

PART II
STANDARD TERMS AND CONDITIONS FOR
NAVAJO NATION ECONOMIC DEVELOPMENT LEASE
(Navajo Nation Trust Land)

1.0 STANDARD TERMS AND CONDITIONS FOR ALL NAVAJO NATION BUSINESS SITE LEASES	1.36 NO WAIVER OF SOVEREIGN IMMUNITY. 10
1.1 DEFINITIONS.....2	1.37 SAVINGS CLAUSE. 10
1.2 CONDITION OF LEASED PREMISES.2	1.38 QUALIFICATIONS OF BUSINESS..... 10
1.3 ACCOUNTING.2	1.39 COMPLIANCE WITH NAVAJO NATION BUSINESS SITE LEASING REGULATIONS OF 2005. 10
1.4 UTILITY SERVICE LINE AGREEMENTS.....2	1.40 NO ORAL AGREEMENTS. 10
1.5 SUBLEASE, ASSIGNMENT, AMENDMENT, TRANSFER.3	1.41 VALIDITY. 10
1.6 ENCUMBRANCE.3	2.0 SPECIAL TERMS AND CONDITIONS FOR NAVAJO NATION BUSINESS SITE LEASES WITH STORAGE TANKS
1.7 LIENS, TAXES, ASSESSMENTS, UTILITY CHARGES.4	2.1 DEFINITIONS. 11
1.8 LESSOR'S PAYING CLAIMS.4	2.2 REGULATED SUBSTANCES. 11
1.9 SANITATION.5	2.3 FINANCIAL RESPONSIBILITY FOR STORAGE TANKS. 11
1.10 REGULATED SUBSTANCES.....5	2.4 ENVIRONMENTAL AUDITS AND COMPLIANCE DOCUMENTS. 11
1.11 LIABILITY INSURANCE5	2.5 OWNERSHIP AND REMOVAL OF STORAGE TANKS 12
1.12 FIRE AND CASUALTY INSURANCE.6	3.0 SPECIAL TERMS AND CONDITIONS FOR NAVAJO NATION BUSINESS SITE LEASES WITHIN THE NAVAJO NATION SHOPPING CENTERS
1.13 INDEMNIFY, DEFEND AND HOLD HARMLESS.7	3.1 SPECIAL ACCOUNTING PROVISION FOR SHOPPING CENTERS. 13
1.14 EMINENT DOMAIN.7	3.2 FIXTURES AND PERSONAL PROPERTY. 13
1.15 DEFAULT.7	3.3 REPAIRS AND MAINTENANCE. 13
1.16 REMEDIES.....8	3.4 LESSEE'S RIGHT TO MAKE ALTERATIONS..... 14
1.17 MUTUAL TERMINATION8	3.5 POSSESSION AND USE. 14
1.18 ATTORNEY'S FEES.....8	3.6 LESSEE'S CONDUCT OF BUSINESS..... 14
1.19 NO PARTNERSHIP.....8	3.7 ADVERTISING MEDIA..... 15
1.20 TERMINATION OF FEDERAL TRUST.....8	3.8 COMMON AREAS. 15
1.21 OBLIGATIONS OF LESSEE.8	3.9 SPECIAL SUBLEASE REQUIREMENT FOR SHOPPING CENTERS..... 16
1.22 STATUS OF SUBLEASES.8	3.10 SPECIAL INSURANCE REQUIREMENT FOR SHOPPING CENTERS..... 16
1.23 INSPECTION.9	3.11 SPECIAL RECONSTRUCTION PROVISION FOR SHOPPING CENTERS. 16
1.24 HOLDING OVER.9	3.12 SIGNS..... 17
1.25 LEASE REQUIREMENTS NOT EXCLUSIVE.9	3.13 ADDITIONAL NOTICE REQUIREMENT FOR SHOPPING CENTERS..... 17
1.26 DELIVERY OF LEASED PREMISES.....9	3.14 LESSOR'S RESERVATIONS AND RIGHTS..... 17
1.27 NAVAJO PREFERENCE.9	
1.28 MINERALS.9	
1.29 SUCCESSORS AND ASSIGNS.9	
1.30 INTEREST OF MEMBER OF CONGRESS.9	
1.31 USE OF NAVAJO PRODUCED GOODS AND SERVICES.9	
1.32 AGREEMENT TO ABIDE BY NAVAJO AND FEDERAL LAWS.....9	
1.33 GOVERNING LAW AND CHOICE OF FORUM.9	
1.34 CONSENT TO JURISDICTION.9	
1.35 COVENANT NOT TO CONTEST JURISDICTION.....10	

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

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, and sureties, if any, in accordance with the terms and conditions of this Lease.
- B. "Condemnation" means the taking of any real property right thereof, in condemnation proceeding, by right of eminent domain, or by conveyance in lieu of or in settlement of a condemnation or eminent domain proceeding brought by any governmental authority having jurisdiction and power over the property.
- C. "Encumbrancer" means the owner and holder of an Approved Encumbrance, including all successors and assigns.
- D. "Federal Laws" means all applicable federal laws, including:
 - i) "CERCLA," the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9601 et. seq., and
 - ii) "RCRA," the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et. seq.
- E. "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.
- F. "Lessor" means the Navajo Nation who conveys property under a lease agreement.
- G. "Secretary" means the Secretary of the Interior or his/her 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, which shall be conducted prior to entering into the Lease, shall include an environmental review which provides the Lessee with knowledge of the environmental status of the leased premises, including the status of the storage tanks and/or other regulated substances.

1.3 ACCOUNTING.

- A. Lessee shall maintain full and adequate books of account and such other records as are necessary to reliably reflect the financial position and results of the operation in accordance with Generally Accepted Accounting Principles ("GAAP") or other comprehensive basis of accounting deemed acceptable by the Navajo Nation Office of Auditor General.
- B. The Navajo Nation Office of Auditor General or any of its duly authorized representatives, shall at any time up until the expiration of five (5) years after the expiration of this Lease, have access to and the right to examine any of Lessee's books of account, documents, papers, and records, including Federal and State income tax returns, and such documents of any affiliated companies of Lessee, in connection with any transaction related to this Lease. 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.

1.4 UTILITY SERVICE LINE AGREEMENTS.

- A. Lessee will identify the rights-of-way necessary or appropriate for construction, operation and maintenance of any improvements. Lessee shall obtain approval from any third parties, Lessor and Secretary as may be necessary or appropriate as required by 25 U.S.C. §415 and 25 C.F.R. § 169.
- B. Lessee is authorized to enter into appropriate service line agreements with utility companies for the provision of necessary or appropriate utility services to the leased premises, including gas, water, sewer, electricity, telephone, television, internet, and other utilities, without further consent by Lessor, on the condition that:
 - (1) such agreements are for the sole purpose of supplying utility services to the leased premises; and
 - (2) such agreements authorize utility service lines only within the leased premises; and
 - (3) such agreements do not extend beyond the term of this Lease, including any extensions thereof; and
 - (4) executed copies of such agreements, together with plats or diagrams showing with particularity the location, size and extent of such service lines are filed by the

utility companies with Lessor within thirty (30) days of their execution; and

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

C. Lessor reserves the right for Lessor's benefit or for the benefit of other land users, whether or not adjacent to the leased premises, to enter into service line agreements with utility companies for service lines across the leased premises, provided that, after consultation, Lessor and Lessee determine such service lines do not unreasonably interfere with Lessee's use of the leased premises nor otherwise affect any property rights reserved to Lessor.

1.5 SUBLEASE, ASSIGNMENT, AMENDMENT, TRANSFER.

A. Lessee shall not sublease, assign, amend, or in any manner whatsoever transfer this Lease or any right to or interest in this Lease or any of the improvements on the leased premises, or sell, assign or transfer more than forty-nine percent (49%) of the corporate stock of any corporation named as Lessee without the written consent of the Lessor and Lessee, as well as the sureties. Lessor, however, in its sole discretion may authorize the Lessee to enter into subleases without further consent from Lessor, which must be specifically provided for in Part I. Unless otherwise provided for in Part I, 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, set forth herein, such action shall be deemed a breach of this Lease, excepting that an encumbrancer may enforce his rights in the manner hereinafter provided. Unless otherwise provided for in Part I, 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 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 other arrangement under which any person or entity other than Lessee is entitled to share in profits derived directly or indirectly from the leased premises or activities carried out thereon, shall require the written consent of Lessor and Lessee, unless Lessee is the majority owner (i.e. majority shareholder, majority partner, etc) of the business that is reorganized, then only written notice will be required.

C. Approval or disapproval of any sublease, assignment, amendment or transfer for any purpose whatsoever by the Lessee shall be within the sole discretion of Lessor. Lessor reserves the right to adjust the rental provisions of this Lease upon any sublease, assignment, amendment, or transfer, unless the Lessee is pre-authorized to approve subleases.

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 be encumbered for the purposes of securing a line of credit to develop and improve the leased

premises.

B. Any encumbrance will:

- (1) be limited to the leasehold interest of the Lessee or subleasehold interest of the Sublessee; and
- (2) not jeopardize in any way Lessor's interest in the land; and
- (3) be subject to the written approval of the Lessor as well as the sureties. The Lessor shall not unreasonably withhold its approval to an encumbrance.

C. Lessee agrees to furnish as requested any financial statements or analysis pertinent to the encumbrance that the Lessor may deem necessary to justify the amount, purpose and terms of said encumbrance.

D. Lessor shall give each encumbrancer notice of, and the right to cure within a reasonable time, a default by Lessee or Sublessee under this Lease or Sublease, whichever is applicable. Lessor shall accept performance by the encumbrancer for covenants or other obligations under the Lease or Sublease, with the same force and effect as though performed by the Lessee or Sublessee.

E. In the event of default by Sublessee, an encumbrancer of any Sublease may exercise any rights provided in such approved encumbrance, provided that before any sale of subleasehold, whether under power of sale or foreclosure, the encumbrancer shall give to Lessor and Lessee notice of the same character and duration as is required to be given to the Sublessee by the encumbrancer. If notice of such sale is given and the Lessee fails to act, Lessor shall have the following rights which may be exercised at any time prior to the completion of sale proceedings.

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

F. Each encumbrancer must provide, if Lessee or Lessor exercises the foregoing rights, all of the right, title, and interest of the Sublessee in the Sublease shall automatically terminate on the same date the right is exercised and the Lessor or Lessee, as the case may be, shall, on the same date, acquire the subleasehold

interest; provided 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. As between the Lessor and Lessee, Lessee shall have the first right to exercise the right to pay the amounts due as described above and to obtain the subleasehold interest. The Sublease shall require that the Sublessee will have the duty to execute any documents and take any action needed to effectuate the termination and transfer of Sublessee's subleasehold interest.

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

H. In the event of default by the Lessee, the encumbrancer may exercise any rights provided for in such approved encumbrance, provided that before any sale of the leasehold, whether under power of sale or foreclosure, the encumbrancer shall give to Lessor notice of the same character and duration as is required to be given Lessee by such encumbrance and/or by applicable law. If notice of such sale be given, and the default 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 Lessor, for the full unpaid principal amount of the approved encumbrance, plus unpaid interest accrued to the date of such execution, plus sale expenses incurred to the date of such execution, upon the same terms and conditions as originally provided by the approved encumbrance, and delivering to the encumbrancer a policy of title insurance in the face amount of such promissory note, issued by a reputable title insurance company, and insuring that the new encumbrance is a first lien upon the property described in this Lease subject only to current taxes and to conditions, restrictions and reservations of record at the time of recording the new encumbrance.

I. Each encumbrancer must provide, if Lessor exercises

the foregoing 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. The Lessee shall have the duty to execute any documents and take any action necessary to effectuate the termination and transfer of the Lessee's leasehold interest.

J. In the event Lessor does not avail itself of the rights set forth in this Section and any sale under the approved encumbrance occurs, whether by power of sale or foreclosure, the purchaser at such sale shall succeed to all of the rights, title, and interest of the Lessee in the leasehold estate covered by said approved encumbrance. It is further agreed that if the purchaser at such sale is the encumbrancer, the encumbrancer may assign the leasehold interest without any further approval, provided that the assignee shall agree in writing to be bound by all the terms and conditions of 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, of the subleasehold interest, under the approved encumbrance occurs and the purchaser is a party other than the encumbrancer, approval by Lessor of any assignment will be required and said purchaser, as successor in interest to the Lessee, shall be bound by all the terms and conditions of 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 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, United States 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, trash, and other utility services as required for construction and or operation and maintenance of any improvements or as necessary for said leased premises.

1.8 LESSOR'S PAYING CLAIMS.

Lessor shall have the option to pay any lien or charge payable by Lessee under this Lease, or settle any action

therefor, if the Lessee after written notice from the Lessor 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 leased premises in a safe, sanitary condition, presenting a good appearance both inside and out in all buildings operated on the leased premises. Non-compliance with Section 1.9 shall constitute a breach of this Lease.
- B. Lessee further agrees to comply with applicable, state, Navajo Nation and local laws, statutes, ordinances, regulations, court and administrative orders and decrees pertaining to all sanitation matters including but not limited to the storage and disposal of refuse, rubbish, other non-hazardous trash and any other regulated substances. Lessee further agrees that all solid waste, including but not limited to refuse, rubbish, other non-hazardous trash and any other regulated substance generated by the Lessee or by any Sublessee shall be disposed of only at a state or tribally certified public or private landfills, and Lessee or Sublessee as applicable 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 and federal government.

1.10 REGULATED SUBSTANCES.

Lessee shall not cause or permit any regulated substance (as defined in 2.1(A)) to be used, stored, generated or disposed of, on, or in the leased premises without first obtaining written consent from the Navajo Nation Environmental Protection Agency. If the Navajo Nation Environmental Protection Agency does not respond to a request for consent within thirty (30) days such consent shall be deemed given.

If regulated substances are used, stored, generated or disposed of, on, or in the leased premises, or if the leased premises become contaminated in any manner for which Lessee or a Sublessee is legally liable, Lessee shall indemnify and hold harmless the Lessor from any and all claims, damages, fines, judgments, penalties, costs, liabilities or losses (including, without limitation, a decrease in value of the leased 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, restoration or other costs of regulatory compliance mandated by the federal government or Navajo Nation. Without limitation of the foregoing, if Lessee causes or permits the presence of any regulated substance on the leased premises and such results in any contamination of the leased premises or other property including, but not

limited to the improvements, soil, surface water or groundwater, Lessee shall promptly, at its sole expense, take any and all necessary actions to return the leased premises to the condition existing prior to the contamination by any such regulated substance on the leased premises. Lessees will first obtain Lessor's approval for any such remedial action.

1.11 LIABILITY INSURANCE

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

- 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 leasehold, and Employers' Liability insurance with a minimum amount as is required and regulated by the state in which the leased premises is located. In case of any contracted work on the leasehold, the Lessee will require the Contractor, and all subcontractors, to provide the same as above.
- B. Commercial General Liability Insurance to cover:
 - (1) the minimum single amount, including a General Aggregate Limit, sufficient for each occurrence, as provided for in Part I.
 - (2) this policy shall cover property business interruption, bodily injury, broad form property damage, personal injury, death, blanket contract, independent contractor, product, completed operations coverage. The policy shall contain a severability of interests provision.
 - (3) If the leased premise is undeveloped, the Lessee must obtain the appropriate insurance, which shall, include the Lessor and the United States as additional named insureds.
- C. Commercial Automobile liability insurance with a combined single limit for bodily injury and property damage for each occurrence with respect to Lessee's owned, hired and non-owned vehicles assigned to or used in Lessee's business, shall be based upon the minimum amount required and regulated under the State in which the lease premises is located.
- D. If the Lessee is engaged in a profession, the Lessee shall carry Professional Liability insurance in an amount as is required and regulated under the State or Association for which the professional is licensed.
- 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 leased 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 leased 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 and the United States 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, on the date the lease is approved or unless granted a postponement, by the Division of Economic Development or successors, as evidence that the required coverages are in full force and effect. The certificate shall indemnify this Lease and indicate the policies will not be canceled, terminated or materially altered unless at least thirty (30) days prior written notice is given to the Lessor.

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

H. The Lessee may request to postpone the insurance requirements until either (a) the receipt of all approvals to commence with construction of the improvements and/or (b) the first drawdown for financing is received; subject to Section 1.11 (B)(3). Such postponement shall be provided for in Part I and shall be at the sole discretion of the Division of Economic Development and shall not be unreasonably withheld.

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. Lessor 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 United States.

L. 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.

M. The Lessee shall not do or commit to be done anything in or upon any portions of the leased premises or bring or keep anything there which would in any way conflict with the conditions of any insurance policy upon the leased premises or in any way increase the rate of insurance upon the leased premises or on property kept there.

N. Lessor will not be responsible for any omissions or inadequacies of insurance coverage and amounts in the event the insurance purchased by Lessee proves to be inadequate or otherwise insufficient for any reason whatsoever.

1.12 FIRE AND CASUALTY INSURANCE.

A. Lessee shall carry from the date the lease is approved, the minimum insurance coverages, unless granted a postponement, which shall be provided for in Part I, for either (a) the receipt of all approvals to commence with construction of the improvements and/or (b) the first drawdown for financing is received. Lessee shall 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 Nationally Accredited Insurance Company, with a financial rating of A or equivalent, licensed to do business in the State in which the leased premises are located and shall be written jointly to protect Lessee, Lessor and the United States and shall provide for notification to the Lessor prior to any change in said policy or any cancellation or non-renewal of said policy for any reason, including non payment of premiums.

A copy of said policy shall be sent to Lessor at the following address: Navajo Nation Division of Economic Development, P.O. Box 663, Window Rock, AZ, 86515.

B. 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. 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.

C. 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 herein. In the event Lessee does not reconstruct, all insurance proceeds shall be paid to Lessor.

D. 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 or if Lessor or Lessee shall within three (3) months after such payment by the insurer to the encumbrancer deposit with the encumbrancer enough money to completely repair the loss or damage, when added to the amount paid by the insurer to the encumbrancer, the encumbrancer shall, upon written order of Lessor or Lessee, pay such monies for such repair, and it shall not be deemed a payment or credit on the encumbrance; but otherwise, at the expiration of such three (3) months said sum so paid by the insurer to the encumbrancer shall be applied and credited upon the approved encumbrance. It is understood and agreed that nothing herein shall relieve Lessee of its obligation to repair and/or replace the damaged improvement to a condition as good or better than before the damage 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, 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 leased premises by Lessee, the conduct of the Lessee's business, any act, omission, neglect or misconduct of Lessee, its agents, contractors, employees or invitees, and out of any Default or Breach by Lessee in the performance in a timely manner of any obligation on the Lessee's part to be performed under this Lease. The 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. Lessee shall have the right to control such defense and to settle or compromise the claim in cooperation with Lessor and the United States as long as such defense, settlement or compromise does not unduly prejudice Lessor and the United States.

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 leased 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. If the condemnation is less than the entire leased premises and/or improvements, the lease shall continue as for the remainder of the term of the lease, however the rental shall be reduced proportionately. If a temporary condemnation of all or a portion of the leased premises and/or improvements, lessee will be entitled to the entire amount of an award, whether paid by way of damages, rent or otherwise; however, if such condemnation extends beyond the term of the lease, such amounts will be apportioned among Lessor and Lessee based upon the duration of the term remaining following the condemnation and the duration of the condemnation following the end of the term of the lease.

1.15 DEFAULT.

- A. Time is declared to be of the essence of this Lease.
- B. Lessor may determine the Lessee is in default for the following:
 - (1) Lessee fails to pay monies or any other amounts such as posting a bond or acquiring insurance when due and such failure continues for ten (10) business days after notice of default is sent to Lessee.
 - (2) Lessee fails to perform any of its material non-monetary obligations or duties under the lease when required and such failure continues for a period of ten (10) days after notice of default is sent to Lessee that such obligation or duty has not been performed; provided that if such failure is not reasonably susceptible to cure within ten (10) days, there is no default for such longer period of time as is reasonably required to cure such failure provided that Lessee commences a cure within ten (10) days after the notice of default is mailed and Lessee diligently pursues the cure.
 - (3) Lessee abandons or surrenders the leased premises and if the operations required hereunder are not operated for a period of sixty (60) consecutive days for any reason other than a closure for major repairs or renovation, acts of god, casualty, war or insurrection, strikes or labor disputes or other matters beyond the reasonable control of Lessee after written notice thereof has been received by Lessee from Lessor.
- C. Lessee shall, within ten (10) days, from the mailing of the notice of default either:
 - (1) Notify in writing to the Lessor that the default has been cured and submit documentation necessary to indicate the default has indeed been cured; or
 - (2) Submit in writing to the Lessor a statement and explanation disputing the Lessor's determination that the Lease is in default and why the Lease should not be terminated; or
 - (3) Request in writing to be given an additional ten (10) days to cure unless found not reasonably susceptible to cure within ten (10) days there is no default for such longer period of time as is reasonably required to cure. Any additional time granted to cure shall be in the discretion of the Division of Economic Development.
- D. Should a default occur the Lessor may take any action in accordance with § 503 of the Navajo Nation Business Site Leasing Regulations of 2005. Additionally, Lessor may exercise the following options upon Lessee's default:
 - (1) Collect, by suit or otherwise, all monies as they become due hereunder, or enforce, by suit or otherwise, Lessee's compliance with all terms of this Lease; or
 - (2) Re-enter the leased premises if the

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

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

E. No waiver 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.

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

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

1.16 REMEDIES

A. If the Lessee fails to cure pursuant to Section 1.15 the Lessor may at its option pursue the following:

- (1) terminate this Lease, as a matter of law; or
- (2) grant an extension of time to cure the default; or

(3) pursue the execution on bonds or collection of insurance proceeds; or

(4) pursue any other remedy set forth in the business site lease management plan.

B. If the Lessor terminates the Lease, the Lessor shall send a termination letter to Lessee within a reasonable time period from the date of determination by the Lessor to terminate, by certified mail, return receipt requested. Lessee shall vacate the premises within thirty (30) days upon receipt of the termination letter, unless an appeal has been filed.

C. The termination shall become effective 31 days after mailing the letter. Any filing of an appeal shall not change the effective date of a cancellation. Pending the outcome of an appeal, the Lessee shall make all requisite payments, as well as comply with the terms of the Lease.

D. If a grant of extension for time to cure is given, the Lessee shall diligently perform and complete the corrective actions within a time frame agreed, in writing, between the Lessor and Lessee.

1.17 MUTUAL TERMINATION

The Lessee may terminate this Lease, without penalty, subject to approval from the Lessor, only during the development period, set forth in Part I of this Lease and conditioned upon compliance with the Navajo Business and Procurement Code, 15 §§ N.N.C. 1501 et. seq. Lessee must notify the Lessor in writing of its intention to terminate no later than thirty (30) days prior to the expiration of the development period.

1.18 ATTORNEY'S FEES.

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

1.19 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.

1.20 TERMINATION OF FEDERAL TRUST.

Nothing contained in this Lease shall operate to delay or prevent a termination of Federal Trust responsibility 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 approved encumbrancers, surety or sureties, if any, shall be notified of any such change in the status of the land.

1.21 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 approved encumbrancers and sureties, are to the United States as well as to the Lessor.

1.22 STATUS OF SUBLEASES.

Termination of this Lease, by cancellation or otherwise, shall not serve to cancel approved subleases and/or subtenancies, but shall operate as a temporary assignment to Lessor, without merger of the Lease and sublease or subtenancy, of any and all such subleases and/or subtenancies, until a lease can be obtained between the Sublessee, Assignee, and the Lessor, which such parties shall diligently pursue.

1.23 INSPECTION.

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

1.24 HOLDING OVER.

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

1.25 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.

1.26 DELIVERY OF LEASED PREMISES.

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

1.27 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 qualified Navajo individuals and certified contractors in compliance with the Navajo Preference in Employment Act, 15 N.N.C. §§ 601 et seq. ("NPEA"), and the Navajo Nation Business Opportunity Act, 5 N.N.C. §§ 201 et seq. ("NBOA"). The terms and provisions of the NPEA and NBOA are specifically incorporated in, and become a part of this Lease. Violation of such laws by the Lessee shall constitute a breach of this Lease and provide grounds for suspension or termination of the Lease or any other remedy prescribed by the NPEA and NBOA, provided such compliance does not violate applicable federal laws.

1.28 MINERALS.

All minerals, including sand and gravel, contained in or on the lease premises are reserved for the use of Lessor, unless placed on the leased premises by the Lessee. 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.

1.29 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.

1.30 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.

1.31 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.

1.32 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.

1.33 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. All actions or proceedings brought by Lessee against the Navajo Nation in connection with or arising out of the terms and conditions of this Lease shall be brought only in the Courts of the Navajo Nation, and no action or proceeding shall be brought by Lessee against the Navajo Nation in any court or administrative body of any state.

1.34 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.

1.35 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.

1.36 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.

1.37 SAVINGS CLAUSE.

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

1.38 QUALIFICATIONS OF BUSINESS.

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

1.39 COMPLIANCE WITH NAVAJO NATION BUSINESS SITE LEASING REGULATIONS OF 2005.

Lessee, its sublessees and assignees and other successors in interest shall comply with the provisions of the Navajo Nation Business Site Leasing Regulations of 2005, which prescribe rules for the regulation of reservation business for the protection of Indian consumers on the Navajo Nation as required by 25 U.S.C. §415(e)

1.40 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.

1.41 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 Economic Development Committee of the Navajo Nation Council and/or any other appropriate oversight committees and the President of the Navajo Nation, pursuant to Navajo Law.

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

2.1 DEFINITIONS.

- A. "Regulated Substance" is defined in Section 9001(7) of the Resources Conservation and Recovery Act, 42 U.S.C. 6991(7), which is any substance defined in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1990 (42 U.S.C. 9601(14)) (but not including any substances regulated as a hazardous waste under subtitle C of the Resource Conservation and Recovery Act (42 U.S.C. 6921 et seq.) and petroleum).
- B. "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 REGULATED SUBSTANCES.

- A. Lessee shall not cause or permit any regulated substance (as defined in 2.1(A)) 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 the Navajo Nation Environmental Protection Agency does not respond to a request for consent within thirty (30) days consent shall be deemed granted.

If regulated substances 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 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, restoration or other costs of regulatory compliance 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 or other property including, but not limited to the improvements, soil, surface water or groundwater, Lessee shall promptly, at its sole expense, take any and all necessary actions to return the premises to the condition existing prior to the contamination by

any such regulated substance on the premises. Lessee shall first obtain Lessor's approval for any such remedial action.

- B. Lessee shall provide the Navajo Nation Environmental Protection Agency and the Navajo Nation Division of Economic Development 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 Nation Environmental Protection Agency shall be by first class mail to:

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

and,

Navajo Nation Division of Economic Development
Post Office Box 663
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 Division of Economic Development. The bond, insurance or other qualifying financial responsibility mechanism shall remain in effect for the term of the base lease or sublease, and any renewals thereof, and shall not be released or terminated until such time as the Division of Economic Development certifies that the facility is in compliance with all applicable law and regulations, or that the tanks have been removed and the site has been remediated, or that the base lease or sublease has been transferred and the new operator has provided proof of an adequate bond, insurance or otherwise satisfied the 40 C.F.R. Part 280, Subpart H financial responsibility requirements. It shall be the responsibility of the Lessee and the Sublessee to provide the Navajo Nation Division of Economic Development with all proof required for release of bond or termination of insurance coverage.

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 and the Navajo Nation Division of Economic Development with a complete copy of the report and underlying data generated in preparation of a Phase Two environmental audit before Lessee places any regulated 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 Lessor.

The Lessee shall notify the Navajo Nation Environmental Protection Agency and the Division of Economic Development, or any institutional successor, of the firm chosen to perform the Phase Two Environmental audit prior to the performance of such audit. Lessor may accept or decline the choice of environmental auditor within twenty (20) days of written notice by Lessee. If Lessor does not respond within twenty (20) days of receipt of the Lessee's written notice, the environmental auditor is deemed accepted. If, however, the most recent prior Lessee of the premises 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.

The amounts shall be deposited at the Navajo Nation Division of Economic Development:

P.O. Box 663
Window Rock, Arizona 86515

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 Navajo Nation Environmental Protection Agency shall determine whether an audit shall be performed.

If the Navajo Nation Environmental Protection Agency determines an environmental audit should be performed at the leased premises prior to the Lessee's deposit of 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 account by the Navajo Nation 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.

2.5 OWNERSHIP AND REMOVAL OF STORAGE TANKS

- A. The ownership and removal responsibility for any regulated substances or petroleum product manufacturing, processing, storage, or conveyance facilities placed in or on the leased premises shall be the responsibility of the Lessee. All facilities or storage tanks must comply with applicable federal, state, Navajo Nation and local law including requirements for corrosion protection, spill and overflow protection and leak detection. Any repairs made to such facilities or storage tanks must comply with applicable repair standards. Lessee shall provide the appropriate Division of Economic Development department with complete and legible copies of all documents establishing Lessee's ownership of, lease of, or acquisition of any other use interest in any storage tanks installed on the leased premises.

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

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

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

3.1 SPECIAL ACCOUNTING PROVISION FOR SHOPPING CENTERS.

When an accounting of Gross Receipts is required under the Lease in order to determine a percentage rent, the Lessee shall on a quarterly basis submit to Lessor, no later than , 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 under the percentage rental fee as set forth in Section D. Said statement shall be prepared by a Certified Public Accountant, licensed in the State of Arizona, New Mexico or Utah, in conformity with GAAP. 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 of any monies paid to Lessor 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 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 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.

3.2 FIXTURES AND PERSONAL PROPERTY.

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

All improvements to the premises by Lessee including, but not limited to, light fixtures, floor coverings, and partitions, but excluding trade fixtures and signs, shall be considered as improvements and shall become the property of Lessor upon expiration or earlier termination of this Lease, unless

Lessor by written notice given prior to the date of expiration or upon the date of earlier termination of this Lease shall require Lessee to remove such improvements in which case Lessee shall repair any damage caused to the premises by such removal so as to return the premises to its original condition, ordinary wear and tear excepted.

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

3.3 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 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.

3.4 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.

3.5 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. 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.

3.6 LESSEE'S CONDUCT OF BUSINESS.

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

be emptied and trash removed at Lessee's cost and expense as set out in Article 11 hereof.

Lessee agrees that commencing with the opening of 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.

3.7 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.

3.8 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 United States 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.

3.9 SPECIAL SUBLEASE REQUIREMENT FOR SHOPPING CENTERS.

The Lessee may enter into subleases, in whole or in part, without the approval of the Lessor, provided:

- A. Lessee provides a copy of the sublease to the Lessor; and
- B. Lessor receives a portion of the rent from the subleasing, as agreed between the Lessor and Lessee; and
- C. the purposes set forth in the sublease is legitimate and for lawful purposes.

3.10 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

3.11 SPECIAL RECONSTRUCTION PROVISION FOR SHOPPING CENTERS.

In the event the premises be damaged by fire or other perils, covered by Lessor's Fire and Extended Coverage Insurance, Lessor shall:

- A. Within a period of one hundred and eighty (180) days thereafter, commence repairs, reconstruction and restoration of said premises and prosecute the same diligently to completion, in which event this Lease shall continue in full force and effect; or
- B. In the event of a partial or total destruction of the premises, only during the last three (3) years of the term hereof, Lessor and Lessee shall each have the option to terminate this Lease upon giving written notice to the other of exercise thereof within thirty (30) days after such destruction. For the purposes of this paragraph, "partial destruction" shall be a destruction of an extent of at least thirty-three and one-third percent (33 1/3%) of the then full replacement cost of the premises as of the date of destruction. All insurance proceeds, in the case of reconstruction shall be held in trust and applied to the payment of such reconstruction, as such reconstruction progresses.
- C. In the event the premises shall be damaged as a result of any flood, earthquake, act of war, nuclear reaction, nuclear radiation or radioactive contamination, or from any other casualty not covered by Lessor's Fire and Extended Coverage Insurance, to any extent whatsoever, the Lessor may, within one

hundred and eighty (180) days following the date of such damage, commence repair, reconstruction or restoration of said premises and prosecute the same diligently to completion, in which event this Lease shall continue in full force and effect, or within said period elect not to so repair, reconstruct or restore said premises in which event this Lease shall cease and terminate. In either such event, Lessor shall give the Lessee written notice of its intention within said period.

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

E. Upon any termination of this Lease under any of the provisions of this Article, the parties shall be released thereby without further obligations to the other party coincident with the surrender of possession of the premises to the Lessor, except for items which have theretofore accrued and be then unpaid. In the event of termination, all proceeds from Lessor's Fire and Extended Coverage Insurance covering items set forth in "Description of Lessor's Work" and Lessor's premises shall go to Lessor.

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

3.12 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.

3.13 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

3.14 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.

**** END OF PART II ****