

Form in Triplicate

Date filed and Document No.

790-391-93

☒ Certified # P 166 135 740 ☐ Air Mail ☐ Return Receipt Requested

Date: March 12, 1993

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To: Manager, Land Titles & Records, Albuquerque, New Mexico

From: Office of Navajo and Hopi Indian Relocation
P.O. Box KK, Flagstaff, Arizona 86002

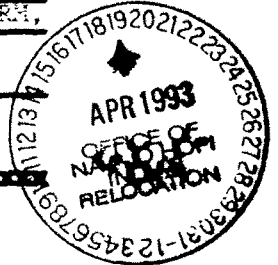
Please record the attached document(s), identified below by items 1 thru 3

- (1) Reservation Code 790
(2) ☐ Allotted lands, No. ☒ Tribal lands.
(3) Document Type
(4) Realty File No. NL-SL-93-002

Remarks: Lease Number NL-SL-93-002 between the Office of Navajo and Hopi Indian Relocation and the Navajo Nation Hospitality Enterprise for 7.04 acres of land situated on the New Lands within Sections 13 & 14, T20N, R26E, S&SRH, Navajo, Apache County, Arizona. Return original to the ONHIR.

Len Chester

Signature
Len Chester
Assistant Land Use Manager



☐ Certified # ☐ Air Mail ☐ Return Receipt requested

Date: APR 15 1993

Return to Sender

The documents identified by items 1 thru 3 above have been recorded in the Land Titles & Records, Albuquerque, New Mexico; see block in the upper right corner of this page for date and time of recording and document number assigned.

☒ Document attached ☐ Document retained and filed

Harold Sando
For Manager, Land Titles & Records

For Title Plant use only:

☐ Index posted by Date ☐ Microfilmed by Date

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Remarks:

(Sender's copy)

LEASE

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THIS AGREEMENT is made and entered into this 23rd day of January, 1992, by and between the Office of Navajo and Hopi Indian Relocation, hereinafter called the Lessor, whose address is P.O. Box KK, Flagstaff, Arizona 86002, and the Navajo Nation Hospitality Enterprise, hereinafter called the Lessee, whose address is P.O. Box 1687, Window Rock, Navajo Nation (Arizona) 86515.

SECTION 1: DEFINITIONS

- A. "Commissioner" means the Commissioner of the Office of Navajo and Hopi Indian Relocation.
- B. "Net Revenues" means all income, including money and any other thing of value, received by or paid to Lessee or its affiliates, whether individuals, corporations, partnerships or other legal entity, or received by or paid to others for Lessee's or its affiliates' use and benefit, derived from business done, sales made, or services rendered directly or indirectly from or on the leased premises or any portion thereof after deducting therefrom all related overhead costs and expenses as defined by Generally Accepted Accounting Principle format including, but not limited to, debt service and equipment lease payments, costs of goods sold, salaries and payroll, utility expenses, taxes, insurance, and maintenance.
- C. "Management Board" means the Management Board of the Navajo Nation Hospitality Enterprise.
- D. "General Manager" means the General Manager of the Management Board of the Navajo Nation Hospitality Enterprise, as appointed by the Management Board.
- E. "Encumbrance" means a claim, lien, charge or liability to and binding real property, including but not limited to a mortgage, security interest, mechanics lien, etc.
- F. "Approved Encumbrance" means an encumbrance approved by the Lessor, the Management Board, its designated representative, and sureties, if any, in the manner provided herein or otherwise permitted under the terms of this lease.
- G. "Encumbrancer" means one who holds an encumbrance.
- H. Where "approval" or "acceptance" by the Lessor is required by an provision of this Lease, such approval or acceptance shall not be unreasonably withheld by Lessor.

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SECTION 2. LAND DESCRIPTION/LEASEHOLD PREMISES

- A. For and in consideration of the rents, covenants, and agreements hereinafter set out, the Lessor hereby leases to the Lessee the premises comprised of land controlled by the Lessor for the benefit of the Navajo and Hopi Relocates, on the South side of Interstate 40 at Navajo, Arizona, encompassing 7.04 acres, more or less, as is more fully described in Exhibit "A" attached hereto and incorporated herein by reference.
- B. Lessor shall give to Lessee the right of first refusal to lease certain additional adjacent acreage on the South Side of Interstate 40 at Navajo, Arizona. The area will extend the present Southern boundary line 300 feet to the south and the present fenced Eastern boundary line 800 feet to the East.

SECTION 3. PURPOSE

This lease shall be for the purpose of the operation of tourism facilities which may include, but not necessarily be limited to: motel operations, restaurant operations, gift shop sales, petroleum product sales, lounge facilities, office space rental, subletting, and any and all other business purposes or activities deemed appropriate or necessary to the profitability of the Lessee, in the Lessee's discretion, with the prior written approval of Lessor.

SECTION 4. TERM

The term of this lease shall be Sixty-Five (65) years, beginning on the date this lease is executed by the Commissioner. The Lessee hereunder shall have an option to renew this lease for an additional Thirty-Four (34) years under the terms specified in Section 5 below.

SECTION 5. RENTAL

- A. The Lessee, in consideration of the foregoing, covenants and agrees to pay in lawful money of the United States of America to the Office of Navajo and Hopi Indian Relocation for the use and benefit of the Lessor, rental payments as follows:
 - i. Actual Construction During the time of actual reclamation of site from the beginning of the lease term until completion of construction of initial improvements for which financial assistance under paragraph 7 herein is provided, rental shall be \$100 per month.
 - ii. Annual Rental As annual rental, Lessee shall pay to Lessor, after the period of actual costs, fifty percent (50%) of net, net revenues. Net, net revenue is defined as the amount remaining after deduction of indirect cost. Indirect cost will be calculated at 10% of net revenues or such other percentage as may be determined in accordance with subsequent paragraphs of this section.

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Upon Lessee's request, and upon a showing by Lessee of indirect costs greater than 10% of Net Revenues based on detailed, line-item reports and their evaluation and acceptance by Lessor, the percentage deduction for indirect costs shall be increased to reflect actual indirect costs.

Upon Lessor's request and at Lessor's expense, Lessor may conduct an audit of Lessee's records of indirect costs. If the audit reveals indirect costs of less than 10%, the percentage deduction for indirect costs may be discussed to reflect the actual indirect costs.

While the parties contemplate that Lessor will reinvest some or all of the rental payments of Lessee and/or discretionary funds of the Lessor in the leasehold premises for the benefit of Lessee, Lessor cannot contractually commit to do so. Therefore, Lessee may find it necessary to seek capital from its own funds, from lending institutions, or from other entities. If Lessee uses such funds for any approved improvements to or development of the leasehold premises, the percent of Lessee's Net Revenues required to be paid to Lessor as annual rental shall be reduced in proportion to the relative capital contributions of Lessor and Lessee. However, Lessee shall offer the Lessor a reasonable opportunity to commit Lessor's funds to any future improvements to or development of the leasehold premises prior to Lessee using its own funds or funds from lending institutions or other entities, provided that no undue delay would result from the application for and use of Lessor's funds.

The parties contemplate the possibility of Lessee incurring losses during initial operations. If such losses occur, they may be accrued for a period not to exceed six months after the commencement of commercial operations of Lessee on the leasehold premises and applied against any Net Revenues which might be earned by Lessee during the following one year period.

iii. Option Term: Annual Rental

In the event Lessee exercises its option to extend this lease for the thirty-four (34) year period as specified in Section 4, above, the annual rental payable to Lessor shall be renegotiated; provided, that the renegotiated annual rental shall not be increased to an amount greater than the average annual rental for years 56 to 65 of this lease multiplied times the maximum positive change during any of those years in the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index for all urban consumer or, if such Index is not available, a comparable standard.

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- B. All annual rentals due under this lease shall be paid on a monthly basis not later than the 10th day of the month following the month in which the income was received by Lessee.
- C. Rental unpaid ten (10) days after the due date shall bear interest at eight (8) per cent per annum from the date it becomes due until paid. The rents called for hereunder shall be paid without prior notice or demand.

SECTION 6. ACCOUNTING

A. Annual Certified Accounting/Audit

The Lessee shall, not later than March 31 of each successive calendar year or fraction thereof following the date the term of the lease begins, submit to Lessor, certified statements of net revenues. Said statements shall be prepared by a Certified Public Accountant and shall be subject to audit by Lessor, upon Lessor's reasonable demand. In the event Lessor elects to audit the revenues of Lessee, Lessor shall be responsible for all costs associated therewith, except that in the event a discrepancy of more than five (5) percent is found, Lessee shall bear its own costs related to the audit and shall immediately tender the appropriate amount of percentage rental to Lessor together with interest thereon, as referred to in Section 5(C).

With said statements, Lessee shall tender payment of any balance due for the preceding calendar year under the rental fee schedule as set forth in Section 5 above. Said statement shall be prepared by a Certified Public Accountant, licensed in the State of Arizona, New Mexico, or Utah, in conformity with generally accepted accounting principles. Any duly authorized representative of Lessor, or any qualified accounting agent or agents appointed by the Lessor, shall have access to and the right to examine and audit any pertinent books, documents, papers, and records of the Lessee and the Lessee's tenants, if any, relating to this lease during the normal business hours of any working day. Lessee shall insert a similar provision in all subleases pertaining to this right 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 the Lessor by Lessee as rental for the leased premises as shown by any statement furnished by the Lessee shall not be an admission of the accuracy of said statement, or of the sufficiency of the amount of said rental payment, but the Lessor shall be entitled at any time within four (4) years after receipt of any such rental payment to question the sufficiency of the amount thereof and/or the accuracy of the statements furnished by Lessee to justify same, and shall have the right to examine and/or audit as hereinbefore described. Therefore, Lessee shall for said period of four (4) years after submission to the Lessor of any such statements, keep safe and intact all of Lessee's records, books, accounts, and other data which in any way bear upon or are

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required to justify in detail any such statement, and Lessee shall insert a provision in all subleases requiring similar retention of records.

SECTION 7. FINANCIAL ASSISTANCE

As partial consideration for entering this Lease Agreement, Lessor agrees to make available to Lessee the amount of Three Hundred Fifty thousand Dollars (\$350,000.00) for the construction of facilities on the premises. Lessee shall be obligated to use such funds only for the construction of the aforementioned facilities. Lessee shall submit detailed plans and costs for the facilities to Lessor for Lessor's review and approval prior to awarding a contract for construction. Lessor shall not unreasonably withhold approval of the plans and costs.

SECTION 8. IMPROVEMENTS

As a material part of the consideration for this lease, the Lessee covenants and agrees that the Lessee shall improve upon the permanent improvements on the leased premises including renovation and construction of expanded tourism facilities or, construct new facilities with prior written approval of Lessor. All buildings and improvements, excluding removable personal property and trade fixtures on the leased property, shall remain on said property after termination of this lease and shall thereupon become the property of the Lessor. The term "removable personal property" as used in this Section shall not include property which normally would be attached or affixed to the buildings, improvements, or land, in such a way that it would become a part of the realty, regardless of whether such property is in fact so placed in, on, or affixed to the buildings, improvements, or land, in such a way as to legally retain the characteristics of personal property.

SECTION 9. PLANS AND DESIGNS

Within one hundred-eighty (180) days after the approval of this lease, the Lessee will submit to the Lessor for approval a general plan and architect's design for the complete renovation and development of the entire leased premises. Before commencing any construction on the leased premises, the Lessee shall submit to the lessor comprehensive plans and specifications for improvements then proposed. The Lessor shall approve them if they conform to the general development plan, but shall not thereby assume any responsibility whatever for detailed design of structures in violation of any public laws, ordinances and regulations applicable to same. The Lessor shall either approve or state its reasons for disapproval of such plans and specifications within 30 days after their submission. Such approval shall not be withheld unreasonably. No change in excess of One Hundred Thousand Dollars (\$100,000.00) will be made in plans or specifications after approval without the consent of the Lessor which consent shall not be unreasonably withheld. Failure of the Lessor to approve or state reasons for disapproval within said 30 days after such submission shall be deemed approval.

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SECTION 10. CONSTRUCTION, MAINTENANCE, REPAIR, ALTERATION

All improvements placed on the leased premises shall be constructed in a good and workmanlike manner and in compliance with applicable laws. The Lessee shall make a good faith effort to secure from public view all service areas. The Lessee shall, at all times during the term of this lease and at Lessee's sole cost and expense, maintain the premises and all improvements thereon in good order and repair and in a neat, sanitary, and attractive condition. Lessee shall construct, maintain, and repair, as required by applicable law, all improvements on the leased premises, and any alterations, additions or appurtenances thereto, and shall otherwise comply with all public laws and ordinances and regulations applicable to said premises. Lessee shall indemnify and hold harmless the Lessor against liability for all claims arising from Lessee's failure to maintain said premises and the improvements thereon as hereinabove provided, or from Lessee's non-observance of any law, ordinance or regulation applicable thereto.

SECTION 11. RENTAL AND PERFORMANCE BOND

It is understood and agreed that the posting of bonds normally required to guarantee performance of the contractual obligations under business leases, and corporate surety bonds also normally required, are waived as the Lessee is an enterprise of the Navajo Nation. In the event of assignment of any rights created hereunder, Lessee's assignee may be required to post corporate surety and performance bonds as may be determined to be reasonably necessary by the Lessor. Lessee agrees to require any assignee of Lessee to commit to make up any deficiency in the value of any U.S. Treasury Bonds which may be required of and provided by such assignee, where the value of such Bonds may decrease. Interest on said U.S. Treasury Bonds shall be paid to Lessee's assignee.

SECTION 12. SUBLEASE, ASSIGNMENT, MANAGEMENT AGREEMENT, TRANSFER

A. Operating Subleases

The Lessee shall have the exclusive right to sublease, assign, place under a management agreement, or transfer this lease or any right to or interest in this lease with the written approval of the Lessor. Such approval shall not be unreasonably withheld.

The terms and conditions of subleases shall be approved by the Lessor. Subleases shall contain reporting and audit requirements identical to those contained in this lease and shall yield the same return of net profit to Lessor as does this lease.

B. Other Subleases

Lessee shall have the exclusive right to enter into other subleases (e.g. for rental of rooms, leases of office space, leases or rentals of mobile home or recreational vehicle space) without the approval of

Lessor, provided that such other subleases shall be at reasonable rates consistent with market conditions.

SECTION 13. EMCUMBRANCE

- A. This lease, or any right to or interest in this lease or any of the improvements on the leased premises, may be encumbered or mortgaged with the written approval of the Lessor; provided that such encumbrance or mortgage is solely for the purpose of financing construction, renovation or improvements upon the leased premises.
- B. An encumbrance must be confined to the Leasehold interest of Lessee or the Subleasehold interest of a sublessee, and shall not jeopardize in any way the Lessor's interest in the land. Lessee agrees to furnish as requested any financial statements or analyses pertinent to the encumbrance that the Lessor may deem necessary to justify the amount, purpose and terms of said encumbrance.
- C. In the event of default by sublessee of the terms of an approved encumbrance, an encumbrancer of any sublessee may exercise any rights provided in such approved encumbrance, provided that before any sale of the subleasehold, whether under power of sale or foreclosure, the encumbrancer shall give to the Lessor and the Lessee hereunder notice of the same character and duration as is required to be given to the sublessee by the encumbrancer and/or the laws of the State of Arizona.
- D. If notice of such sale shall be given and the defaults of any of them upon which such notice of sale is based shall then continue, Lessee shall have the following rights which may be exercised at any time prior to the completion of sale proceedings.
 - i 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.
 - ii To execute in favor of the encumbrancer a promissory note and a new encumbrance 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 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.
 - iii If the Lessee exercises either of the above rights, all of the rights, title, and interest of the sublessee in the sublease shall automatically terminate on the same date the right is exercised and the Lessee shall on the same date

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acquire the subleasehold. The acquisition of the subleasehold by Lessee under these circumstances shall serve to extinguish the sublease by merger with the lease.

- iv In the event Lessee does not avail himself of the above rights and any sale under the approved encumbrance occurs, whether by power of sale or foreclosure, the purchaser at such sale shall succeed to all of rights, title, and interest of the sublessee in the subleasehold covered by said encumbrance. It is further agreed that if the purchaser at such sale is the encumbrancer, the encumbrancer may sell and assign the subleasehold without any further consent, provided that the assignee shall agree in writing to be bound by all the terms and conditions of the sublease. If the encumbrancer is the purchaser, it shall be required to perform the sublease only so long as it retains title thereto. If a sale under the approved encumbrance occurs and the purchaser is a party other than the encumbrancer, approval by the Lessor of any assignment will be required and said purchaser, as successor in interest to the sublessee, shall be bound by all the terms and conditions of the sublease and will assume in writing all the obligations thereunder.
- E. In the event of default by the Lessee of the terms of an approved encumbrance, the encumbrancer may exercise any rights provided in such approved encumbrance, provided that before any sale of the leasehold, whether under power of sale or foreclosure, the encumbrancer shall give to Lessor notice of the same character and duration as is required to be given Lessee under the terms of such encumbrance and the laws of the State of Arizona.
- F. If notice of such sale be given, and the defaults or 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:
 - i 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.
 - ii To execute in favor of the encumbrancer a promissory note and a new encumbrance 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, and insuring that the new encumbrance is a first lien upon the property described in the lease subject only to current taxes and to conditions, restrictions and reservations of record at the time of recording the new encumbrance.

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- iii If the Lessor exercises either of the above rights, this lease shall automatically terminate on the date the right is exercised and shall be of no further force and effect; provided, that such termination shall relieve the Lessee from any obligation or liability which had accrued prior to the date of termination.
- iv In the event Lessor does not avail himself of the rights above set forth in this Article and any sale under the approved encumbrance occurs, whether by power of sale or foreclosure, the purchaser at such sale shall succeed to all of the rights, title and interest of the Lessee in the leasehold estate covered by said approved encumbrance. It is further agreed that if the purchaser at such sale is the encumbrancer, the encumbrancer may sell and assign the leasehold interest without any further consent, provided that the assignee shall agree in writing to be bound by all the terms and conditions of this lease. If the encumbrancer is the purchaser, it shall be required to perform this lease only so long as it retains title thereto. If a sale under the approved encumbrance occurs and the purchaser is a party other than the encumbrancer, approval by the 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.

SECTION 14. 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 eight (8) percent per annum from the date of payment until repaid. Default in such repayment shall constitute a breach of the covenants of this lease.

SECTION 15. SANITATION

Lessee hereby agrees to comply with all applicable sanitation codes, requirements, or laws which may be related to the purpose of this lease as set forth in Section 3 hereinabove. Such compliance shall specifically include, but not be limited to the sanitary regulations of the U.S. Indian Health Service and Navajo Nation. Lessee further agrees to at all times maintain the entire premises in a safe, sanitary condition, presenting a good appearance both inside and out in all buildings operated on the leased premises.

SECTION 16. PUBLIC LIABILITY INSURANCE

At all times during the term of this lease, Lessee shall carry a public liability insurance policy in the amount of \$200,000 per person/\$1,000,000 per incident for personal injury, and \$500,000 for property damage, said policy to be written jointly to protect

Lessee and Lessor. Copy of said policy shall be furnished Lessor. Neither the Lessor nor the United States Government, nor their officers, agents, and employees shall be liable for any loss, damage, or injury of any kind whatsoever to the person or property of the Lessee or sublessee or of any other person whomsoever, caused by any use of the leased premises, or by any defect in any structure erected thereon, or arising from any accident, fire, or other casualty on said premises or from any other causes whatsoever; and Lessee, as a material part of the consideration for this lease, hereby waives on Lessee's behalf all claims against Lessor and/or the United States Government and agrees to hold Lessor and/or the United States Government free and harmless from liability for all claims for any loss, damage, or injury arising from the use of the premises by Lessee, together with all costs and expenses in connection therewith.

On the tenth anniversary of this lease and each ten years thereafter, the amount of public liability insurance shall be reviewed and adjusted to reflect changes in the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index.

SECTION 17. FIRE AND DAMAGE INSURANCE

- A. Lessee shall, from the date of approval of this lease, carry fire insurance with extended coverage endorsements, and vandalism, jointly in the names of the Lessee and Lessor, covering the full insurance value of all improvements on the leased premises. Lessee shall pay all premiums and other charges payable in respect to such insurance, and provide satisfactory evidence thereof upon demand by Lessor. In the event of damage to any improvement on the leased premises, Lessee shall reconstruct the improvement in compliance with applicable laws and regulations in accordance with plans to be approved pursuant to Section 9 hereinabove. Such reconstruction shall commence sixty (60) days from receipt of insurance payment by Lessee, and shall be pursued diligently. Insurance proceeds shall be deposited in escrow with an institution approved by Lessor upon request by Lessor. The Lessee shall also deposit in said escrow all additional funds required to reconstruct the damage improvements.
- B. Escrow instructions shall include provisions that all funds so deposited shall be used to reconstruct the damaged improvements, and funds shall be disbursed during the progress of reconstruction on proper architect's, engineer's or contractor's certificates.
- C. If Lessee has not defaulted under this lease, all money in escrow after reconstruction has been completed shall be paid to Lessee; if a default has taken place, said money shall remain in escrow as security for performance of Lessee until said default is corrected, after which funds remaining shall be paid to Lessee. If Lessee does not correct the default, said funds shall be paid to the Lessor.

- D. Any encumbrancer shall be named as a beneficiary under the insurance mentioned in the within 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 amount of the approved encumbrance) shall be paid to the encumbrancer. If such amount paid to the encumbrancer is sufficient to repair the loss, 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 and 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.
- E. In the event of damage to the extent of seventy-five (75) percent or more of the total value of all improvements on the leased premises, the Lessee shall have the option to reconstruct said improvements or terminate this lease. Should Lessee elect not to reconstruct, the leased premises shall be cleared at Lessee's expense. In that event, all insurance proceeds shall be divided equally among Lessor and Lessee after payment of any encumbrance or record and costs associated with clearing the site of the debris.

SECTION 18. UNLAWFUL USES

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

SECTION 19. ENVIRONMENTAL ASSESSMENT AND CLEANUP

The Lessor hereunder shall be responsible for assessing the environmental damage that has previously occurred at the subject site and cleanup of any debris or situation that exists that threatens the health and safety of the Lessee or Sublessees, employees, business invitees, or other visitors to the leased premises. Lessor shall indemnify and hold Lessee harmless for any and all environmental liabilities that result due to any prior occupant's acts or omissions. Lessor shall further be responsible for demolition and removal of all improvements currently located at the site not deemed usable by Lessee.

The parties hereto recognize that the septic system now located on the leasehold premises is inadequate and unsanitary. Lessor agrees to take all necessary steps to remedy this problem promptly, to install a new septic or other system compatible with the intended uses of the leasehold premises, and to pay for such renovation and installation from its funds alone.

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SECTION 20. COMPLETION OF DEVELOPMENT

- A. Lessee shall use its best efforts to substantially complete the full improvement and development of the leased premises in accordance with the general plan and architect's design, submitted in accordance with Section 9 above, within twenty-four (24) months from the beginning date of the term of this lease.
- B. Whenever under this lease a time is stated within which or by which original construction, repairs, or reconstruction of said improvements shall be made and during such period a general or sympathetic strike or lock out occurs, war or rebellion ensues, or some event plainly beyond Lessee's power to control, the period of delay so caused shall be added to the period limited herein for the completion of such work.
- C. In the event of condemnation of the leased premises or any part thereof, the compensation or award insofar only as it is awarded for the unpaid balance of any approved encumbrance, shall be paid to the encumbrancer. As between the Lessor and Lessee or sublessor and sublessee as the case may be, such amount shall be paid to the Lessee or sublessee.

SECTION 21. EMINENT DOMAIN

If, at any time, during the term of this lease, the leased premises or any part thereof is taken or condemned under the laws of eminent domain, then and in every such case, the leasehold estate and interest of the Lessee in said premises or part thereof taken shall forthwith cease and terminate. All compensation awarded by reason of the takings of the leased lands 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. The rental thereafter payable hereunder shall be reduced in the proportion that the value of the entire premises is reduced by such taking or condemnation.

SECTION 22. DEFAULT

- A. Should Lessee default in any payment of monies or fail to post bond as required by the terms of this lease, or should Lessee breach any other covenant of this lease and if such default or breach shall continue uncured for the period of thirty (30) days after written notice thereof by the Lessor to the Lessee, then Lessor may collect, by suit or otherwise, all monies as they become due hereunder, or enforce, by suit or otherwise, Lessee's compliance with any other provision of this lease.
et seq.
- B. Any action taken or suffered by Lessee as a debtor under any insolvency or bankruptcy act shall constitute a breach of this lease unless such action is terminated prior to adjudication of Lessee as insolvent.

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- C. At least forty-five (45) days prior to any termination of the lease the Lessor shall give to all encumbrancers written notice of intention to so terminate. If such proposed termination be for any default of Lessee under the lease, encumbrancers shall be entitled to remedy default at any time before such termination occurs, and thereby prevent termination for such default, or if default cannot be remedied within forty-five (45) days, to commence the remedy thereof within thirty (30) days and diligently prosecute the same thereafter, during which time the lease shall not be terminated for such default.
- D. No waiver of a breach of any of the covenants of this lease shall be construed to be a waiver of any succeeding breach of the same or any other covenant.

SECTION 23. LESSOR'S OBLIGATION TO DEFEND

The Lessor and Lessee hereunder acknowledge that the subject premises is currently in trust status with the United States of America. However, because Lessee may invest substantial funds in the improvement of the subject premises, the Lessor and any successor in interest of Lessor shall have the obligation to defend, for the duration of this lease and any extension or renewal hereof, the Lessee's right, title, and interest in and to the subject leased premises and the Lessee's right to use the leased premises, for the purposes contemplated by this lease. In the event it is necessary to employ counsel to defend Lessee's right to use the subject property by virtue of the transfer of the land to another entity, Lessor or Lessor's successor in interest will pay Lessor's reasonable attorney fees in defending Lessee's right to use the subject premises pursuant to the terms and conditions of this lease.

SECTION 24. ATTORNEY'S FEES

If action be brought by Lessor in unlawful detainer for rent or any other sums of money due under this lease, or to enforce performance of any of the covenants and conditions of this lease, the losing party shall pay the reasonable attorney's fees of the prevailing party, to be fixed by the Court as a part of the costs in such action.

SECTION 25. NO PARTNERSHIP: OPERATION OF BUSINESS

- A. Regardless of the fact that terms of rental may in part be determined on a percentage basis, Lessee and Lessor are not in partnership.
- B. All businesses on the leased premises shall be conducted during the regular and customary hours of such businesses and on all business days in good faith, so that Lessor will at all times receive the maximum income under the percentage rental provisions of this lease.

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SECTION 26. STATUS OF SUBLEASES

Termination of this lease, by cancellation or otherwise, shall not serve to cancel approved subleases and/or subtenancies, but may operate as an assignment to Lessor of any and all such subleases and/or tenancies.

SECTION 27. PAYMENTS AND NOTICES

All notices, payments, and demands, shall be sent to the parties hereto at the addresses herein recited or to such addresses as the parties may hereafter designate in writing. Notices and demands shall be sent by certified mail. Service of any notice or demand shall be deemed complete ten (10) days after mailing or on the date actually received, whichever occurs first.

SECTION 28. INSPECTION

The 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.

SECTION 29. HOLDING OVER

Holding over by the Lessee after the termination of this lease shall not constitute a renewal or extension thereof or give the Lessee any rights hereunder in or to the leased premises. Lessee agrees to remove all property removable under the terms of this lease within sixty (60) days after termination of this lease.

SECTION 30. DELIVERY OF PREMISES

At the termination of this lease, Lessee will peaceably and without legal process deliver to the Lessor the possession of the leased premises, in good condition, usual wear and tear and acts of God excepted.

SECTION 31. EMPLOYMENT OF NAVAJOS

Lessee and operating sublessees shall give preference in employment arising in connection with this lease to qualified, willing and available Navajos and other Indians living on or near the Navajo Reservation in accordance with Navajo law, during the term of this lease.

SECTION 32. FENCING OF PREMISES - USE OF WATER

A. Lessee shall have the right to fence all or any portion of the demised premises if the same shall be necessary or desirable to the proper and efficient conduct and operation of Lessee's business.

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- B. Lessor shall assure Lessee a sufficient quantity and quality of water for the business purposes contemplated by the lease by providing connection to the premises to the New Lands Regional Water System. Lessor shall provide an appropriate main line water service and master meter to the boundary of the premises. Lessee shall pay established commercial water rates to the Navajo Tribal Utility Authority, the operator of the New Lands Water System. In the event Lessee receives notice from the operator of the New Lands Regional Water System that Lessee's water needs cannot be met, Lessee shall be entitled to drill for water on the leased premises. Lessee shall comply with all Navajo Tribal regulations regarding drilling. Any water source thus developed shall be available for the proper and efficient conduct and operation of Lessee's business.

SECTION 33. MINERALS

All minerals and sand and gravel contained in the tract leased, in whatever concentration are hereby reserved for the use of the Lessor. However, Lessor shall not be entitled to excavate or otherwise remove sand and gravel from said premises until Lessee's interest in said premises is terminated as herein provided.

SECTION 34. LEASE BINDING

This lease and the covenants, conditions and restrictions hereof shall extend to and be binding upon the successors, heirs, assigns, executors, and administrators of the parties hereto.

SECTION 35. INTEREST OF MEMBER OF CONGRESS AND FEDERAL EMPLOYEES

No member of, or delegate to Congress, employee of the Department of Interior, or employee of the ONHIR shall be admitted to any share or part of this contract or to any benefit that may arise herefrom, but this provision shall not be construed to extend to this contract if made with a corporation or company for its general benefit.

SECTION 36. LIENS, TAXES, ASSESSMENTS, UTILITY CHARGES

- A. Lessee shall not permit to be enforced against the leased premises or any part thereof any liens arising from any work performed, materials furnished, obligations incurred by Lessee, but Lessee shall discharge all such liens before any action is brought to enforce same; further, Lessee shall pay when and as the same become due and payable, 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 the Lessee or Lessor may become liable.

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- B. Lessee shall have the right to contest any claim, asserted taxes, or assessment against the property, by posting bond to prevent enforcement of any lien resulting therefrom, and Lessee agrees to protect and hold harmless the Lessor and the leased premises and all interests therein and improvements thereon from any and all claims, taxes, assessments, and like charges from any claimant therefor, or from sale or other proceedings to enforce payment thereof, and for 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 all charges for water, sewage, gas, electricity, telephone and other utility services supplied to said premises.

SECTION 37. VALIDITY

This lease, and any modification of or amendment to this lease, shall not be valid or binding upon either party hereto until executed by both parties hereto.

SECTION 38. OWNERSHIP AND MANAGEMENT

The Lessee shall operate and manage all business activities on the lease site, except when written approval has been obtained from the Lessor for a different management arrangement. Lessor shall not unreasonably withhold such consent.

SECTION 39. FRUSTRATION OF BUSINESS PURPOSE

Lessor hereunder agrees that it will in no way do, or attempt to do, any act that will frustrate the business purpose for which this lease is entered into. Such activity shall include, but not be limited to, re-zoning of the property, the levy of taxes on the property or the business conducted on the property, the disruption or blockage of access to the property, or any other method of interference with the Lessee's business operations on the property so long as Lessee is in compliance with the mandates contained within this lease.

SECTION 40. JURISDICTION AND GOVERNING LAW

This Agreement is entered into in Flagstaff, Arizona. The terms of this Agreement shall be interpreted by the laws of the State of Arizona and the courts of jurisdiction shall be the United States District Court for the District of Arizona. The foregoing language shall not abrogate rights enjoyed under any other jurisdiction.

SECTION 41. SOVEREIGN IMMUNITY

Except as provided for herein, this agreement shall not be construed as a waiver of the sovereign immunity of the Navajo Nation Hospitality Enterprise.

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SECTION 42. SECTION TITLES

All section titles contained within this lease are for ease of reference only and are not intended to assist in defining any terminology contained within those sections.

IN WITNESS WHEREOF, the parties hereto have set their hands.
Navajo Nation Hospitality Enterprise, Lessee

By: [Signature]
General Manager

Attest: [Signature]
Secretary of the Management Board

Office of Navajo and Hopi Indian Relocation

By: [Signature]
Carl J. Kunasek, Commissioner

STATE OF ARIZONA)
COUNTY OF Apache) ss

SUBSCRIBED AND SWORN TO before me this 14th day of January, 1991, by [Signature].

[Signature]
Notary Public

My Commission Expires:
My Commission Expires Feb. 4, 1994

STATE OF ARIZONA)
COUNTY OF Coconino) ss

SUBSCRIBED AND SWORN TO before me this 23^d day of January, 1991, by Carl J. Kunasek, Commissioner.

[Signature]
Notary Public

My Commission Expires:
September 28, 1993

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