

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

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT; APPROVING THE UNILATERAL TERMINATION OF BUSINESS SITE LEASE NO. TC-03-208, LESSEE KERLEY TRADING POST, INC.

BE IT ENACTED:

Section One. Findings

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

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

C. The Western Regional Business Development Office (RBDO) has requested that the Resources and Development Committee unilateral terminate Business Site Lease No. TC-03-208, Exhibit B, for the reasons stated in a memorandum, attached as Exhibit C, dated December 7, 2015 from the Western Regional Business Development Office.

D. The Unilateral Termination of Business Site Lease TC-03-208, Exhibit A, states the reasons for the request for unilateral termination.

E. Whereas ... According to Procurement Clearance dated October 22, 2015, the rental has accumulated to \$106,517.64 with very little effort to clear the outstanding rental with Controller of the Navajo Nation; and

F. Whereas the "Lessee" entered into a Settlement Agreement on February 29, 2000 on a delinquent rental of \$563,000, the Navajo Nation Settled for \$150,000 which was put on a repayment plan. The Settlement Agreement combined the old Kerley Trading Post, Inc. Lease (TC-59-22) and the old Black Mesa Shopping Center Lease (TC-71-60) outstanding rentals because the two (2) Leases were under the same owners; and

G. Whereas Kerley Trading Post, Inc. business site Lease was initiated for renewal upon approval of the Settlement Agreement and Lease No. TC-03-208 was approved by the Secretary on February 22, 2003; and

H. Whereas the Settlement Agreement had a condition where it stated the Agreement will go into effect upon renewal of the Kerley Trading Post, Inc. Lease and Black Mesa Shopping Center Lease but the Black Mesa Shopping Center Lease was never renewed due to numerous sanitation, Navajo Environmental Protection Agency issues and water quality problem. Due to non-renewal of Black Mesa Shopping Center business site lease, the Settlement Agreement never went into effect; and

I. Whereas the Procurement Clearance from Navajo Nation Office of the Controller, Accounts Receivable Section dated 03-20-09 had a delinquent balance of \$8,192.30, balance was only on GMAR, there was no Profit & Loss (P&L) Statement submitted for CY 2004-2008. The Procurement Clearance dated 10-11-12 had a delinquent balance of \$61,826.84, there was no P&L Statement for CY 2004-2011. Procurement Clearance dated 11-04-13 showed a delinquent balance of \$79,622.66, no P&L had been submitted for CY 2004-2012. Procurement Clearance dated 12-12-13 had a delinquent balance of \$78,835.55, no P&L Statement were submitted for CY 2004-2013. Procurement Clearance dated 5-19-15 had a delinquent rental balance of \$105,012.63 and no P&L Statement for CY 2004 to 2014. Procurement Clearance dated 10-22-15 had a delinquent balance of \$106,517.64; and

J. Whereas Western Regional Business Development Office mailed numerous certified letters to Lessee regards to the delinquent rental after each Procurement Clearances were received demanding Lessee to address the delinquent rental but Lessee failed to submit any documentation on how Lessee was addressing the delinquent rental; and

K. Whereas the "Lessee" has never shown any concern or enthusiasm to comply with Section D. of Lease No. TC-03-208 and the Settlement Agreement dated 02-29-2000 which covered \$563,000; and

L. Whereas the delinquent rental will keep accumulating with no effect from the Lessee to address this on-going problem.

M. The Unilateral Termination of Business Site Lease TC-03-208 will not relieve the Lessee of the financial obligations to the Navajo Nation.

N. Attached are Exhibit A, Unilateral Termination of Business Site Lease TC-03-208; Exhibit B, Business Site Lease TC-03-208; Exhibit C, Executive Summary for Unilateral Termination of Business Site TC-03-208; Exhibit D, Procurement Clearance documents; and Exhibit E, correspondence between the Western Regional Business Development Office and the Lessees.

Section Two. Approval

A. The Navajo Nation hereby approves the Unilateral Termination of Business Site Lease TC-03-208, as set forth in Exhibit A.

B. The Navajo Nation hereby authorizes the President of the Navajo Nation to execute this Unilateral Termination of Business Site Lease TC-03-208 and all other documents necessary to effectuate the intent of this resolution.

Section Three. Directive

The Navajo Nation Resources and Development Committee hereby directs the Director of the Division of Economic Development to work with the Navajo Nation Department of Justice to recoup the amount due the Navajo Nation under this lease.

Section Four.

The Navajo Nation Resources and Development Committee hereby urges the Bureau of Indian Affairs to do all necessary to recoup the amount due the Navajo Nation this lease.

CERTIFICATION

I, hereby, certify that the foregoing resolution was duly considered by the Resources and Development Committee of the 23rd Navajo Nation Council at a duly called meeting at NDOT Administrative Conference Room, Tse Bonito (Navajo Nation) New Mexico, at which a quorum was present and that same was passed by a vote of 3 in favor, 0 opposed, 1 abstained this 29th day of November, 2016.



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

Motion: Honorable Walter Phelps
Second: Honorable Leonard Pete

UNILATERAL TERMINATION
OF BUSINESS SITE LEASE TC-03-208



The Navajo Nation (the "Lessor") and Kerley Trading Post, Inc., (Lessee) made and entered into Lease No. TC-03-208 (the "Lease") on February 22, 2003, and such Lease was approved by the Secretary, and became valid and binding under the terms of the Lease and applicable provisions of law; and

WHEREAS the term of the Lease will terminate on its own term and conditions on February 22, 2028, provided that the "Lessee" does not renew; and

WHEREAS under Section D. "Lessee" covenanted and agreed to pay in lawful money of the United States of America to the Controller of the Navajo Nation, for the use and benefit of the Lessor. According to Procurement Clearance dated October 22, 2015, the rental has accumulated to \$106,517.64 with very little effort to clear the outstanding rental with Controller of the Navajo Nation; and

WHEREAS the "Lessee" entered into a Settlement Agreement on February 29, 2000 on a delinquent rental of \$563,000, the Navajo Nation Settled for \$150,000 which was put on a repayment plan. The Settlement Agreement combined the old Kerley Trading Post, Inc. Lease (TC-59-22) and the old Black Mesa Shopping Center Lease (TC-71-60) outstanding rentals because the two (2) Leases were under the same owners; and

WHEREAS Kerley Trading Post, Inc. business site Lease was initiated for renewal upon approval of the Settlement Agreement and Lease No. TC-03-208 was approved by the Secretary on February 22, 2003; and

WHEREAS the Settlement Agreement had a condition where it stated the Agreement will go into effect upon renewal of the Kerley Trading Post, Inc. Lease and Black Mesa Shopping Center Lease but the Black Mesa Shopping Center Lease was never renewed due to numerous sanitation, Navajo Environmental Protection Agency issues and water quality problem. Due to non-renewal of Black Mesa Shopping Center business site lease, the Settlement Agreement never went into effect; and

WHEREAS the Procurement Clearance from Navajo Nation Office of the Controller, Accounts Receivable Section dated 03-20-09 had a delinquent balance of \$8,192.30, balance was only on GMAR, there was no Profit & Loss (P&L) Statement submitted for CY 2004-2008. The Procurement Clearance dated 10-11-12 had a delinquent balance of \$61,826.84, there was no P&L Statement for CY 2004-2011. Procurement Clearance dated 11-04-13 showed a delinquent balance of \$79,622.66, no P&L had been submitted for CY 2004-2012. Procurement Clearance dated 12-12-13 had a delinquent balance of \$78,835.55, no P&L Statement were submitted for CY 2004-2013. Procurement Clearance dated 5-19-15 had a delinquent rental balance of \$105,012.63 and no P&L Statement for CY 2004 to 2014. Procurement Clearance dated 10-22-15 had a delinquent balance of \$106,517.64; and

WHEREAS Western Regional Business Development Office mailed numerous certified letters to Lessee regards to the delinquent rental after each Procurement Clearances were received demanding Lessee to address the delinquent rental but Lessee failed to submit any documentation on how Lessee was addressing the delinquent rental; and

WHEREAS the "Lessee" has never shown any concern or enthusiasm to comply with Section D. of Lease No. TC-03-208 and the Settlement Agreement dated 02-29-2000 which covered \$563,000; and

WHEREAS the delinquent rental will keep accumulating with no effect from the Lessee to address this on-going problem.

NOW THEREFORE the Lessor hereby unilateral agrees that it is in the best interest of all parties to terminate Lease TC-03-208, and therefore so terminate this Lease by this Unilateral Termination under the following terms and conditions:

- 1.) This Unilateral Termination shall warrant that all permanent buildings and improvements on the leased property shall thereupon become the property of Lessor.
- 2.) This Unilateral Termination shall not be valid until approved by the Secretary.
- 3.) This Unilateral Termination shall not relieve the Lessees of their financial obligations to the Navajo Nation, including but not limited to the breached Settlement Agreement of 02-29-2000, nor shall it prohibit the Lessees from seeking relief from their financial obligation to the Navajo Nation under applicable provisions of the Navajo Nation.

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

NAVAJO NATION, LESSOR:

Russell Begaye, President

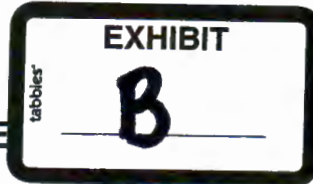
Date: _____

Approved Pursuant to Secretary Re-delegation
Order 209 DM8, 230 DM 1 and 3 IAM 4

BY: _____ Date: _____
Regional Director, Navajo
Bureau of Indian Affairs

LEASE NO: TC-C3-203
LEASE FEE: \$240.00
TRANSACTION #: 190-23-00034-03

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



- ☐ Standard Business Site Lease
☐ Shopping Center Lease

(From) _____ - (Until) _____

THIS 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 9000, Window Rock, Navajo Nation (Arizona) 86515, and, Kerley Trading Post, Inc. dba Van's Trading Company, hereinafter called the Lessee, whose address is P.O. Box 7 Tuba City, Arizona 86045, in accordance with the provisions of 25 U.S.C. §§ 415 as amended, and as implemented by the regulations contained in 25 C.F.R. Part 162; and any amendments thereto relative to business leases on restricted lands which by this reference are made a part hereto.

A. LAND DESCRIPTION.

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

Legal Description

Tract A:

Beginning at the brass cap representing the northeast corner of Section 6, thence N 02° 45' 21" W for a distance of 1947.51' to the true Point of Beginning for Tract A;

thence N 1° 35' 00" W for a distance of 275.05';
thence S 88° 25' 00" W for a distance of 350.00';
thence S 1° 35' 00" E for a distance of 275.05';
thence N 88° 25' 00" E for a distance of 350.00', returning to the point of Beginning, said Tract A contains 2.21 acres, more or less.

Tract B:

Beginning at the brass cap representing the northeast corner of Section 6, thence N 09° 12' 58" W for a distance of 1308.42' to the true Point of Beginning for Tract B; which point is on the northerly right of way of Highway 160;

thence N 8° 12' 00" W for a distance of 300.00';
thence S 81° 48' 00" W for a distance of 400.00';
thence S 8° 12' 00" E for a distance of 300.00'; returning to the northerly right of way of Highway 160;
thence along said right of way N 81° 48' 00" E for a distance 400.00' returning to the Point of Beginning,

said Tract B contains 2.75 acres, more or less.

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

B. PURPOSE, UNLAWFUL USES.

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

- A. Operation of a grocery store with sales of general merchandise, dry goods, fresh meat, produce, deli food and sewing niche.
- B. Sale of Native American Arts & Craft, and furniture.
- C. Pawn Shop
- D. Sale of gasoline and propane.
- E. Automotive and tire repair services and sales.
- F. Car Wash
- G. Laundromat operation with snack bar and video game machines.
- H. Leasing of office and commercial spaces.
- I. Sale of wool & mohair.
- J. Sale and buying of livestock.
- K. A residential site for security and employee housing.
- L. Storage rental.
- M. Operation of a recreational vehicle park.
- N. Operation of a motel.
- O. Operation of a trailer park.
- P. Operation of a restaurant/café.

C. TERM.

The term of this Lease shall be 25 years, beginning on the date this Lease is approved by the Secretary.

This lease may be renewed for an additional term of 25 years, provided that this Lease is in good standing. Lessee shall give written notice of its intent to renew this Lease to the Executive Director of the Division of Economic Development, or his successor, at least ninety (90) days, but no more than six (6) months, prior to the expiration date of this Lease. Renewal of this Lease is subject to the approval of Lessor and the Secretary and to applicable provisions of Navajo Nation law and the regulations contained in 25 C.F.R. Part 162, including all amendments and successors thereto.

D. RENTAL.

1. The Lessee, in consideration of the foregoing, covenants and agrees to pay in lawful money of the United States of America to the Controller of the Navajo Nation, for the use and benefit of the Lessor the following: (NOTE: The rent may consist of a guaranteed minimal annual rent [GMAR] or a rent based on a percentage of gross, whichever is higher [commonly used for business sites]; A guaranteed minimal annual rent plus a percentage of gross [commonly used for Shopping Centers]; or a fixed monthly rent subject to renegotiation every five years [commonly used for Industrial and Manufacturing Facilities]. Be specific as to the rental terms of the Lease):

Rental**Year 2-25**

Grocery store sales	1.5%
Arts & Craft	1.5%
Furniture	1.5%
Pawn Shop	1.5%
Gasoline and propane.	.2¢ per gallon
Automotive and tire repair	1.5%
Car Wash	1.5%
Laundromat	1.5%
Office & commercial spaces rental	1.5%
Sale of wool & mohair	1.5%
Sale of livestock.	1.5%
Storage rental	1.5%
Operation of a motel	1.5%
Operation of a trailer park	1.5%
Operation of a recreational vehicle park	1.5%
Operation of restaurant	1.5%

(All percentage rentals are to be paid on an annual basis)

The sum of \$8,000.00 as a Guaranteed Minimum Annual Rental (GMAR) hereunder.
(Guaranteed Minimum Annual Rental shall be waived (yes X , no) for the first year of the business site lease period.)

2. If Lessee's rental is an annual obligation, Lessee must make monthly rental payments in advance equal to at least one-twelfth of the aforementioned minimum annual rental not later than the tenth (10th) day after the first day of the month for which the rental is due.

Lessee may elect to pay monthly rental in an amount based on the percentage rental rate on the month's gross receipts; however, no payment shall be less than one-twelfth of the minimum rental. Monthly payments based on the percentage rental rate on gross receipts shall be paid not later than the tenth (10th) day after the end of the month for which rental is due. All rental shall be deposited with the Controller of the Navajo Nation. When the annual accounting required by Section 1.3, Part II, of this Lease is completed, the Lessee shall pay any balance due on any percentage rental, or if there is an overpayment, the overpayment shall be credited toward future rents.

3. Rental unpaid ten (10) days after the due date shall bear interest at eighteen percent (18%) per annum, from the date it becomes due until paid, but this provision shall not be construed to relieve the Lessee from any default in making any rental payment at that time and in the manner herein specified. The rents called for hereunder shall be paid without prior notice or demand.
4. While the leased premises are in trust or restricted status, the Secretary may in his discretion suspend the direct rental payment provisions of this Lease, in which event the rental shall be paid to the Secretary or his authorized representative.
5. In the event a sublease, assignment, management agreement or transfer of this Lease, or any right to or interest in this Lease, or any improvements are made to the leased premises, the rent and other terms of this Lease shall be subject to renegotiation.

E. IMPROVEMENTS.

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

F. COMPLETION OF DEVELOPMENT.

1. The Lessee shall complete the full improvement and development of the leased premises in accordance with the general plan and architect's design, submitted in accordance with Section E above, within N/A months from the date which the Navajo Nation approves the plans and designs described in that Section. If Lessee fails to complete full development within such period, such failure shall constitute a breach of the terms of this Lease and may be cause for cancellation.
2. Whenever under this Lease a time is stated within which or by which original construction, repairs, or reconstruction of improvements shall be made and during such period a general or sympathetic strike or lock out occurs, war or rebellion ensues, or some event unquestionably beyond Lessee's power to control, the period of delay so caused shall be added to the period limited herein for the completion of such work.

G. CONSTRUCTION, MAINTENANCE, REPAIR, ALTERATION.

All improvements placed on the leased premises shall be constructed in a good and workmanlike manner and in compliance with applicable laws and building codes. All parts of building visible to the public or from adjacent properties shall present a pleasant appearance as determined by Lessor and all service areas shall be screened from public view to the satisfaction of Lessor. Lessee shall, at all times during the term of this Lease and at Lessee's sole cost and expense, maintain the premises and all improvements thereon and any alterations, additions, or appurtenances thereto, in good order and repair and in a safe, sanitary, neat and attractive condition, and shall otherwise comply with all laws, ordinances and regulations applicable to said premises. Lessee shall have the right during the term of this Lease to make limited alterations, additions or repairs to improvements on the premises in an amount not to exceed \$ 50,000.00 per year. Alterations, additions or repairs in excess of the above amount or any removal or demolition of an improvement shall not be made without the prior written approval of Lessor. Lessee shall indemnify and hold harmless the Lessor and the United States Government against liability for all claims arising from Lessee's failure to maintain said premises and the improvements thereon as herein above provided, or from Lessee's non-observance of any law, ordinance or regulation applicable thereto.

H. RENTAL AND PERFORMANCE BOND.

1. Upon approval of this Lease by the Lessor and the Secretary, Lessee agrees to post a corporate surety bond or other security acceptable to Lessor and the Secretary in a penal sum of \$ 8,000.00, which bond shall be deposited with the Secretary and shall remain in force for the full term of this Lease, at the discretion of Lessor and the Secretary. From time to time the amount of such bond may be increased or decreased by the Lessor and the Secretary, at the Lessor's and the Secretary's reasonable discretion, to more accurately reflect the actual damage which would be suffered by the Lessor in the event of a default in any performance required of the Lessee.
3. It is understood and agreed that bond or security required by this Section will guarantee performance of the contractual obligations under this Lease, and that a corporate surety bond may be furnished annually or may be continued from year to year by a certificate of renewal, a copy of which certificate shall be furnished to the Secretary by Lessee. If U.S. Treasury Bonds are provided, Lessee agrees to make up any deficiency in the value of the bonds. Interest on said U.S. Treasury Bonds shall be paid to Lessee. Should waiver of bond or security be granted during the term of this Lease, Lessor and the Secretary reserve the right to request that Lessee furnish bond or security at a later date and Lessee hereby agrees to comply with said request.

I. CONSTRUCTION BOND.

1. At Lessor's option, prior to the commencement of construction of any improvement on the leasehold premises, the Lessee will cause his construction contractor to post a construction bond in favor of Lessor and Lessee. If the construction contractor cannot post such a bond, the Lessee shall post the construction bond. The purpose of the construction bond is to guarantee the completion of the improvements and payment in full of valid claims of all persons for work performed in or materials furnished for construction of the improvements. The construction contractor or the Lessee may provide security by either.
 - A) Posting a corporate surety bond in an amount equal to the cost of each improvement, said bond to be deposited with the Lessor and to remain in effect until the improvement is satisfactorily completed. Said bond shall be conditioned upon faithful performance by Lessee or his construction contractor and shall give all claimants a right of action to recover upon said bond in any suit brought to foreclose on any mechanic's or materialmen's liens against the property. If United States Treasury Bonds are provided, Lessee, or his construction contractor, agrees to make up any deficiency in the value deposited that might occur due to a decrease in the value of the bonds. Interest on said bonds shall be paid to Lessee.
 - B) Depositing in escrow with the Lessor or an institution acceptable to the Lessor, negotiable United States Treasury Bonds, or cash, or furnishing a non-revocable letter of credit satisfactory to Lessor in an amount sufficient to pay the entire cost of construction of each building or other improvement then to be erected on the premises. If United States Treasury Bonds are provided, Lessee or his construction contractor shall make up any deficiency of the value deposited that might occur due to a decrease in the value of said bonds. Interest on said bonds shall be paid to Lessee or his construction contractor. The funds so deposited may then be used, at the option of Lessor, to discharge any valid mechanic's or materialmen's liens; if no such liens exist, the withheld funds shall be disbursed to Lessee or his construction contractor.

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

J. NOTICES AND DEMANDS.

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

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

Telefax: 1-520-871-4025

To or upon Lessee: **Kerley Trading Post, Inc.
Dba: Van's Trading Company
P.O. Box 7
Tuba City, Arizona 86045**

Copies to: **Executive Director
Division of Economic Development
P.O. Box 663
Window Rock, Navajo Nation (Arizona) 86515**

**Regional Director
Navajo Regional Office
Bureau of Indian Affairs
P. O. Box 1060
Gallup, New Mexico 87305-1060**

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

K. APPLICABLE TERMS AND CONDITIONS

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

as a matter of law. Special Terms and Conditions for Navajo Nation Business Site Leases Within Navajo Nation Shopping Centers apply only to Leases in Navajo Nation Shopping Centers).

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

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

Checks or Money Order should be made payable to: The Navajo Nation
Mail payment to: Navajo Nation Financial Services Department
Accounts Receivable Section
P.O. Box 3150
Window Rock, Arizona 86045

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

KERLEY TRADING POST INCORPORATED

Judy Van Tondan, PRES. 11-16-02
(Lessee) _____ Date
C# 76278

11-15-02
(Lessee) SHANNON I VAN KEUREN, VICE-PRES. Date
C# 306776

THE NAVAJO NATION, LESSOR

By: [Signature]
President, Navajo Nation

Date: 11-27-02

APPROVED:

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

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

Date: 2-24-03

PART II

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

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

1.1 DEFINITIONS.

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

1.2 CONDITION OF LEASED PREMISES.

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

1.3 ACCOUNTING.

When an accounting of Gross Receipts is required under the Lease in order to determine a percentage rent, the Lessee shall, not later than April 15, of each successive calendar year or fraction thereof following the date the term of this Lease begins, submit to Lessor and the Secretary individually, certified statements of gross receipts. Failure to submit aforementioned statements on a timely basis shall be considered a breach of the Lease and the Lease may be subject to cancellation. With said statements, Lessee shall tender payment of any balance due for the preceding calendar year under the percentage rental fee as set forth in Section D above. Said statement shall be prepared by a Certified Public Accountant, licensed in the State of Arizona, New Mexico or Utah, in conformity with standard accounting procedures. Any duly authorized representative of the United States Government, or any qualified accounting agent or agents appointed by the Lessor, shall have access to and the right to examine and audit any pertinent books, documents, papers, and records of Lessee's tenants, if any, relating to this Lease during the normal business hours of any working day. Lessee shall insert a similar provision in all subleases and shall make available to said representative, agent, or agents, all books and records of Lessee's tenants which may be requested or may be necessary for completion of a full audit of all business conducted on the leased premises. The acceptance by the Lessor or the Secretary of any monies paid to Lessor or the Secretary by Lessee as percentage rental for the leased premises as shown by any statement furnished by Lessee shall not be an admission of the accuracy of said statement, or of the sufficiency of the amount of said percentage rental payment, but the Lessor or the Secretary shall be entitled at any time within four (4) years after receipt of any such percentage rental payment to question the sufficiency of the amount thereof and/or the accuracy of the statements furnished by Lessee to justify the same and shall have the right to examine and/or audit as hereinbefore described. Therefore, Lessee shall for said period of four (4) years after submission to the Lessor or the Secretary of any such statement keep safe and intact all of Lessee's records, books, accounts, and other data which in any way bears upon or are required to justify in detail any such statement, and Lessee shall insert a provision in all subleases requiring similar retention of records.

1.4 UTILITY SERVICE LINE AGREEMENTS.

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

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

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

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

1.5 SUBLEASE, ASSIGNMENT, MANAGEMENT AGREEMENT, TRANSFER.

- A. Lessee shall not sublease, assign, place under a management agreement, or in any manner whatsoever transfer this Lease or any right to or interest in this Lease or any of the improvements on the leased premises, or sell, assign or transfer more than forty-nine percent (49%) of the corporate stock of any corporation named as Lessee without the written approval of Lessor, the Secretary and sureties, if any, and no such sublease, assignment, sale, amendment or transfer shall be valid or binding without such approval, and then only upon the condition that the Sublessee, Assignee or other successor in interest, excepting an approved encumbrancer(s), shall agree in writing to be bound by each and all of the covenants and conditions of this Lease. Should Lessee attempt to make any such sublease, assignment, sale, amendment, or transfer, except as aforesaid, such action shall be deemed a breach of this Lease, excepting that an encumbrancer, as herein set forth, may enforce his rights in the manner hereinafter provided. Approval of one sublease, assignment, sale, amendment or transfer shall not validate a subsequent sublease, assignment, sale, amendment or transfer, and the restrictions of this Section shall apply to each successive sublease, assignment, sale, amendment or transfer hereunder and shall be severally binding upon each and every Sublessee, Assignee, Transferee and other successor in interest of the Lessee, excepting an encumbrancer.
- B. For purposes of this Section, the creation of a partnership, corporation, joint venture, management agreement or any other arrangement under which any person or entity, other than Lessee is entitled to share in profits derived directly or indirectly from the leased premises or activities carried out thereon, shall be considered a sublease or assignment of this Lease, and therefore shall require the approval of Lessor and the Secretary.
- C. Approval or disapproval of any sublease, assignment, management agreement, or transfer, for any purpose whatsoever, by the Lessee shall be within the sole discretion of Lessor. Approval of any sublease, assignment, management agreement, or transfer is subject to

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

1.6 ENCUMBRANCE.

- A. This Lease, or any right to or interest in this Lease or any of the improvements on the leased premises, may not be encumbered without the written approval of the Lessor, the Secretary and sureties and no such encumbrance shall be valid without said approval. The Lessor shall not unreasonably withhold its approval to an encumbrance.
- B. An encumbrance must be confined to the leasehold interest of the Lessee or the subleasehold interest of a Sublessee and shall not jeopardize in any way Lessor's interest in the land. Lessee agrees to furnish as requested any financial statements or analysis pertinent to the encumbrance that the Lessor and the Secretary may deem necessary to justify the amount, purpose and terms of said encumbrance.
- C. An encumbrancer of any Sublease, in the event of default by Sublessee of the terms of an approved encumbrance, may exercise any rights provided in such approved encumbrance, provided that before any sale of subleasehold, whether under power of sale or foreclosure, the encumbrancer shall give to Lessor, the Secretary, and Lessee hereunder notice of the same character and duration as is required to be given to the Sublessee by the encumbrancer and/or by applicable law.

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

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

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

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

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

- (1) To pay to the encumbrancer the full unpaid principal amount of the approved encumbrance plus unpaid interest accrued to the date of such payment, plus sale costs incurred to the date of such payment.
- (2) To execute in favor of the encumbrancer a promissory note and a new encumbrance, which new encumbrance must be approved by the Secretary, for the full unpaid principal amount of the approved encumbrance, plus unpaid interest accrued to the date of such execution, plus sale expenses incurred to the date of such execution, upon the same terms and conditions as originally provided by the approved encumbrance, and delivering to the encumbrancer a policy of title insurance in the face amount of such promissory note, issued by a reputable title insurance

company, and insuring that the new encumbrance is a first lien upon the property described in this Lease subject only to current taxes and to conditions, restrictions and reservations of record at the time of recording the new encumbrance.

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

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

1.7

LIENS, TAXES, ASSESSMENTS, UTILITY CHARGES.

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

LESSOR'S PAYING CLAIMS.

Lessor shall have the option to pay any lien or charge payable by Lessee under this Lease, or settle any action therefor, if the Lessee after written notice from the Lessor or Secretary fails to pay or to post bond against enforcement. All costs and other expenses incurred by Lessor in so doing shall be paid to Lessor by Lessee on demand, with interest at the rate of eighteen percent (18%) per annum from the date of Lessor's payment until repayment is made. Failure to make such repayment on demand shall constitute a breach of this Lease.

1.9

SANITATION.

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

1.10

HAZARDOUS AND REGULATED SUBSTANCES.

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

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

1.11

LIABILITY INSURANCE

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

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

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

- G. An acceptable certificate of insurance shall be issued to the Navajo Nation by the Lessee prior to commencement of the Lease as evidence that policies providing the required coverages, conditions and limits are in full force and effect. A copy of such certificate shall be furnished to the Secretary. Such certificate shall indemnify this Lease and contain provisions that coverage afforded under the policies will not be canceled, terminated or materially altered until at least thirty (30) days prior written notice has been given to the Lessor.
- Certificates of insurance shall be addressed as follows: Navajo Nation Department of Risk Management, P.O. Box 1690, Window Rock, Arizona 86515
- H. Any failure to comply with the claim reporting provisions of the policies or any breach of a policy warranty shall not affect coverage afforded under the policy to protect the Lessor.
- I. Failure on the part of the Lessee to procure or maintain required insurance shall constitute a material breach of contract upon which the Lessor may immediately terminate this Lease.
- J. The Navajo Nation reserves the right to request and receive certified copies of any or all of the above policies and/or endorsements.
- K. Lessee and its insurers providing the required coverages shall waive all rights of recovery against the Navajo Nation and its agents, officials and employees, and the Secretary. The insurance limits required under this Lease shall not limit the liability of the Lessee, nor relieve the Lessee of any obligation under this lease.
- L. The Lessee shall not do or commit to be done anything in or upon any portions of the Premises or bring or keep anything there which would in any way conflict with the condition of any insurance policy upon the Premises or in any way increase the rate of insurance upon the Premises or on property kept there.

1.12 FIRE AND CASUALTY INSURANCE.

- A. Lessee, shall, from the date of approval of this Lease, carry fire and casualty insurance with extended coverage endorsement, covering not less than full insurable value of all improvements on the leased premises. Said policy shall be obtained from a reliable insurance company licensed to do business in the State in which the leased premises are located and shall be written jointly to protect Lessee, Lessor and the United States of America and shall provide for notification to the Lessor and the Secretary prior to any change in said policy or any cancellation or non-renewal of said policy for any reason, including non payment of premiums. A copy of said policy shall be deposited with Lessor and the Secretary. In the event of damage to any improvement on the leased premises, Lessee shall rebuild, repair or otherwise reinstate the damaged improvement or building in a good and

substantial manner according to the plan and elevation of the improvement or building so destroyed or damaged or in accordance with any modified plan approved in writing by the Lessor prior to commencement of repair or reconstruction. Repair or reconstruction shall commence as soon as possible and, in any event, within one (1) year after the damage occurs and shall be pursued diligently. Insurance proceeds shall be deposited in an escrow account with an institution approved by Lessor and the Secretary. Lessee shall also deposit in said escrow account all additional funds required to reconstruct the damaged improvement. Escrow instructions shall include provisions that all funds so deposited shall be used to reconstruct the damaged improvements and that funds shall be disbursed during the progress of reconstruction on proper architect's, engineer's, or contractor's certificates. All money in escrow after reconstruction has been completed shall be paid to Lessee.

- B. In the event of damage to the extent of seventy-five percent (75%) or more of the total value of all improvements on the leased premises during the last five (5) years of the term of this Lease, Lessee shall have the option to reconstruct said improvements. Lessee shall provide Lessor with a written notice of the exercise of Lessee's reconstruction option within thirty (30) days of the event of damage giving rise to Lessee's reconstruction option. Should Lessee exercise its option to reconstruct, Lessee shall commence reconstruction of the damaged improvements within ninety (90) days of Lessee's exercise of its reconstruction option and shall diligently pursue the reconstruction to completion. Should Lessee not exercise its option to reconstruct, this Lease shall terminate one hundred and twenty (120) days after the event of damage giving rise to Lessee's reconstruction option. The leased premises shall be cleared of debris at Lessee's expense prior to termination of the Lease. Lessee shall not be charged rent during the period of debris removal unless Lessee occupies the leased premises beyond the Lease termination date, after which the Lessee will be charged hold over rental as provided in Section 1.21. In the event Lessee does not reconstruct, all insurance proceeds shall be paid to Lessor.
- C. Any encumbrancer shall be named as a beneficiary under all insurance policies required by this paragraph and in the event of loss or damage to the buildings on the leased property while an approved encumbrance remains unpaid, the amount of such loss or damage (but not exceeding the remaining balance of the approved encumbrance) shall be paid to the encumbrancer on the condition that the encumbrancer agrees to comply with the reconstruction obligations set forth herein. If such amount paid to the encumbrancer is sufficient to repair the loss or damage with respect to which it was paid, or if Lessor or Lessee shall within three (3) months after such payment by the insurer to the encumbrancer deposit with the encumbrancer enough money to completely repair the loss or damage, when added to the amount paid by the insurer to the encumbrancer, the encumbrancer shall, upon written order of Lessor or Lessee, pay such monies for such repair, and it shall not be deemed a payment or credit on the

encumbrance; but otherwise, at the expiration of such three (3) months said sum so paid by the insurer to the encumbrancer shall be applied and credited upon the approved encumbrance. It is understood and agreed that nothing stated herein shall relieve Lessee of its obligation to repair and/or replace the damaged improvement to a condition as good or better than before the damage occurred.

1.13 INDEMNIFY, DEFEND AND HOLD HARMLESS.

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

1.14 EMINENT DOMAIN.

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

1.15 DEFAULT.

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

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

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

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

- B. No waiver of a breach of any of the covenants of this Lease shall be construed to be a waiver of any succeeding breach of the same or any other covenant of this Lease.
- C. Exercise of any of the remedies outlined in this Section shall not exclude recourse to any other remedies, by suit or otherwise, which may be exercised by Lessor or the Secretary or any other rights or remedies now held or which may be held by Lessor in the future.
- D. If any approved encumbrancer shall give Lessor, before any default shall have occurred in this Lease, a written notice containing the name and address and the interest in the premises of such encumbrancer, Lessor shall thereafter give to such encumbrancer a copy of each notice of default by Lessee at the same time as such notice of default shall be given by Lessor to Lessee. Lessor shall accept such encumbrancer's performance of any of Lessee's covenants or other obligations under this Lease, with the same force and effect as though performed by Lessee. Upon providing such written notice, the encumbrancer shall have standing to pursue any appeals permitted by applicable statutes and regulations that Lessee would be entitled to pursue. Further, Lessor shall not terminate the Lease if an encumbrancer has commenced and is diligently pursuing a foreclosure action to terminate Lessee's interest in said Lease and has cured or is taking action to cure the breach that is the cause of the termination.

1.16 ATTORNEY'S FEES.

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

1.17 NO PARTNERSHIP.

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

1.18 TERMINATION OF FEDERAL TRUST.

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

1.19 OBLIGATIONS OF LESSEE.

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

1.20 STATUS OF SUBLEASES.

Termination of this Lease, by cancellation or otherwise, shall not serve to cancel approved subleases and/or subtenancies, but shall operate as an assignment to Lessor, without merger of the Lease and sublease or subtenancy, of any and all such subleases and/or subtenancies.

1.21 INSPECTION.

The Secretary and Lessor, and their authorized representatives, shall have the right, at any reasonable time during the term of this Lease, to enter upon the leased premises, or any part thereof, to inspect the same and all buildings and other improvements erected and placed thereon for purposes, including, but not limited to, conditions affecting the health, safety and welfare of those entering the premises, the protection of the leased premises, any improvements thereto or any adjoining property or uses, or compliance with applicable environmental health or safety laws and regulations. No showing of probable cause shall be required for such entry and inspection. If testing for environmental contamination reveals environmental contamination in violation of applicable law, Lessee shall pay the costs of such testing. Nothing in this paragraph shall limit Lessee's obligation under applicable law or this Lease to perform testing or remediation or otherwise limit Lessee's liability.

1.22 HOLDING OVER.

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

1.23 LEASE REQUIREMENTS NOT EXCLUSIVE.

Nothing in this Lease shall be construed to relieve Lessee of

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

1.24 DELIVERY OF PREMISES.

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

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

1.25 NAVAJO PREFERENCE.

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

1.26 MINERALS.

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

1.27 SUCCESSORS AND ASSIGNS.

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

1.28 INTEREST OF MEMBER OF CONGRESS.

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

1.29 USE OF NAVAJO PRODUCED GOODS AND SERVICES.

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

1.30 AGREEMENT TO ABIDE BY NAVAJO AND FEDERAL LAWS.

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

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

1.31 GOVERNING LAW AND CHOICE OF FORUM.

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

1.32 CONSENT TO JURISDICTION.

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

1.33 COVENANT NOT TO CONTEST JURISDICTION.

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

1.34 NO WAIVER OF SOVEREIGN IMMUNITY.

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

1.35 SAVINGS CLAUSE.

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

1.36 QUALIFICATIONS OF BUSINESS.

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

1.37 COMPLIANCE WITH 25 CFR 141.

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

1.38 NO ORAL AGREEMENTS.

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

1.39 VALIDITY.

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

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

2.1 DEFINITIONS.

- A. "CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9601 et seq.
- B. "RCRA" means the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq.
- C. "Regulated Substance" is as defined at 42 U.S.C. 6991(2), which is any substance defined in section 101(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1990 (42 U.S.C. 9601(14)) (but not including any substances regulated as a hazardous waste under subtitle C of the Resource Conservation and Recovery Act (42 U.S.C. 6921 et seq.) and petroleum).
- D. "Storage Tank" is any tank which is defined by either of the following subsections.

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

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

2.2 HAZARDOUS AND REGULATED SUBSTANCES.

A. Lessee shall not cause or permit any hazardous substance

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

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

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

and,

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

or their respective institutional successors.

2.3 FINANCIAL RESPONSIBILITY FOR STORAGE TANKS.

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

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

2.4 ENVIRONMENTAL AUDITS AND COMPLIANCE DOCUMENTS.

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

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

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

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

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

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

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

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

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

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

3.1 FIXTURES AND PERSONAL PROPERTY.

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

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

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

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

3.2 REPAIRS AND MAINTENANCE.

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

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

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

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

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

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

3.3 LESSEE'S RIGHT TO MAKE ALTERATIONS.

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

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

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

3.4

POSSESSION AND USE.

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

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

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

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

3.5 LESSEE'S CONDUCT OF BUSINESS.

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

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

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

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

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

3.6 ADVERTISING MEDIA.

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

In addition, no advertising medium shall be utilized by

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

3.7

COMMON AREAS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3.8 SPECIAL INSURANCE REQUIREMENT FOR SHOPPING CENTERS.

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

3.9 SPECIAL RECONSTRUCTION PROVISION FOR SHOPPING CENTERS.

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

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

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

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

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

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

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

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

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

3.10

SIGNS.

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

3.11

ADDITIONAL NOTICE REQUIREMENT FOR SHOPPING CENTERS.

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

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

3.12

LESSOR'S RESERVATIONS AND RIGHTS

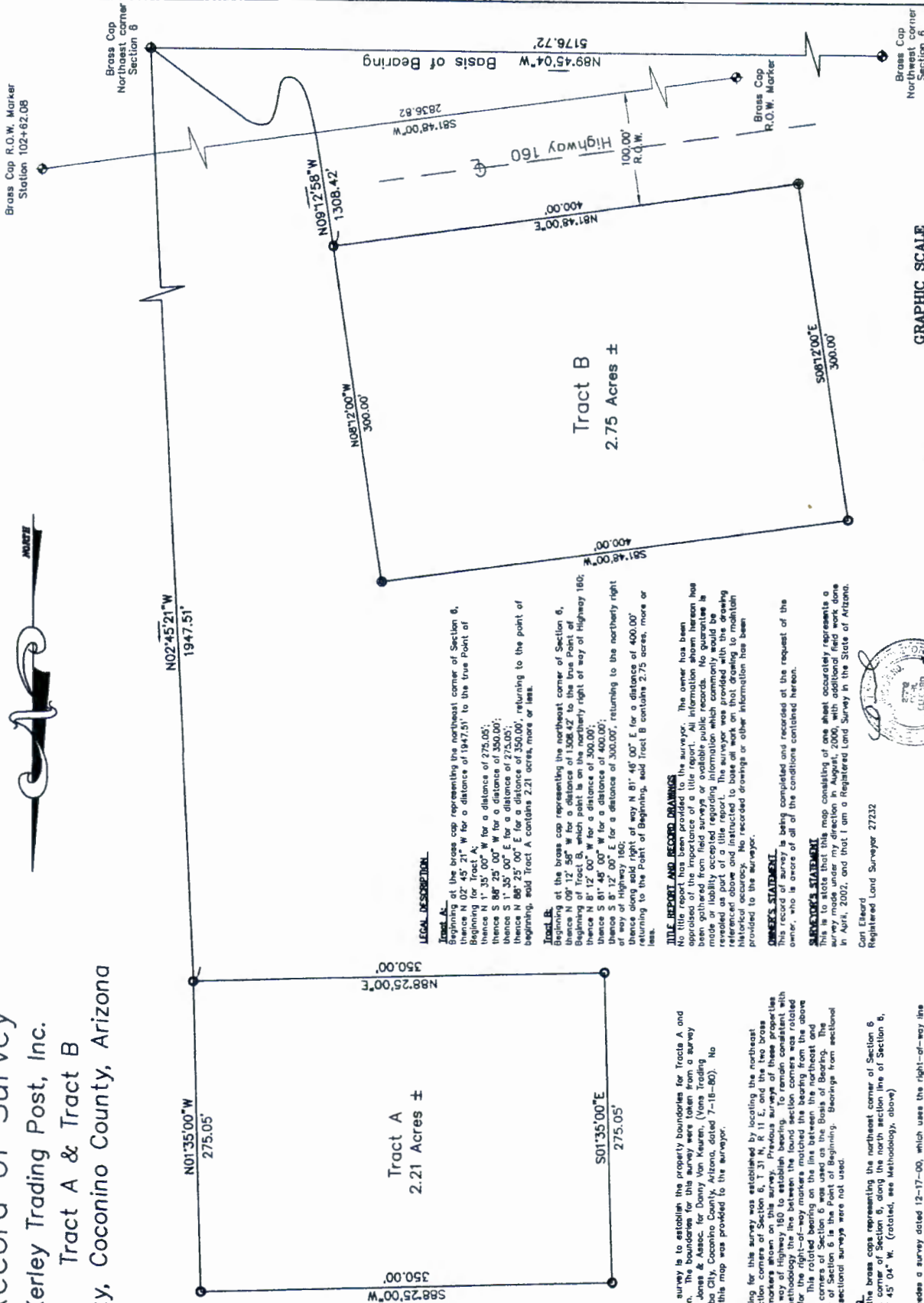
Lessor reserves the absolute right to effect such other tenancies in the Shopping Center as Lessor, in the exercise of its sole business judgment, shall determine to best promote the interests of the Shopping Center, subject to the terms of this Lease. Lessee does not rely on the fact, nor does Lessor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

Record of Survey

Kerley Trading Post, Inc.

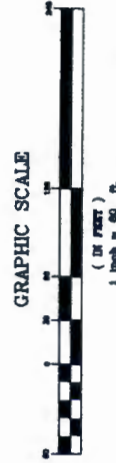
Tract A & Tract B

Tuba City, Coconino County, Arizona



Legend

- — Set 5/8" rebar with yellow cap (R.L.S. 27232)
- — Set Spike
- ◆ — Brass Cap



NOTE:
The intent of this survey is to establish the property boundaries for Tract A and B as shown hereon. The boundaries for this survey were taken from a survey map done by Joe Jones & Assoc. for Danny Van Keuren, (Vans Trading Company, Inc., Tuba City, Coconino County, Arizona, dated 7-16-80). No recorded copy of this map was provided to the surveyor.

METHODS:
The Basis of Bearing for this survey was established by locating the northeast and northwest corners of Section 6, T. 31 N., R. 11 E., and the two brass cap right-of-way markers shown on this survey. Previous surveys of these properties used the right of way of Highway 160 to establish bearing. It remains consistent with the right of way of Highway 160 to establish bearing. The corners were relocated until the bearing for the right-of-way markers matched the bearing shown above referenced survey. This related bearing on the line between the northeast and northwest corners of Section 6 was used as the Basis of Bearing. The north-east corner of Section 6 is the Point of Beginning. Bearings from sectional data and original sectional surveys were not used.

BASE OF BEARING:
The line between the brass caps representing the northeast corner of Section 6 and the northwest corner of Section 6, along the north section line of Section 6, which bears N 89° 45' 04" W. (related, see Methodology, above)

NOTE:
This survey supercedes a survey dated 12-17-00, which uses the right-of-way line as the Basis of Bearing.

LEGAL DESCRIPTION

Tract A:
Beginning at the brass cap representing the northeast corner of Section 6, thence N 02° 45' 21" W for a distance of 1947.51'; thence S 88° 25' 00" W for a distance of 275.05'; thence S 88° 25' 00" W for a distance of 350.00'; thence S 1° 35' 00" E for a distance of 350.00'; thence N 88° 25' 00" E for a distance of 275.05'; returning to the point of beginning, said Tract A contains 2.21 acres, more or less.

Tract B:
Beginning at the brass cap representing the northeast corner of Section 6, thence N 09° 12' 58" W for a distance of 1308.42'; thence N 81° 12' 00" W for a distance of 400.00'; thence S 81° 45' 00" W for a distance of 400.00'; thence S 8° 12' 00" E for a distance of 300.00'; returning to the point of beginning, said Tract B contains 2.75 acres, more or less.

TITLE REPORT AND RECORD DRAWING

This is a preliminary report of the surveyor. The owner has been notified of the results of the survey. All information shown on this map has been gathered from field surveys or available public records. No guarantee is made or liability accepted regarding information which community would be revealed as part of a title report. The surveyor was provided with the drawing referenced above and instructed to base all work on that drawing to maintain the accuracy of the survey. No recorded drawings or other information has been provided to the surveyor.

OWNER'S STATEMENT:
This record of survey is being completed and recorded at the request of the owner, who is aware of all of the conditions contained herein.

SURVEYOR'S STATEMENT

This is to state that this map consisting of one sheet accurately represents a survey made under my direction in August, 2000, with additional field work done in April, 2002, and that I am a Registered Land Survey in the State of Arizona.

Carl Elward
Registered Land Surveyor 27232



MCM ENGINEERING, INC.
STRUCTURAL/CONCRETE/AND SURVEYING
CONSTRUCTION MANAGEMENT

(520) 645-1636
(520) 645-1638 FAX
P.O. BOX 7110
PAGE, AZ 86040

Judy Van Keuren
Record of Survey



Executive Summary
Unilateral Termination of Business Site Lease TC-03-208
Kerley Trading Post, Inc.

Business Site Lease TC-03-208 (Lease) was approved on February 22, 2003, by the Secretary with a term of 25 years, Lease will expire on February 22, 2028, provided that the "Lessee" expires on its own term. The Lease is being unilaterally terminated for the following cause:

Lessee agreed to pay rental under Section D. of the Lease. According to Procurement Clearance dated October 22, 2015, the rental has accumulated to \$106,517.64 with very little effort to clear the outstanding rental with Controller of the Navajo Nation. The previous expired Lease of Kerley Trading Post, Inc. (TC-59-22) had a very difficult time with procurement, this problem prevented the previous Lease to be re-newed until a Settlement Agreement was approved on February 29, 2000, see Settlement Agreement enclosed. The Settlement Agreement of 02-29-00 covered a delinquent rental of \$563,000, the Navajo Nation Settled for \$150,000 which was put on a re-payment plan. The Settlement Agreement combined the old Kerley Trading Post, Inc. Lease (TC-59-22) and the old Black Mesa Shopping Center Lease (TC-71-60) outstanding rentals because the two (2) Leases were under the same owners.

Settlement Agreement had a condition where it stated the Agreement will go into effect upon renewal of the Kerley Trading Post, Inc. Lease and Black Mesa Shopping Center Lease but the Black Mesa Shopping Center Lease was never renewed due to numerous sanitation, Navajo Environmental Protection Agency issues and water quality problem. Due to non-renewal of Black Mesa Shopping Center business site lease, the Settlement Agreement never went into effect.

Due to previous serious delinquent issues with Kerley Trading Post, Inc., Western Regional Business Development Office (WRBDO) started monitoring the business with requests to Navajo Nation Office of the Controller, Accounts Receivable Section (NNOC) starting in March of 2009. Procurement Clearance from NNOC dated 03-20-09 had a delinquent balance of \$8,192.30, balance was only on GMAR, there was no Profit & Loss (P&L) Statement submitted for CY 2004-2008. The Procurement Clearance dated 10-11-12 had a delinquent balance of \$61,826.84, there was no P& L Statement for CY 2004-2011. Procurement Clearance dated 11-04-12 showed a delinquent balance of \$79,622.66, no P&L had been submitted for CY 2004-2012. Procurement Clearance dated 12-12-13 had a delinquent balance of \$78,835.55, no P&L Statement were submitted for CY 2004-2013. Procurement Clearance dated 5-19-15 had a delinquent rental balance of \$105,012.63 and no P&L Statement for CY 2004 to 2014. Procurement Clearance dated 10-22-15 had a delinquent balance of \$106,517.64; and

WRBDO mailed numerous certified letters to Lessee regards to the delinquent rental after each Procurement Clearances were received demanding Lessee to address the delinquent rental but Lessee failed to submit any documentation on how Lessee was addressing the delinquent. Due to no response to these certified letter, WRBDO has exhausted all efforts to get Lessee to address the delinquent rental account with the Navajo Nation.

Executive Summary

Unilateral Termination of Business Site Lease TC-03-208, Kerley Trading Post, Inc.

Pg. 2

“Lessee” has never shown any concern or enthusiasm to comply with Section D. of Lease No. TC-03-208 and the Settlement Agreement dated 02-29-2000 which covered \$563,000. The delinquent rental will keep accumulating with no effect from the Lessee to address this on-going problem.

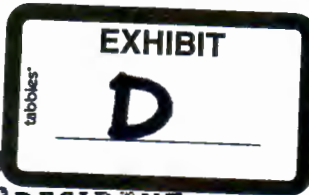
It is in the best interest of the Navajo Nation and all parties involved to unilaterally terminate Business Site Lease TC-03-208.

All supporting documents are attached for justification.

THE NAVAJO NATION



BEN SHELLY PRESIDENT
REX LEE JIM VICE PRESIDENT



Louise Johnson, Credit Manager

VIA: FACSIMILE

MEMORANDUM

TO: Dolly Lane, PEDS
Tuba City Regional Business Development Office
Division of Economic Development

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

DATE: May 6, 2015

SUBJECT: *PROCUREMENT CLEARANCE*

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

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

Kerley Trading Post, Inc. TC-03-208	P.O. Box 7 Tuba City, AZ 86045	PROCUREMENT CLEARED
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Should you have any questions, please contact our office at (928) 871-6749.

Xc: File/Chrono



THE NAVAJO NATION

RUSSELL BEGAYE **PRESIDENT**

JONATHAN NEZ **VIC. PRESIDENT**

E-MAILED
10/22/2015

October 22, 2015

MEMORANDUM

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

FROM:

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

SUBJECT: "Navajo Business and Procurement Act clearance check"

Pursuant to your memorandum dated October 8, 2015 (*Received in Account Receivable on 10/19/15 @ 9:02 a.m.*) seeking a procurement clearance check on the following individual/ Business is as follows:

Name	Address/ BSL No./ Store Location	A. R. Debt Due	Action
Kerley Trading Post, Inc. dba: Van's Trading Company <i>Address:</i> Post Office Box 7 Tuba City, AZ 86045	BSL: TC83-98 AB# 186264 Business: Black Mesa Trailer Park	\$ 190,380.84	Procurement not cleared. This business site lease carries a delinquent balance of \$190,380.84 as of 10/22/2015. The profit & loss statements for CY 2002 through 2009 have not been submitted and are due immediately.
	BSL: TC03-208 AB# 223051 Business: Kerley Trading Post, Inc.	\$ 106,517.64	Procurement not cleared. This business site lease has a delinquent balance of \$106,517.64 as of 10/22/2015. The profit & loss statements for CY 2004 through 2014 have not been submitted and are due immediately.
	BSL: TC71-60 AB# None Business: Black Mesa Shopping Center	\$ 52,809.62	Procurement not cleared. This business site has a current delinquent balance of \$52,809.62 as of 10/22/2015. The profit & loss statements for CY 2004 through 2014 have not been submitted and are due immediately. Though the lease expired on 03/25/1996 it currently operates without a valid lease agreement. The Navajo Accounts Receivable will continue billing at hold over rate until such time case is resolved by Shonto Chapter and Navajo Nation DOJ.

This document supersedes procurement clearance memorandum response dated May 19, 2015.

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

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

/mj

CC: *Accounts Receivable*



BEN SHELLY PRESIDENT
REX LEE JIM VICE PRESIDENT



CERTIFIED MAIL - RETURN RECEIPT REQUESTED

November 2, 2012

Kerley Trading Post, Inc./Vans Trading Company
Shannon Van Keuren, Vice-President
P.O. Box 7
Tuba City, Arizona 86045

Dear Mrs. Van Keuren:

This is to inform you that Kerley Trading Post, Inc. has a serious delinquent rental with the Navajo Nation Account Receivable Section, see enclosed Procurement Clearance dated October 11, 2012.

On February 29, 2000, the Navajo Nation entered into a Settlement Agreement with Kerley Trading Post, Inc. to deal with an existing accounts receivable balance of approximately \$563,000.00 of Kerley Trading Post, Inc. and Black Mesa Shopping Center. The Settlement Agreement consisted of a note for re-payment but the Agreement stated "The note will become effective, and payments will commence, upon approval of the new leases by the Secretary", see page 2, paragraph 3 under "NOW THEREFORE the parties to this Agreement agree as follow:"

Business Site Lease TC-03-208 was approved on 2-24-03 for Kerley Trading Post, Inc. but the Black Mesa Shopping Center business site lease was never renewed because of numerous problems such as on-going delinquent rental, noncompliance with Environmental laws along with serious sanitation problems, Navajo Nation Water Code problems and others. Due to non-renewal of the Black Mesa Shopping Center business site lease, the Settlement Agreement of 2-24-12 never went into effect.

To date, there are still delinquent rental problems and Western Regional Business Development Office is turning the matter over to Navajo Nation Department of Justice for legal assistance for either collection or eviction. If you feel this decision is incorrect, please submit a written justification within 30 days from the date of this letter to the address below, our contact information is (928)-283-3014.

Sincerely,

Dolly Lane

Principal Economic Development Specialist

Enclosures

Cc: BSL TC-03-208 file

Western Regional Business Development Office
P.O. Box 485 Tuba City, (Navajo Nation) Arizona 86045
♦ Phone: (928) 283-3010/3011/3013/3014 ♦ Fax: (928) 283-3015

THE NAVAJO NATION



BEN SHELLY
REX LEE JIM

PRESIDENT
VICE PRESIDENT

CERTIFIED LETTER - RETURN RECEIPT REQUESTED

November 5, 2012

Kerley Trading Post, Inc./Vans Trading Company
Judy Van Keuren, President
Shannon Van Keuren, Vice-President
P.O. Box 7
Tuba City, AZ 86045

Dear Madams:

This is to notify you that there was a small typo- error on the certified letter dated November 2, 2012, copy of the letter is enclosed. The typo-error is as follow:

Paragraph 2 stated the following:

On February 29, 2000, the Navajo Nation entered into a Settlement Agreement with Kerley Trading Post, Inc. to deal with an existing accounts receivable balance of Approximately \$563,000.00 of Kerley Trading Post, Inc. and Black Mesa Shopping Center.

Paragraph 3; last sentence stated:

Due to non-renewal of the Black Mesa Shopping Center business site lease, the Settlement Agreement of **2-24-12** never went into effect.

This particular sentence supposed to read:

Due to non-renewal of the Black Mesa Shopping Center business site lease, the Settlement Agreement of **2-29-00** never went into effect.

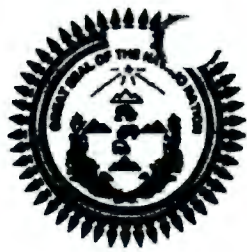
Our office apologizes for any inconvenience this may have caused, please note this correction. If you have any question, contact our office at (928)-283-3014.

Sincerely

A handwritten signature in cursive script, appearing to read "Dolly Lane".

Dolly Lane

Principal Economic Development Specialist



**BEN SHELLY PRESIDENT
REX LEE JIM VICE PRESIDENT**

CERTIFIED LETTER - RETURN RECEIPT REQUESTED

November 8, 2013

Kerley Trading Post, Inc./Vans Trading Company
Judy Van Keuren, President
P.O. Box 7
Tuba City, Arizona 86045

Dear Mrs. Van Keuren:

Our office requested for an updated Procurement Clearance to Navajo Nation Office of the Controller, Accounts Receivable Section (Accounts Receivable) on October 24, 2013 to determine the rental status of Business Site Lease TC-03-208. Accounts Receivable submitted an updated Procurement Clearance dated November 4, 2013. According to this Procurement Clearance, Kerley Trading Post, Inc. is in serious delinquency by \$79,622.66, an increase by \$17,795.82 from last year on October 11, 2012. This amount does not include the Black Mesa Shopping Center (TC71-60) and the Black Mesa Trailer Park (TC-83-98). The Black Mesa Shopping Center and the Black Mesa Trailer Park should be close and should not be operating. See copy of Procurement Clearances dated 11-04-13 and 10-11-12 enclosed.

At this time, Western Regional Business Development Office (Western RBDO) has exhausted all efforts in trying to get Kerley Trading Post, Inc. to address its delinquent rental accounts with the Navajo Nation. This letter will serve as a last notification before a Unilateral Termination is initiated to terminate Business Site Lease TC-03-208.

If Kerley Trading Post, Inc. has evidence on full payments on its delinquent rental accounts on TC-03-208, TC-71-60 and TC-83-98, receipts of full payments is to be submitted to Western RBDO on or before December 9, 2013 at the address below or at Dook'o'oosliid Business Center, Suite 201, Tuba City, Arizona. If there is no evidence of full payments on all these delinquent accounts on or before December 9, 2013, Western RBDO will have no choice but to initiate Unilateral Termination of Business Site Lease TC-03-208. For any question, contact our office at (928)-283-3014.

Sincerely,

Dolly Lane

Principal Economic Development Specialist

CONCURRENCE:

Joe Salt, Program Manager

Western Regional Business Development Office

Enclosures

Cc: BSL TC-03-208 file

Navajo Nation Department of Justice

Western Regional Business Development Office
Small Business Development Department/DIVISION OF ECONOMIC DEVELOPMENT
P.O. Box 485 Tuba City, (Navajo Nation) Arizona 86045

Diwayne Gardner
ATTORNEY AT LAW
P.O. Box 57063
Albuquerque, NM 87187

email: ChoctawChief2002@yahoo.com

Phone: (928) 401-1956

December 21, 2013

VIA FIRST CLASS MAIL AND FAX

Ms. Dolly Lane, Principal Economic Development Specialist
Western Regional Business Development Office
P.O. Box 485
Tuba City (Navajo Nation), Arizona 86045

RECEIVED

DEC 23 2013

Western Regional
Business Development Office

Re: Letter Dated November 8th, 2013

Ms. Lane:

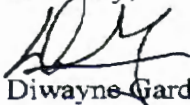
Thank you for the pleasant conversation we had on the phone this past Tuesday, December 17, 2013. In our conversation we requested and you agreed to extend Kerley Trading Post one more week to respond to your inquiry and this letter is their response. This correspondence will address the Kerley Trading Post rental payments and not Black Mesa Store or trailer park, as per our discussion. I did promise to have this correspondence to you by Friday, December 20th, 2013 but due to unexpected transportation repairs, I am sending this letter today.

Mrs. Judy Van Keuren is currently involved with creating documents for Internal Revenue Service audit and unavailable at this time to provide documents to me. It is my understanding that Mrs. Van Keuren stores documents she needs to answer your letter in Cortez, Colorado. Mrs. Van Keuren will provide documentation to me after the 1st of January 2014 so that a more complete and accurate response can be made to your letter.

I have been involved in the Van Keuren's legal issues and have resolved Navajo Nation's Safe Drinking Water Act complaint in their favor. Navajo Nation can appeal and we will defend it if the appeal is granted. The Safe Drinking Water Act litigation contained a provision to deny a business license to Black Mesa Shopping Center which has had a deleterious effect on all business activities of the Van Keurens. Maybe now new discussion concerning business leases can be reopened.

I will be in contact soon, best wishes and happy holidays.

Sincerely,



Diwayne Gardner



**BEN SHELLY PRESIDENT
REX LEE JIM VICE PRESIDENT**

CERTIFIED LETTER: RETURN RECEIPT REQUESTED

February 21, 2014

Kerley Trading Post, Inc./Vans Trading Company
Judy Van Keuren, President
P.O. Box 7
Tuba City, Arizona 86045

RE: Letter dated December 21, 2013 from Diwayne Carter/Attorney At Law

Dear Mrs. Van Keuren,

This is to inform you that our office received the above referenced letter dated December 21, 2013 in response to our certified letter dated November 8, 2013. Mr. Carter requested for a time extension on your behalf for you to gather the necessary documents to respond to our letter dated 11-8-13. This is to let you know that our office will allow you to present your documents justifying why our office should not pursue the termination of Business Site Lease TC-03-208 (Kerley Trading Post, Inc./Vans Trading Company) by March 14, 2014.

This is enough time from December 12, 2013 to March 14, 2014 to submit your written justification. Upon receipt of your documents, office will turn the matter to Navajo Nation Department of Justice because you retained an Attorney to assist you in this matter.

If our office does not receive any justification to why Business Site Lease TC-03-208 should not be terminated, our office will still turn the matter over to Navajo Nation Department of Justice. After March 14, 2014 our office will provide you information on who your contact will be within Navajo Nation Department of Justice.

Please do not hesitate to call our office if you have any question regarding this letter.

Sincerely,

Dolly Lane

Principal Economic Development Specialist

CONCURRENCE:

Joe Salt, Program Manager

Western Regional Business Development Office

Enclosures

Cc: Diwayne Carter, Attorney At Law
Navajo Nation Department of Justice

Western Regional Business Development Office
Small Business Development Department/DIVISION OF ECONOMIC DEVELOPMENT
P.O. Box 485 Tuba City, (Navajo Nation) Arizona 86045
Phone (928) 283-3014 & Fax (928) 283-3015

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Kerley Trading Post, Inc.

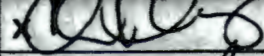
Attention: Judy Van Keuren, Pres.

P.O. Box 7

Tuba City, Arizona 86045

COMPLETE THIS SECTION ON DELIVERY

A. Signature

☐ Agent☐ Addressee

B. Received by (Printed Name)

Clement H. Hiley

C. Date of Delivery

3/3/14

D. Is delivery address different from item 1?

☐ Yes

If YES, enter delivery address below:

☒ No

3. Service Type

☒ Certified Mail☐ Express Mail☐ Registered☐ Return Receipt for Merchandise☐ Insured Mail☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

2. Article Number

(Transfer from service label)

7008 3230 0003 4854 2218

RECEIVED

MAY 16 2014

Kerley Trading Post, Inc., dba Van's Trading Company
P.O. Box 7
Tuba City, AZ 86045

Navajo Nation
Western Regional Business Development Department
Small Business Development Department
DIVISION OF ECONOMIC DEVELOPMENT
P.O. Box 485 Tuba City, AZ 86045

May 12, 2014

Re: Letter dated February 21, 2014 from Dolly Lane, Western Regional Business Development Office

Dear Ms. Lane,

We are in receipt of your letter requesting that we provide you with "justification to why Business Site Lease TC-06-208 should not be terminated." I request that the Navajo Nation Department of Justice, and the Navajo Nation Western Regional Business Development Department not pursue termination of Van's Trading Company's business site lease, for the following reasons:

- Van's Trading Company, Inc. (hereafter "Van's") employs predominantly Navajo or Hopi citizens, helping to provide income and economic sustainability for families in the Tuba City market area. Prior to the economic recession, Van's typically employed 25 full time employees, with that number declining to an average of 10. Recessionary economic conditions drastically reduced tourism visitation to the Navajo Nation, and resulted in declining sales at Van's and other reservation based businesses. The sales decline subsequently forced many businesses like Van's to reduce staffing and limit new hiring. Our goal is to increase our staffing as economic conditions permit.
- Van's purchases hundreds of arts and crafts items from Navajo and Hopi artists annually, which fulfills a demand for Native American-crafted goods, and serves as a source of income for local Native American citizens. The Navajo Nation has many skilled artisans who rely upon retail outlets like Van's to purchase their woven rugs, pottery, beadwork, silversmith work, and other crafted goods locally. For over fifty years, Van's has been proud to be a reliable purchaser and seller of authentic Native American crafts.
- Van's provides Tuba City and nearby communities a much needed pawn service. Local customers often rely on "gap funding" like short-term loans secured by jewelry to make ends meet. Van's competes with off-reservation entities, such as other pawn shops and title loan companies, by offering customers a competitive (and typically lower) rate of interest on short-term, small-dollar loans. Customers are also able to conveniently obtain pawn service locally at Van's, versus having to drive 50 minutes to off-reservation businesses.

- Van's supports the Navajo Nation through collection and remittance of sales tax. Please note that it is my understanding that Van's is currently in good standing on its sales tax obligations. These tax revenues are ostensibly collected on behalf of all residents of the Navajo Nation for the collective benefit of members of the Nation by funding essential services and paying wages and salaries to tribal government employees.
- Van's majority ownership is a citizen of the Navajo Nation, who was born in the community of Tuba City, and who is as entitled as any other member of the Navajo Nation to own and operate a small business to earn a living.
- Van's has a history of being attentive to and supportive of the local culture by providing donations for traditional ceremonial, cultural and charitable purposes, as Van's is a member of the local community.

Your request has provided me with an opportunity to reflect, for which I have gained deep appreciation. You asked me to state why I think that you should not terminate my business license. I have reflected seriously on your request. I reflected on how meaningful my and my husband's work has been all of these years that we have lived on the reservation and worked in partnership in retail, and worked with members of the community to keep the business going. These past few years have been very challenging for us operationally and financially, but I come from a family of old Navajo entrepreneurs, and we do what we can to prevail. I am reminded how Van's is woven into the community in Tuba City, as it has been for over 50 years. I am deeply aware and appreciative of why we have persisted in this remote location of Tuba City all these years. I personally value my longstanding and friendly customers who have patronized the business for many years. I am so grateful when I see them come in to my store and express gratitude that we are here. I also feel grateful for those individuals for whom we have provided skills training, a steady job and a paycheck during their employment with us. We couldn't be in business without customers and employees. Like partnerships, the owners and employees of Van's, and the community Van's serves, have been through thick and thin over the years. For the past few years, I have been so buried in paperwork, training new hires one-on-one, and regrouping given our business and financial challenges. Your request allowed me to step back and get some perspective. I don't want you to terminate my business license. I believe that Van's remains a valuable part of the community.

Sincerely,



Judy Van Keuren

Owner, Kerley Trading Post, Inc., dba Van's Trading Company

This letter sent via Certified Mail



THE NAVAJO NATION

RUSSELL BEGA PRESIDENT
JONATHAN NEZ VICE PRESIDENT

CERTIFIED LETTER - RETURN RECEIPT REQUIRED

July 16, 2015

Judy Van Keuren, President
Kerley Trading Post, Inc.
P.O. Box 7
Tuba City, Arizona 86045

Dear Mrs. Van Keuren:

Our office received your letter dated June 18, 2015 requesting to consider granting Kerley Trading Post, Inc. (Company) additional time before pursuing termination of Business Site Lease TC-03-208 (Lease). Because of the medical hardship the family is experiencing, our office will grant the Company up to October 30, 2015 (90 days) to take corrective action and clear all delinquent rental accounts with the Navajo Nation.

Be informed that Western Regional Business Development Office (Western RBDO) is aware that Kerley Trading Post, Inc. has a long history of being delinquent on its rental account with the Navajo Nation; therefore it is highly recommended that the Company put forth a lot of effort into reducing and clearing the rental account. The amount of effort put forth by the Company to clear its rental account with the Navajo Nation will determine if Western RBDO will continue pursuing the unilateral termination of the business site lease after October 30, 2015.

If you have any question, contact our office at (928)-283-3014.

Sincerely,

A handwritten signature in cursive script that reads "Dolly Lane".

Dolly Lane,
Principal Economic Development Specialist

Attachment

Cc: Business Site Lease TC-03-208.



THE NAVAJO NATION

RUSSELL BEATY
JONATHAN NEZ

CERTIFIED LETTER - RETURN RECEIPT REQUESTED

November 13, 2015

Kerley Trading Post, Inc./Vans Trading Company
Judy Van Keuren, President
P.O. Box 7
Tuba City, Arizona 86045

RE: Official notification of Business Site Lease TC-03-208 termination

Dear Mrs. Van Keuren:

Our office requested for an updated Accounting Report on Business Site Lease (Lease) TC-03-208 on 10-09-15, a new procurement clearance was issued by Navajo Nation Accounts Receivable Section on 10-22-15, according to this report there is still a huge delinquent rental of \$106,517.64, this does not include all other past outstanding rental on other business operations and other outstanding accounts. The procurement clearance further shows there was very little effort made in reducing the delinquent rental account for Lease TC-03-208.

As stated in the certified letter dated July 16, 2015 our office approved a 90 days deadline extension for termination of the Lease. Within this 90 days Kerley Trading Post, Inc. was to work on drastically reducing the delinquent rental account of \$105,012.63.

The new balance in the amount of \$106,517.64 is an indication that Kerley Trading Post, Inc. did not put forth the effort to drastically reduce the company's delinquent Lease rental. Western Regional Business Development Office has exhausted all efforts, this will serve as an official notification that the office will initiate a termination of Business Site Lease TC-03-208.

If you have any question, contact our office at (928)-283-3014.

Sincerely,

Dolly Lane

Principal Economic Development Specialist

CONCURRENCE:

Joe Salt, Program Manager

Enclosures

Cc: Kerley Trading Post, Inc./TC-03-208 file

Western Regional Business Development Office
Small Business Development Department ♦ DIVISION OF ECONOMIC DEVELOPMENT
P.O. Box 485 Tuba City, Navajo Nation (Arizona) 86045 • (928) 283-3011/3014 • Fax: (928) 283-3015



THE NAVAJO NATION

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

MEMORANDUM

TO : 164 Reviewers
Navajo Nation

FROM : *Dolly Lane*
Dolly Lane, PEDS
Western Regional Business Development Office
Division of Economic Development

DATE : December 7, 2015

SUBJECT : Unilateral Termination of Business Site Lease TC-03-208
(Kerley Trading Post, Inc.) – Bureau of Indian Affairs Approved Lease

Western Regional Business Development Office (Western RBDO) is requesting Navajo Nation to support and approve the Unilateral Termination of Business Site Lease TC-03-208 because the company has a long history of neglecting its business site lease rental obligation to the Navajo Nation. Following is a short summary of the Lease activities:

- 1.) Business Site Lease TC-59-22 (Kerley Trading Post, Inc.'s old Lease) expired on March 25, 1996. Western RBDO was unable to re-new the Lease due to over \$563,000+ delinquency on the Lease and Business Site Lease TC-71-60 (Black Mesa Shopping Center).
- 2.) On February 29, 2000 the Navajo Nation approved a Settlement Agreement which paved the way for Kerley Trading Post, Inc. to renew the business site lease (TC-03-208) on February 22, 2003. The Settlement Agreement consisted of a note for re-payment but the Agreement stated "The note will become effective, and payments will commence, upon approval of the new leases by the Secretary", copy of Settlement Agreement is enclosed. The Black Mesa Shopping Center Business Site Lease was also packaged for renewal but it was not process due to numerous Navajo EPA issues, non-compliance with the Clean Water Act and sanitation problems. Due to non-renewal of the Black Mesa Shopping Center business site lease, the Settlement Agreement of 2-29-00 never went into effect.
- 3.) Western RBDO started monitoring the Lease rental by requesting for Procurement Clearance on March 17, 2009. Procurement Clearance date March 20, 2009 had a delinquent rental of \$8,192.30. From March 20, 2009 to October 22, 2015, the delinquent rental accumulated to \$106,517.64.

Certified Letters were submitted to Kerley Trading Post, Inc. on majority of the Procurement Clearances requesting Lessee to address and pay off the delinquent rental. There were only

Memo. 164 Reviewers, Navajo Nation

Subject: Unilateral Termination of Business Site Lease TC-03-208, (Kerley Trading Post, Inc.)

12/07/15

Pg. 2

two (2) responses letters from Kerley Trading Post, Inc. to the certified letters but these letters did not provide any information on how the company was addressing the delinquent rental.

The delinquent rental of Business Site Lease TC-03-208 will continue to increase. It is in the best interest of all parties involved to approve the unilateral termination of the Lease.

Your support and approval will be appreciated. All supporting documents are enclosed with the Unilateral Termination. If you have any question, contact our office at (928)-283-3014.

Enclosures

Cc: Kerley Trading Post, Inc. file

EXECUTIVE OFFICIAL REVIEW

Title of Document: Unilateral Termination BSL TC-03-208
Kerley Trading Post INC.
 Program/Division: REGIONAL BUSINESS DEVELOPMENT
OFFICE – Western Navajo/DED

Contact Name: Dolly Lane, Principal Economic
Development Specialist
 Email/Phone Number: djj_lane@hotmail.com (928)
283-3014

Business Site Lease

Sufficient Insufficient

- ☒ 1. Division: EL Date: 12-16-15 ☒ ☐
- ☐ 2. Office of the Controller: 12/17/15 Ana Duran Date: 12.18.15 ☒ ☐
 (only if Procurement Clearance is not issued within 30 days of the initiation of the E.O. review)
- ☐ 3. Office of the Attorney General: UBJ Date: 09/16/17 ☒ ☐

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

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

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

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

Navajo Housing Authority Request for Release of Funds

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

Lease Purchase Agreements

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

Grant Applications

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

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

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

Relinquishment of Navajo Membership

☐ 1. Land Department:	_____	Date: _____	☐	☐
☐ 2. Elections:	_____	Date: _____	☐	☐
☐ 3. Office of the Attorney General:	_____	Date: _____	☐	☐

Land Withdrawal or Relinquishment for Commercial Purposes

☐ 1. Division:	_____	Date: _____	Sufficient	Insufficient
☐ 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
- ☐ 7. DOJ
- ☐ 8. OPVP

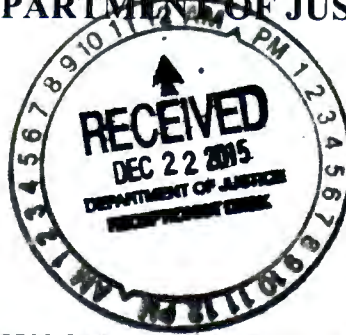
_____	Date: _____	☐	☐
_____	Date: _____	☐	☐
_____	Date: _____	☐	☐



☐ RESUBMITTAL

NAVAJO NATION DEPARTMENT OF JUSTICE

DOCUMENT REVIEW REQUEST FORM



DOJ	
12/22/15	12pm
DATE / TIME	
☐ 7 Day Deadline	
DOC #:	5147
SAS #:	
UNIT:	ECDA

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

CLIENT TO COMPLETE

DATE OF REQUEST:	12/10/2014	DIVISION:	Division of Economic Development
CONTACT NAME:	Dolly Lane	DEPARTMENT:	Small Business Development Dept. WRBDO
PHONE NUMBER:	(928)-283-3014	E-MAIL:	djj_lane@hotmail.com
TITLE OF DOCUMENT: <i>Approving a sublease agreement on Business Site Lease TC-04-219 between SDI of Tuba City Arizona, LLC and SW KARMA, LLC. Business Site Lease TC-04-219 is BIA approved Lease, business is a Sonic Drive-In and is located in Tuba City, Arizona.</i>			

DOJ SECRETARY TO COMPLETE

DATE/TIME IN UNIT:	12/22/15 1pm	REVIEWING ATTORNEY/ADVOCATE:	Latoria Johnson
DATE TIME OUT OF UNIT:			

DOJ ATTORNEY / ADVOCATE COMMENTS

Success

REVIEWED BY: (Print)	Date / Time	SURNAMED BY: (Print)	Date / Time
<i>UBJ</i>	1/6/16 1207pm	<i>UBJ</i>	1/6/16 1207pm

DOJ Secretary Called: *Dolly Lane* for Document Pick Up on *1/6/16* at *1218* By: *AH*

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

NNDOJ/DRRF-July 2013



NAVAJO NATION DEPARTMENT OF JUSTICE



REQUEST FOR SERVICES

☐ RESUBMITTAL

DOJ

DATE / TIME

RFS #: _____

UNIT: _____

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

CLIENT TO COMPLETE

DATE OF REQUEST: 3/21/2014 ENTITY/DIVISION: Economic Development

CONTACT NAME: Dolly Lane DEPARTMENT: Small Business Development/WRBDO

PHONE NUMBER: (928)-283-3014 E-MAIL: djj_lane@hotmail.com

COMPLETE DESCRIPTION OF LEGAL NEED AND SERVICES REQUESTED (Attach Documents):
Unilateral Termination of Business Site Lease TC-03-208-Kerley Trading Post, Inc. Business located in Tuba City, AZ.

DEADLINE: 4/30/2014 REASON: Unilateral Termination is now necessary

DOJ SECRETARY TO COMPLETE

DATE/TIME IN UNIT:

REVIEWING ATTORNEY/ADVOCATE:

DATE TIME OUT OF UNIT:

PREPARED BY (initial):

DOJ ATTORNEY / ADVOCATE COMMENTS

REVIEWED BY: (PRINT)

DATE / TIME:

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

PICKED UP BY: (PRINT)

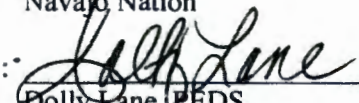
DATE / TIME:



BEN SHELLY PRESIDENT
REX LEE JIM VICE PRESIDENT

MEMORANDUM

TO : Karis Begaye, Attorney
Latonia Becenti-Johnson, Attorney
Department of Justice
Navajo Nation

FROM : 
Dolly Lane, PEDS
Western Regional Business Development Office
Division of Economic Development

DATE : March 25, 2014

SUBJECT : Request for Service-Unilateral Termination of Business Site Lease TC-03-208

Western Regional Business Development Office (Western RBDO) is requesting Navajo Nation Department Justice's assistance with the Unilateral Termination of Business Site Lease TC-03-208 because Lessee retained Attorney Diwayne Gardner. Outlined here is a short history of Kerley Trading Post, Inc. business site lease activities:

- 1.) Business Site Lease TC-59-22 (Lease) expired on March 25, 1996. Western RBDO was unable to renew the Lease due to over \$563,000+ delinquency on the rental on TC-59-22 and Business Site Lease TC-71-60 (Black Mesa Shopping Center).
- 2.) On February 29, 2000 the Navajo Nation approved a Settlement Agreement which paved the way for Kerley Trading Post, Inc. to renew the business site lease. The Settlement Agreement consisted of a note for re-payment but the Agreement stated "The note will become effective, and payments will commence, upon approval of the new leases by the Secretary", see page 2, paragraph 3 under "NOW THEREFORE the parties to this Agreement agree as follow:" The Black Mesa Shopping Center Business Site Lease was also packaged for renewal. Due to non-renewal of the Black Mesa Shopping Center business site lease, the Settlement Agreement of 2-29-00 never went into effect.
- 3.) February 25, 2002- James E. Fitting issued an Interpretation of Settlement Agreement between the Navajo Nation and Kerley Trading Company (RFS No. 02-0398). Mr. Fitting concluded that since Kerley Trading Company, Inc. had disabled itself from obtaining a new lease it voluntarily disabled itself from complying with the Settlement Agreement by not paying its accounts. Since this time, Kerley Trading Company obtained a new lease on 02-24-03 but it fell back into the old status of accumulated delinquent rental. The Black Mesa Shopping Center Lease was never renewed due to numerous Navajo EPA issues.
- 4.) Kerley Trading Post, Inc. business site lease TC-03-208 was approved on February 24, 2003 but the Black Mesa Shopping Center business site lease was never renewed because of numerous problems such as on-going delinquent rental, noncompliance with Environmental laws along with serious sanitation problems, Navajo Nation Water Code problems and others. It appears due to non-renewal of the Black Mesa Shopping Center business site lease, the Settlement Agreement of 02-29-00 never went into effect.

Memorandum to Karis Begaye, Attorney, Navajo Nation Department of Justice
Subject: Request for Service- Unilateral Termination of Business Site Lease TC-03-208
03-25-14
Pg. 2

In November of 2012 Western RBDO made an attempt by certified letter to get Kerley Trading Post, Inc. to address their delinquent rental. In the letters, Lessee was informed that there was a potential for termination of Business Site Lease TC-03-208, see certified letters enclosed.

Western RBDO's last certified letter dated February 21, 2014 gave Lessee up to March 14, 2014 to provide written justification as to why Western RBDO should not terminate the business site lease. Lessee never provided a written response but Attorney Diwayne Gardner responded to a previous certified letter dated November 8, 2013 requesting for an extension of one additional week to respond to the letter dated November 8, 2013, deadline date being December 09, 2013. This request was approved by me by telephone conversation with Mr. Gardner. This one week turn into several weeks and a final certified letter was mailed out to Lessee on February 21, 2014 informing Lessee that a new and final deadline was March 14, 2014.

There was no written response from Lessee on or before the deadline date of March 14, 2014. Our office is turning this matter to Department of Justice because Lessee retained attorney Diwayne Gardner.

Please review all enclosed documents and proceed with unilateral termination. If you have any question, contact our office at (928)-283-3014.

Enclosures

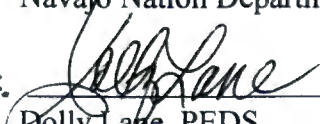
Cc: Business Site Lease TC-03-208 file
Judy Van Keuren, President-Kerley Valley Trading Post, Inc.



BEN SHELLY PRESIDENT
REX LEE JIM VICE PRESIDENT

MEMORANDUM

TO : Karis Begay, Attorney
Community & Economic Development Unit
Navajo Nation Department of Justice

FROM : 
Dolly Lane, PEDS
Western RBDO
Division of Economic Development

DATE : June 13, 2014

SUBJECT : Request for Service – Unilateral Termination of Business Site Lease TC-03-208
(Kerley Trading Post, Inc. business located in Tuba City, AZ.)

Our office submitted the Request for Service (RFS) on March 25, 2014 requesting for assistance from Navajo Nation Department of Justice to terminate Business Site Lease TC-03-208 (Lease) after numerous attempt to get Lessee into compliance with the terms and conditions of the business site lease. A certified letter was mail to Kerley Trading Post, Inc./Vans Trading Company on February 21, 2014 informed Lessee of the deadline of March 14, 2014 to submit justification as to why the business site lease should not be terminated.

By March 14, 2014 there was no written response. Our office submitted the RFS to DOJ requesting for assistance to terminate the Lease on March 25, 2014. On May 16, 2014 our office received the attached letter from Judy Van Keuren providing information as to why the Lease should not be terminated. The initial reason for a unilateral termination is the delinquent rental of Kerley Trading Post, Inc./Vans Trading Company. As I was not really clear in my February 21, 2014 letter, I was very specific in my certified letter dated November 8, 2014 to Mrs. Van Keuren on what our office wanted in order not to pursue termination of the Lease. There were no responses to these 2 letters by the deadline date and to date, there is no proof that the delinquent rental is being resolved.

Enclosed is the most recent letter from Mrs. Van Keuren which state it is a response to our February 21, 2014 letter, this letter should not prevent DOJ from continuing to work on the unilateral termination of the Lease because there is no mention on how the delinquent rental is being addressed or any plans to take care of the delinquent rental.

Memo. to Karis Begay, Attorney Community & Economic Development Unit Navajo Nation Department of Justice
SUBJECT: Request for Service – Unilateral Termination of Business Site Lease TC-03-208
(Kerley Trading Post, Inc. business located in Tuba City, AZ.)

06-13-14

Pg. 2

Please provide written response to our Request for Service for a unilateral termination of Business Site Lease TC-03-208.

Your assistance with this termination is appreciated. If you have any question, contact our office at (928)-283-3014.

Enclosures

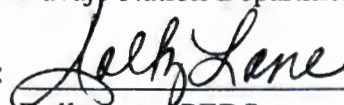
Cc: TC-03-208 file



BEN SHELLY PRESIDENT
REX LEE JIM VICE PRESIDENT

MEMORANDUM

TO : Karis Begay, Attorney
• Community & Economic Development Unit
Navajo Nation Department of Justice

FROM : 
Dolly Lane, PEDS
Western RBDO
Division of Economic Development

DATE : May 09, 2014

SUBJECT : Request For Service – Unilateral Termination of Business Site Lease
TC-03-208 (Kerley Trading Post, Inc. business located in Tuba City, AZ.)

Our office submitted the above subject document to your office on March 21, 2014. This is requesting for an updated status report on what is going on with this request.

Your immediate attention and response will be appreciated. If you have any question, contact our office at (928)-283-3014.

Enclosure

Cc: TC-03-208



THE NAVAJO NATION

RUSSELL BEGAYE PRESIDENT
JONATHAN NEZ VICE-PRESIDENT

January 19, 2016

Otto Tso, Council Delegate
To'naneesdizi Chapter
P.O. Box 727
Tuba City, Arizona 86045

RE: Request for Sponsorship on Doc. # 5147

Dear Honorable Delegate Tso:

Western Regional Business Development Office processed Doc. # 5147 and our office is requesting you to sponsor the document to the next approval process which is the approval by Resource & Development Committee (R&D Committee) of the Navajo Nation Council.

Our office prefers to attend any R&D Committee meeting that will be held in Window Rock or within Western Navajo Agency when the time comes for R&D Committee's action and approval on the document. Please designate an alternate sponsor for this document and provide the name of the alternate sponsor to our office at the telephone number below.

The document has its own Executive Summary, please review the Executive Summary and if you have any question, contact our office at (928)-283-3014.

Sincerely,

Dolly Lane
Principal Economic Development Specialist

Attachment
Cc: Business Site Lease TC-03-208 file

Honorable Delegate Tso,

I have 2 documents that are ready for sponsorship and requesting you to sponsor both of these documents to the Resource & Development Committee meeting, you should get an alternate for sponsorship. The documents are setting at Division of Economic Development, Small Business Development Department. The two are as follow:

1.) Document # 5147 - Unilateral Termination of Business Site Lease TC-03-208 - Kerley Trading Post, Inc. Kerley Trading Post, Inc. (Van's Trading Co.) has a long history of neglecting its financial responsibility to the Navajo Nation. The company

had a large debt to the Navajo Nation in 1999 (\$563,000+), because of this large debt, the company could not re-new its old business site lease. The company ended with a Settlement Agreement, the Nation Settle for \$150,000 and the company

was

suppose to start paying on the Note when Black Mesa Shopping Center Lease was re-newed as well. The re-newal of Black Mesa Shopping Center never happen but Kerley Trading Post, Inc.'s Lease was re-newed which is TC-03-208. After the

re-newal of Kerley Trading Post, Inc.'s Lease, the financial rental obligation started accumulating with little rental payments. As of October 22, 2015 the company had accumulated \$106,517.64 in debt to the Navajo Nation. This amount does not

include the Black Mesa Shopping Center. The Black Mesa Trailer Court was supposed to be shut down in early 2000 but it seems to be operating.

Our office has run out of all remedies and has no choice but to process this termination. A lot of certified letters have been sent to the company requesting to address the delinquent account but very little effort has been put forth by owners of the

company. See the memorandum dated December 7, 2015 and the Executive Summary.

2.) Document # 5148 - This is a sublease Agreement of Business Site Lease TC-04-219 between SDI of Tuba City, Arizona LLC (Sonic Drive-In) and SW Karma, LLC. SDI of Tuba City, Arizona LLC is going to sublease the Sonic Drive-In to SW Karma, LLC.

There is going to be no change in management, all the people that are currently working will stay, the business will stay as a Sonic Drive-In. SW Karma, LLC will be the new owners of Sonic Drive-In but they will Lease the building and the property from SDI of Tuba City, Arizona LLC (Current Owners of Sonic Drive-In).

The 2 packets need to be picked up from Jennifer Jones, @ Small Business Development Department of Division of Economic Development, Kerigan Professional Office Building in St. Michael, Arizona. Ground level office located at the end of the north hall way on the left side. If you have any question, contact me at the number below.

Dolly Lane, PEDS

Western Regional Business Development Office

P.O. Box 485

Tuba City, AZ 86045

M (928) 283-3014

F (928) 283-3015