

## COLLATERAL ASSIGNMENT OF LEASE

This Collateral Assignment of Lease is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ between the \_\_\_\_\_, whose address is: \_\_\_\_\_, hereinafter called Assignee and \_\_\_\_\_ whose address is \_\_\_\_\_ hereinafter called the Assignor. The Business Site Lease has been previously approved by the Navajo Nation as Lease No. \_\_\_\_\_.

### WITNESS

#### SECTION I. RECITALS

A. The Assignor, also the Lessee, under a certain Lease Agreement Number \_\_\_\_\_, a copy of which is attached as Exhibit "A", has been approved by the Navajo Nation and has been issued for a period of \_\_\_\_\_ commencing on the date the Lease was approved by the Navajo Nation. The Lessor under this Lease was the Navajo Nation ("Lessor") and the Lease was approved on, \_\_\_\_\_, 20\_\_\_\_.

B. Assignee has agreed to make a pre-development loan in the amount of \$\_\_\_\_\_ to finance planning and pre-development of \_\_\_\_\_ and is an amount sufficient to assure completion of the project. The pre-development loan will be made pursuant to a Loan Agreement dated \_\_\_\_\_, 20\_\_\_\_, and a Promissory Note ("Note") as evidence of its repayment obligation in connection with the Loan Agreement. The Loan Agreement and Promissory Note will be amended at such time as the financing needs for the entire project have been determined by the pre-development study.

C. The Assignor has agreed to make a Collateral Assignment of the Lease ("Assignment") to secure the Note under the terms of the Loan Agreement as originally made and as it may be amended.

#### SECTION II. ASSIGNMENT

A. As security for the payment of the Note, the Assignor hereby assigns its interest in, rights, and right to continued possession, under, Lease No. \_\_\_\_\_, subject to the terms and conditions herein, to Assignee.

#### SECTION III. WARRANTIES AND COVENANTS

A. Assignor shall pay all applicable rents and other charges as they fall due under the terms of the Lease.

B. Assignor shall not surrender its Lease and interest in the Lease, nor terminate or cancel the Lease. The Assignor shall not modify, change, supplement, alter or amend the Lease, either orally or in writing, without the express written consent of the Assignee. Any such termination, cancellation, modification, change, supplement, alteration, or amendment, of the Lease without the prior written consent of Assignee shall be null and void and have no force and/or effect. However, Assignee shall not unreasonably

withhold approval of any requested changes or amendments to the Lease which do not impair its security interest.

#### **SECTION IV. PERFORMANCE OF LEASE OBLIGATIONS AND RIGHT TO CURE**

A. The Assignor shall at all times fully perform and comply with all covenants, terms and conditions imposed on or assumed under the Lease.

B. If Assignor fails to fully perform and comply with the Lease and the Lessor notifies the Assignee in writing of the default under the terms provided for in Lease No. \_\_\_\_\_, Assignee shall not take action against the Navajo Nation in the event of such a default, but shall have the option, in its sole discretion, but not the obligation, to take any actions it deems necessary or desirable to cure the default by the Assignor. On receipt by Assignee of any written notice of default of the Lease by the Lessor, Assignee may rely on the notice and take any reasonable action to cure the default even though the existence of such a default, or the nature thereof, is questioned or denied by the Assignor, or by any party on behalf of the Assignor, including taking possession of the leased premises. If Assignee takes possession of the premises it shall have the right to enforce the Lease to the same extent as if it were the original Lessee under the Lease.

C. The Assignor hereby expressly grants to Assignee, and agrees that Assignee shall have the absolute and immediate right to enter in and on the leased premises, or any part thereof, in the event that Assignee deems it necessary or desirable to prevent or cure any default on the Lease by the Assignor.

D. Assignee may pay and expend reasonable sums of money that are necessary to prevent or cure any default on the Lease by the Assignor and the Assignor in turn, agrees to pay to Assignee, immediately and without demand, all sums paid and expended by Assignee in preventing or curing a default of the Lease by the Assignor together with interest thereon from the date of each such payment by Assignee at the rate of the Wall Street Journal Prime Rate plus two percent adjusted daily from the date of Assignee payment. All sums so paid and expended by Assignee and the interest thereon shall be secured by this assignment.

#### **SECTION V. RELEASE OR FORBEARANCE**

No release or forbearance by Assignee of any of the Assignor obligations under the Loan Agreement or Note shall release the Assignor from any of its obligations under the Lease, including the Assignor obligation to perform all of the terms, covenants and conditions contained in the Lease.

#### **SECTION VI. ACCELERATION AND RIGHT OF POSSESSION OR SALE**

Upon the event of default, as defined in the Loan Agreement and Note, and upon the Assignor's failure to cure within the period provided in the Loan Agreement and Note, Assignee shall be entitled to immediate possession of the leased premises subject to the terms and conditions of the Lease, to which Assignee expressly agrees. Assignee further expressly agrees to furnish, as requested, any financial statements or analysis pertinent to the encumbrance that the Lessor may deem necessary to justify the amount, purpose and terms of this Assignment.

## **SECTION VIII. DEFAULT AND SALE**

A. In the event of default under the Loan Agreement and Note, and if the Assignor fails to cure the default, Assignee may exercise the rights provided for in the Loan Agreement, Note, and this Assignment. However, before any subsequent assignment, transfer, or sale, of the Lease, whether under power of sale or foreclosure, Assignee shall give written notice of the event of default and the Assignor's failure to cure the default to the Lessor. Before any notice of sale, subsequent assignment, transfer or any other form of alienation, the Lessor with first priority shall be given the right to pay Assignee the full unpaid principal, accrued interest due under the Loan Agreement and Note, plus reasonable sale and enforcement costs incurred by Assignee through the day of such payment by the Lessor. This right may be exercised at any time before the completion of the sale proceedings.

B. If the Lessor exercise its right to pay Assignee the full unpaid amount and interest due under the Loan Agreement and Note, plus reasonable sale and enforcement costs incurred through the date of payment, this Assignment shall automatically terminate on the date such right is exercise, and shall have no further force or effect. However, the termination of this Assignment shall not relieve Assignee from any obligation or liability which has accrued before the date of termination. Assignee shall file the appropriate termination statement and/or release with the Lessor.

C. In the event that the Lessor, avail itself of the rights set forth above, Assignee shall have the right to either 1) remain in possession of the Lease, assume the position of the Lessee and perform the terms and conditions of the Lease so long as Assignee retains title thereto, or 2) sell its interest in the Lease by either public or private sale on terms that are commercially reasonable. If a sale occurs resulting in a purchase by a party other than Assignee, the purchaser shall be bound by all of the terms and conditions of the Lease and shall expressly assume those terms and conditions as a condition of the sale. Any purported sale where the purchaser does not expressly assume the terms and conditions of the Lease shall be null and void and without effect.

## **SECTION IX. TERMINATION UPON PAYMENT IN FULL**

In the event that the Assignor pays the amount specified in the Loan Agreement and Note in full plus interest thereon, this Assignment shall cease to have effect and Assignor shall file such termination statement and/or releases as reasonably necessary within ten (10) days after the Assignor pays the full amount of the Loan Agreement and Note and interest thereon, or at such time as the Assignor requests that such termination statements and/or releases be filed.

## **SECTION X. CHOICE OF LAW**

The laws of the Navajo Nation shall govern this Assignment. If there is Navajo or applicable federal law the court shall apply such law. In dispute arising under, or related to, this Assignment shall be decided exclusively in the Courts of the Navajo Nation. Nothing in this Collateral Assignment of Lease shall be construed as a waiver, either express or implied, of the Sovereign Immunity of the Navajo Nation.

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

**FOR THE ASSIGNOR:**

\_\_\_\_\_  
[*name*], [*title*]  
[*name of business*]

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

**FOR THE ASSIGNEE:**

\_\_\_\_\_  
[*name*], [*title*]  
[*name of business*]

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

**APPROVED**

By: \_\_\_\_\_  
President/Vice-President

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