



# **PROCEDURAL HANDBOOK**

## **Leasing and Permitting Chapter 4 – Business Leasing**

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## 1.0 INTRODUCTION

The purpose of this chapter is to provide procedures for business leasing and permitting to BIA regional offices, agencies and field offices, and tribal offices that are under self-governance and those tribes that contract Bureau of Indian Affairs (BIA), programs under P.L. 93-638 Self-Determination and Education Assistance Act, as amended, 25 U.S.C. § 450, et seq. It is intended that the instructions will provide direction to management, realty personnel and support staff to assist them in providing service to landowners, potential lessees and the general public. It will also be used to inform Tribes and individual Indians on the processes and requirements of surface business leasing and permitting.

The Superintendent, Deputy Superintendent, Real Estate Services (RES) staff, or the Trust Officer as the initial Point-Of-Contact (POC) at the local agency, will:

- Be responsible for accurately completing Part A of the Data Intake Sheet.
- If the Client pursues the transaction, then Part B will be completed by the Client, or aided with completion by the POC.
- When RES has completed the review of the lease file, Part B, the Memorandum of Record (MOR) and Notice of Appeal will be completed under Part C.
- If there is no appeal or all administrative remedies from an appeal have been exhausted, then the lease file will be closed as defined in Part D.

### Types of Business Leases

A critical step in the development of lease requirements is working with landowners so they negotiate, devise, approve and use leases that are in their best interests. Although there are no standard lease forms for business leasing, there are different types of leases which include the following:

- **Revocable Use Permits** are used for purposes such as cultural events, special and holiday events, weddings, and fireworks stands.
- **Long-term leases** are used where there may be substantial commercial development investment required such as for hotels, golf courses, country clubs, and apartment complexes. Long term leases usually include percentage rents based on gross receipts.
- **General business leases** are also referred to as commercial leases. The landowner(s) and lessee may agree on special negotiated lease provisions that require a portion of the rent be based on the “gross receipts” of the business. A business where this type of lease may be appropriate is a convenience store or smokeshop.
- **Recreational leases** are appropriate for businesses such as a baseball field, theater, skating rink, or bowling alley.
- **Multi-purpose development leases** may include any legal use as long as the use is not detrimental to the land or resources of the Indian landowner(s).

- **Industrial leases** may include businesses such as storage or transport facilities or mineral-related compressor stations, water injection wells and disposal wells.
- **Joint Venture Business Leases** involve multiple people or entities that participate in the development and operation of the business. For example, when the Department of Defense leases tribal lands and contracts with the tribe to build a facility to make military equipment this lease type is appropriate.

## **2.0 PROCESS AND PROCEDURES OVERVIEW**

The Business leasing process is divided into the following standard operating procedures and transaction processes. Each transaction process requires that the application adhere to the following format:

<b>Lease Intake</b>
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The purpose of this procedure is to provide requirements regarding initial point-of-contact with the applicant requesting a business lease transaction, collecting information on the potential lessee's intent, and providing information about lease requirements and compliances to the applicant. BIA will also inform the applicant that an application for the transaction must be secured by the Indian landowner/beneficiary within thirty (30) days or the request will be closed out and the applicant notified in writing.

<b>Lease Preparation</b>
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The purpose of this procedure is to provide requirements regarding preparation of the lease in a manner that ensures the legal and technical sufficiency of the proposed lease. A Memorandum of Record (MOR) is required that certifies that the proposed transaction complies with all BIAM, policy and regulations and meets statutory requirements.

<b>Recommendation and Appeal</b>
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The purpose of this procedure is to provide requirements regarding the final review and approval by the designated-line official.

<b>Lease Closeout Procedures</b>
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The purpose of this procedure is to provide requirements regarding preparing the schedule for income distribution and recording the encumbrance and encoding the transaction into the automated system.

**The procedures below explain the following transaction processes. These procedures are completed in accordance with 25 CFR Part 162 Subpart F: Non – Agricultural Leases.**

**Lease Negotiation**

Lease Negotiation. This is authorized by §162.605 Negotiation of leases. The transaction should follow the Lease Intake process.

**Advertised Competitive-Bid Lease Sale**

Advertisement. This transaction is completed in accordance with § 162.606 Advertisement. The procedure follows the Lease Intake process.

**Lease Modification/Amendment**

Lease Modification. This transaction is completed in accordance with § 162.610. This procedure includes processing any subsequent modifications to the lease. The procedure follows the Lease Intake process once it is established that the applicant is requesting a lease administrative or procedural modification.

**Sublease**

Sublease. This transaction is authorized by § 162.610. The transaction follows the Lease Intake process. These transactions can occur on either commercial or residential or a combination thereof.

**Lease Assignment**

Lease Assignment. This transaction is authorized in accordance with § 162.610. The procedure follows the Lease Intake process once it is established that the applicant is requesting to conduct a lease assignment to a current lease or sublease.

**Encumbrance (Deeds of Trust/Leasehold Mortgage)**

Encumbrance (Deeds of Trust / Leasehold Mortgage). This transaction is authorized in accordance with § 162.610(c). The transaction should follow the Lease Intake process.

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**Lease Option to Renew or Extend**

Option to Renew or Extend. Unless otherwise provided, lease renewals and extensions will be granted/approved in accordance with § 162.607 Duration of leases. The transaction follows the Lease Intake process.

**Unitization for Leasing**

Unitization for Leasing. This transaction is authorized under § 162.105 and §162.609. The procedure follows the Lease Intake process once it is established that the requestor is requesting to exercise the procedure.

**Lease Compliance and Cancellation**

The purpose of this procedure is to provide requirements regarding monitoring of leases for both financial and use compliance. Inspections are made to ensure the activities on the lease are in conformance with the terms and conditions of the lease. Lease violations are identified and appropriate actions are taken to resolve or mitigate such violations and in some cases, to initiate lease cancellation procedures. Lease cancellation will be conducted in accordance with § 162.621. This procedure will adhere to the progression notices provided to lessee under § 162.612 – §162.621 and if warranted, cancellation will proceed with notice under 25 CFR Part 2 to lessee/tenant of the cancellation action.

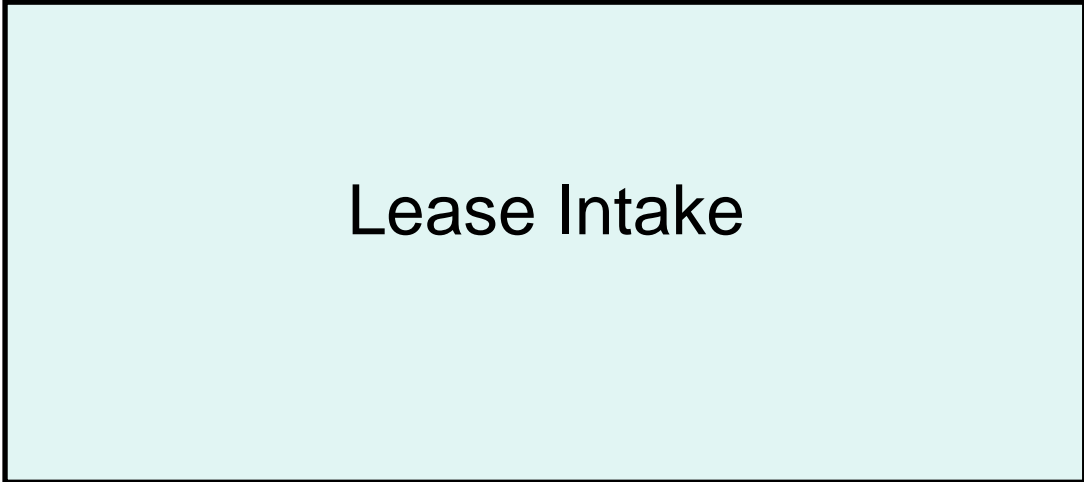
### **3.0 GENERAL AUTHORITIES AND POLICIES**

This chapter includes instructions and basic procedures for business leasing and permitting of trust and restricted tribally and individually owned Indian lands. These leases and permits are negotiated or advertised (if necessary), and approved in accordance with 25 U.S.C. 415, as amended, or other authorizing statutes as amended by the Indian Land Consolidation Act of 2004 and AIPRA of 2004, and governed by 25 CFR Part 162, Subpart A “General Provisions” and Subpart F “Non-agricultural leases”. Further guidance can be found in 54 BIAM 5.1 Leases and Permits.

It should be noted that although the general purpose of this handbook is to standardize the leasing and permitting process, there are specific exceptions for some tribes to the regulations and the operating procedures described in this handbook. There are also other statutory requirements, exceptions and restrictions for certain tribes which may be affected differently and realty staff must become familiar with those differences when working on potential projects within their respective jurisdictions.

### **4.0 PROCEDURES**

This section of the handbook presents the complete text and associated attachments (if applicable) for each procedure associated with Business Leasing.



Lease Intake



## LEASE INTAKE

### Purpose

This procedure includes initial contact (Point-of-Contact (POC)) with the requestor of a business lease-related transaction, collecting information on the potential lessee intent, and providing information about lease requirements and compliances to the applicant.

### Scope

This procedure is developed to provide direction to management, realty personnel and support staff to assist them in providing service to landowners, potential lessees, and the general public. It is primarily developed for all BIA agency programs, self-governance tribes, and Tribal programs that have secured program responsibility through 638 Self-Determination contracts. The procedures outlined are to be used for most locations, but local, federal and tribal legal requirements may result in modifications to these procedures. In those cases, Regional Addenda to the procedure is applied.

### Process

**Step 1:** Respond to a requestor with a business lease transaction. The requestor may be a landowner, a potential lessee, or both. The request may occur by:

- Walk-in
  - Appointment
  - Representative contact in person, phone contact or by letter (Letter of Intent)
  - Attorney
  - Power of Attorney
  - Designated family member
  - Official Correspondence (letter/or fax)
  - Telephone call
  - E-mail
- If not dealing with the beneficiary directly, the contact person must provide current written evidence that he/she has the authority to legally represent the landowner or the potential lessee and provide detail identifying the tract to be leased. If there is no current written authorization by the Beneficiary, obtain one.

**Step 2:** Gather information on the Intake Worksheet for intended transaction. The requested transaction could be initiation for a new lease or a transaction related to an existing lease.

- Record the information on a standard intake worksheet to assist in processing the transaction and determining that all applicable lease requirements are met. (See

[Attachment 1B - Data Intake Worksheet.](#))

- The intake form is completed in order to ascertain (1) what type of lease transaction is being requested, and (2) if there is enough evidence to support the potential that the lease transaction can be completed.
- Once the information is collected, create a temporary lease file to maintain documents relating to the proposed lease.

**Step 3:** Review leasing requirements with the applicant. The requestor is responsible for completing or ensuring that all requirements are met.

- Discuss how additional information and technical assistance can be secured on more complex requirements. This may include names, offices and phone numbers of DOI or tribal staff that can further elaborate on environmental, survey, and appraisal issues. Answer any questions concerning the process or requirements.
  - If time allows, if at all possible, put together a team to assist with the transaction.
- Review the timelines and processing steps involved with the transaction from start to finish.
- Advise the applicant to review applicable local zoning and inter-agency agreements (e.g., MOUs and MOAs) and tribal ordinances that the tribe has adopted.
- In the event fee interests are to be included in the lease, those interests must be supported by appropriate evidence.
- Provide the requestor a recommended lease format that includes the mandatory provisions and suggested optional terms for incorporation in the negotiated lease. (See [Exhibit 6 - Mandatory and Optional Lease Provisions.](#))
- Explain the varied compliances required to complete the transaction. These compliances involve explanation for appraisal requirements, environmental, historical and cultural, and other related activities.
  - Advise the requestor that if an appraisal has been prepared in the proper format, it will need to be forwarded to the Office of Appraisal Services (OAS) for review and approval as required by law.
    - Waivers or a waiver of appraisal, or in-kind consideration in lieu of monetary value to complete the requirements for the transaction, must be discussed and any agreements must be in writing by the parties.
- Explain the environmental compliance requirements to the applicant. Either an Environmental Assessment (EA), Environmental Impact Statement (EIS) or a Categorical Exclusion (Cat-Ex) will be required. (See [Attachment 2B - Categorical Exclusion Exception Checklist.](#))

- Explain the requirements for archaeological, cultural and historical compliances which include a review of documents and generally a field site assessment. This is completed under the umbrella of the National Historic Preservation Act (NHPA).
- Explain additional considerations that may be relevant pursuant to 25 U.S.C. 415 including:
  - Potential impacts of the lease on property adjacent to the lease
  - Compatibility of the proposed lease use with the surrounding properties and land use plans in effect on those lands
  - Notification to the landowner(s) of the surrounding properties
  - Conservation/environmental issues
  - Zoning
  - Easements/Rights of Way
  - Roads
  - Utilities
  - Conservation
  - Noise
  - Water
  - Waste disposal
  - Hazardous and contaminate materials
  - Cultural, archeological, historical implications
  - Traffic
  - Air space
- Explain the terms and type of payment for any cash or in-kind consideration involving the transaction so the transaction may be processed efficiently.
- Explain that administrative fees associated with the issuance of a lease may be required. Any waiver or exceptions to any fees must be processed accordingly. These fees are non-trust; therefore, are deposited into FFS and are reimbursable to the agency that performed the work.
  - Tribes may charge additional fees if they choose.
- Advise the applicant that more information may be required to verify the following:
  - Age of applicant
  - Age(s) of Beneficiary of conveyance
  - Need for Court Order for guardianship determination, if minors involved. This could be confirmed with Social or Family Services.
  - Are any non-compos mentis individuals? If so, was there a determination order or decision?
  - Enrollment number from a Federally Recognized tribe
  - Marital status
  - Employment verification, if necessary
  - Non-enrolled Indian owning trust property

- Schedule a site visit when appropriate.
- Provide the applicant with a packet of documents. The packet contains all necessary checklists, contact information, samples or forms necessary to be assembled and completed for the processing of the lease package. (See [Attachment 3B - Business Leasing Checklist](#).) The packet includes:
  - Checklist
  - Compliance information that includes appraisal and NEPA (environmental, historical and cultural compliance)
  - A copy of the regulations/statute
  - Sample Recommended Business Lease or other transaction form (See [Attachment 4B - Sample Business Lease](#).)
- Use this packet to work through the pre-lease, lease requirement review, and approval procedures.

**Step 4:** Verify current ownership.

- Request the appropriate title documents which may include a Title Status Report and agency ownership files. (See [Attachment 5B - TSR Request Form](#).)
- If required, review additional agency records. For example, if a parcel of land that is solely owned and is in estate status, it can be leased. (See [Exhibit 4 - 25 CFR 162.607\(b\)](#).)

**Step 5:** Determine fair market value (FMV) and fair annual rental.

- An appraisal or other appropriate valuation must be completed to establish fair market value, fair annual rental, highest and best use. If an appraisal is not provided by the applicant, request an appraisal to be completed by OAS. If provided, submit the appraisal to OAS for review and approval. (See [Attachment 6B - Appraisal Request Form](#).)
- Trust land appraisals not prepared by the Office of Appraisal Services (OAS) must be reviewed by OAS before approval of a trust land or resource transaction, even if the appraisal was prepared by a compacted or contracted tribe. The review of appraisals has been declared an inherently federal function. (See [Attachment 7B - Review of Land Appraisals](#).)
- Leases may be approved by the Secretary at less than the fair annual rental when a determination is made that it is in the best interest of the landowner(s).
- Upon a duly adopted tribal resolution or other appropriate legal document, some type of valuation other than an appraisal can be utilized for a business lease on tribal land, subject to BIA approval.

**Step 6:** Conduct a pre-lease site visit, if required.

**Step 7:** If needed, arrange a team or provide contact information for staff that can provide technical assistance to the applicant.

REVIEW		
Revision #	Change	Effective Date
0	Initial Issuance	

**END OF PROCEDURE**



Lease Preparation

## LEASE PREPARATION

### Purpose

This procedure includes the review of the lease package to insure that all applicable statutory and regulatory requirements are satisfied. The authorizing official can either approve or disapprove the lease. If approved, the lease is recorded in the LTRO.

### Scope

This procedure is developed to provide direction to management, realty personnel and support staff to assist them in providing service to landowners, potential lessees, and the general public.

This procedure is developed for BIA agency programs, self-governance tribes, and Tribal programs that have secured program responsibility through 638 Self-Determination contracts. The procedures outlined are to be used for most locations, but local, federal and tribal legal requirements may result in modifications to these general outlines. In those cases, Regional Addenda to the procedure are applied.

### Process

**Step 1:** Receive a lease package and supporting documents for review and processing.

**Step2:** Ensure that the necessary supporting documentation has been provided as discussed during the application process.

- The documents may include:
  - An appraisal report or some other acceptable valuation that establishes the fair market value or fair annual rental for the project
  - An archaeological report
  - NEPA compliance documentation. If the project involves petroleum products or other type materials that could cause public concern, discussion of this must be fully documented in the environmental assessment (EA) or environment impact statement (EIS), whichever is provided for the project
  - Certified survey of the property, if required
  - Discussion and determination if there are any tribal, local, county or state permits required due to zoning, ordinances etc.
  - Site plan(s)
  - Corporate documents
  - Pro forma

**Step 3:** Review agency land records for encumbrances already recorded on the tract to ensure the land is available for lease. Title evidence was verified in Lease Intake

– Step 4.

**Step 4:** The environmental staff and the regional archeologist need to determine the actions necessary to ensure compliance with the National Environmental Policy Act (NEPA), National Historic Preservation Act (NHPA), and Endangered Species Act (ESA).

- For further discussion see the Bureau's NEPA Handbook.
- In certain instances the cost of NEPA, NHPA, and ESA analyses may be passed on to the applicant.
- If the proposed transaction is categorically excluded, no consultation is necessary. Send the categorical exclusion (cat.ex.) exception checklist to the regional environmental office for signature. (See [Attachment 2B - Categorical Exclusion Exception Checklist.](#))
- See NEPA Handbook Chapter 3 for directions on completing the checklist.

**Step 5:** Review the site and construction development plans to, (1) insure there is ingress and egress to the proposed site, (2) the project schedules are appropriate, and (3) the impact on adjacent properties is considered.

- If the leased premise is described in metes and bounds, a survey plat is required. An official survey plat or a certified survey plat that conforms to the current [Manual of Instructions for the Survey of the Public Lands of the United States](#) and laws governing the practice of land surveying of the leased premises must be provided. The plat must include the legal description of the land encumbered by the lease, and a description of each tract of trust/restricted land in the lease and the acreage of each. Plats show the tie-in to the nearest corner of an official survey, all courses and distances, exceptions, and tract acreages. For further guidance see Indian Trust Lands Boundary Standards.

**Step 6:** Review the proposed lease provided by the applicant to ensure all mandatory terms are included in the lease. (See [Attachment 4B - Sample Business Lease.](#))

- Verify the lease has been executed by all appropriate parties.
- Any lease drafted by negotiated parties must be in an approved form acceptable to the Secretary and must contain mandatory lease provisions. The lease can include recommended optional lease provisions provided during earlier discussions with the applicant. (See [Exhibit 6- Mandatory and Optional Lease Provisions.](#))

**Step 7:** Ensure that all negotiated lease terms and conditions are included in the lease language.

- Negotiated terms may not alter or supersede mandatory provisions that are established by statute or regulation.
- Provisions may not be allowed if they are contrary to, or in conflict with, DOI



(departmental) policies, regulations and inter-agency agreements, such as the conditions under which direct payment is allowed or standard late payment penalties.

- The rental must be consistent with the agreed upon conditions between the lessee(s) and lessor(s).
  - The rental can be calculated as a percent of income, gross or net, or income as a Guaranteed Minimum Annual Rental (GMAR), with recommended adjustments every five years, or both.
- Seek additional guidance on the assessment of the lease proposal if submitted documents need technical or specialized assessment. If a complicated lease, assistance from other offices may be required.

**Step 8:** Verify that the proposed duration of the lease complies with statutes and regulations.

- Business leases are generally allowed for a term of up to 25 years, but may include provisions authorizing a renewal or an extension for an additional term not to exceed 25 years, except as provided in specific statutes for individual tribes which allow a term not to exceed 99 years. (Long Term Leasing Act of 1955, 25 U.S.C. 415(a) as amended). (See [Exhibit 4 - 25 CFR 162.607\(a\)](#).)

**Step 9:** If tribal land, verify that applicable tribal resolutions or other appropriate documents have been included with the submittal.

**Step 10:** Ensure that the appropriate landowner consents have been obtained. (See [Exhibit 4 - 25 CFR 162.602 and 162.605](#).)

- Adult Indian land owners may grant leases on trust or restricted land, subject to the approval of the Secretary. (See [Chapter 1- Section 2.5 Landowner Consent](#).)
- Tribal corporations acting through their appropriate officials may grant leases on tribally-owned land. For the purposes of this handbook, tribal corporations are those chartered under Section 17 of the IRA, Act of June 14, 1934, as amended. This handbook does not apply to these types of leases, since they do not require Secretarial approval.

**Step 11:** Ensure that the land description is accurate and the survey requirement has been satisfied. (See [Exhibit 5 - How to Read a Land Description](#).)

- Option: Submit the land description to the BLM Indian Lands Surveyor for review. See the BIA Indian Lands Trust Boundary Standards Handbook for details.

**Step 12:** Ensure that the business organizational papers are in order, for example, the following documents are required depending on the lessee's organizational structure:

### **Corporations**

1. Articles of Incorporation

2. Statement of Officers to Execute Papers (See [Attachment 8B - Sample Evidence of Authority of Officers to Execute Documents.](#))
3. Evidence of Authority to Sign
4. Financial Statement(s)
5. Certificate of Good Standing
6. Corporate Resolution
7. Credit Report (if foreign corp.) or State Filing Report.

**Limited Liability Corporations or Joint Ventures**

1. Articles of Organization or Certificate of Information
2. Operating Agreement
3. Evidence of Authority to Sign
4. Financial Statement(s) (will be common)

**Individuals**

1. Financial Statement(s)
2. Individual Credit Report

**Partnerships**

1. Partnership Agreement
2. Evidence of Authority to Sign
3. Financial Statement(s)

- Verify the lessee address against business documents or other proper identification.

**Step 13:** Ensure that any additional documentation required for consideration, review, and approval of a project has been submitted. These documents may include:

- Certificate of Insurance
- Surety (Rental Bond)
- Pro forma
- Business Plan
- Feasibility Analysis
- Fictitious Name Filing
- Waivers

**Step 14:** Advise the applicant in writing of any additional information he/she may be required to finalize the transaction.

- The letter indicates that the additional information must be submitted within 15 business days.

<b>REVIEW</b>		
<b>Revision #</b>	<b>Change</b>	<b>Effective Date</b>
0	Initial Issuance	

**END OF PROCEDURE**



Recommendation and Appeal

## RECOMMENDATION AND APPEAL

### Purpose

This includes a final review of the lease and supporting documentation. The authorizing official can either approve or disapprove the lease. If approved, the lease is recorded in the Title system.

### Scope

This procedure is developed for those BIA agency programs and Tribal programs that have secured program responsibility through 638 Self-Determination contracts. The procedures outlined are to be used for most locations, but local, federal and tribal legal requirements may result in modifications to these general outlines. In those cases, Regional Addenda to the handbooks are applied.

**Step 1:** Receive the additional information requested from the lessee.

**Step 2:** Initiate and conduct final review and verification for all compliances.

**Step 3:** Prepare a Memorandum of Record (MOR) including an analysis of the lease package review and a recommendation to approve or not approve the lease.

**Step 4:** Prepare a letter for the lessee indicating approval or denial of the lease and detailing their appeal rights.

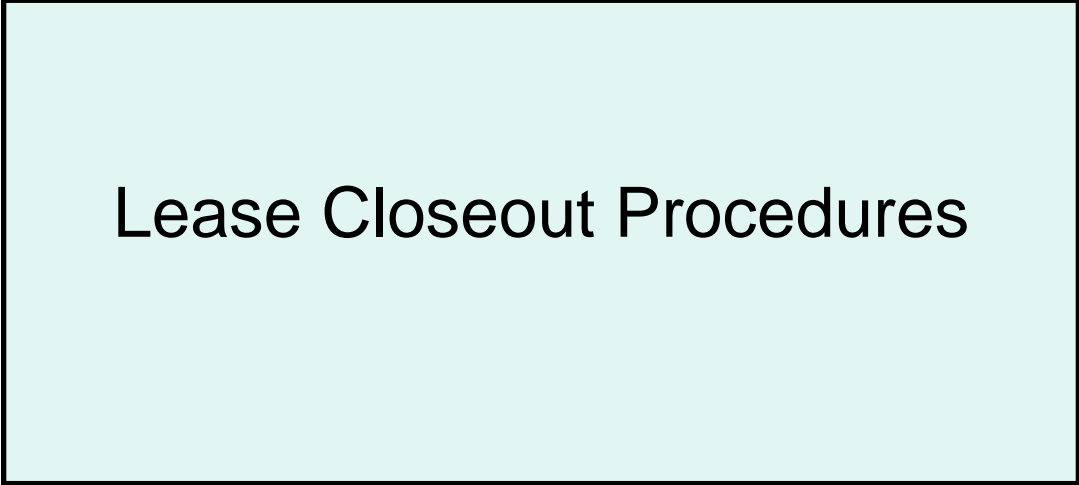
- Provide appeal notices if the lease is approved or denied to any interested party adversely affected by the decision.
- If an appeal is filed, see [Chapter 1 - Section 3.6](#) of this handbook for further discussion of administrative appeals.

**Step 5:** Transmit the lease package and MOR to the designated line official for signature.

- Record the date the file was submitted to the line official.
- Designated line official reviews the lease package and decides to approve or deny the lease transaction.
- If approved, the approval signature and the date approved are documented; or if the lease is denied, the basis of that determination is documented.

REVIEW		
Revision #	Change	Effective Date
0	Initial Issuance	

END OF PROCEDURE



Lease Closeout Procedures

**LEASE CLOSEOUT PROCEDURES**

**Purpose**

This procedure includes preparing the schedule for income distribution and recording the lease.

**Scope**

This procedure is developed for those BIA agency programs and Tribal programs that have secured program responsibility through 638 Self-Determination contracts. The procedures outlined are to be used for most locations, but local, federal and tribal legal requirements may result in modifications to these general outlines. In those cases, Regional Addenda to the procedure are applied.

**Step 1:** Take action to distribute income in accordance with the lease.

**Step 2:** Send originally executed copies (generally five or six original leases are prepared and executed) of the approved documents to the lessee and other parties to the lease as appropriate.

**Step 3:** Send the approved lease to Land Titles and Records Office (LTRO) or Title Service Office (TSO) as appropriate for recording. ([See Attachment 9B - Recordation Form.](#))

**Step 4:** Place lease or permit data into the agency automated leasing system; e.g., TAAMS.

REVIEW		
Revision #	Change	Effective Date
0	Initial Issuance	

**END OF PROCEDURE**





Lease Negotiation

## LEASE NEGOTIATION

### Purpose

This procedure provides instruction and guidance for processing requests for business leases and business lease transactions.

### Scope

This procedure is developed for BIA agency programs, self-governance tribes and Tribal programs that have secured program responsibility through 638 Self-Determination contracts. The procedures outlined are to be used for most locations, but local, federal and tribal legal requirements may result in modifications to these general outlines. In those cases, Regional Addenda to the procedure are applied.

### Process

**Step 1:** Respond to contact from a prospective lessee or landowner requesting the negotiation of a business lease.

- With the assistance of the requestor, collect the intake information. (See [Attachment 1B - Data Intake Worksheet](#).)
  - Verify the identity of the potential lessee (i.e., tribal membership card, other valid identification).
  - If the requestor is a tribal entity, a Tribal Resolution or a copy of the authorizing document must be submitted along with the application requesting the lease.

**Step 2:** Conduct a preliminary consultation.

- A lease cannot be entered in to more than 12 months prior to commencement of the term of the lease. The lease may not provide any preferential right to future leases nor provisions for renewal, except as otherwise provided in accordance with 25 CFR 162.604 (e).
- The parties that should attend this meeting include:
  - The landowner(s)/Beneficiary or designated representative
  - BIA/tribal personnel (Realty, Environmental, Land Operations, etc.)
  - Prospective lessee(s)
  - Developers
  - Indian Health Services (if they are providing water)
  - Other necessary parties

**Step 3:** Submission of proposed lease.

- The requestor may submit a proposed lease with supporting documentation for BIA review and approval.
- Upon request, assist the applicant in completing a proposed lease.

**Step 4:** Verify land ownership.

- Request the appropriate title documents which may include a Title Status Report, agency ownership files. (See [Attachment 5B - TSR Request Form.](#))
- Review probate records to see if the land has undetermined estates.
- Where a full parcel is solely owned and in estate status, a lease shall not be approved for more than two years. ([See Exhibit 4 - 25 CFR 162.607\(b\).](#))

**Step 5:** Identify the land description of the proposed lease site. A survey is provided by the potential lessee.

- A land description must be provided by the potential lessee.
- Submit the survey plat of the lease to the Regional BLM Indian Lands Surveyor for review if necessary. See the BIA Indian Lands Trust Boundary Standards Handbook for details.

**Step 6:** Obtain a site plan for the leased premises that identifies all utilities, driveways, improvements, etc.

- Review the site plan to insure:
  - There is ingress and egress to the proposed site
  - The development does not conflict with current and/or proposed use

**Step 7:** Determine fair annual rental.

- An appraisal or other appropriate valuation may be needed to establish fair market value. (See [Attachment 6B - Appraisal Request Form.](#)) See the Appraisal Handbook for more information.
- Trust land appraisals not prepared by the Office of Appraisal Services (OAS) must be reviewed by OAS before approval of a trust land or resource transaction, even if the appraisal was prepared by a compacted or contracted tribe. The review of appraisals has been declared an inherently federal function. (See [Attachment 7B - Review of Land Appraisals.](#))

- A determination of fair annual rental/value must be provided to the landowner even if the lease consideration negotiated is less than the fair annual rental.
- Leases may be approved by the Secretary at less than the fair annual rental when a determination is made that it is in the best interest of the landowners.

**Step 8:** Determine, in consultation with regional environmental staff and the Regional Archeologist, the actions necessary to ensure compliance with the National Environmental Policy Act (NEPA), National Historic Preservation Act (NHPA), and Endangered Species Act (ESA).

- For further discussion see the Bureau's NEPA Handbook.
- In certain instances, the cost of NEPA, NHPA, and ESA analyses may be passed on to the applicant.
- If the proposed lease is categorically excluded, no consultation is necessary. Send the categorical exclusion (cat.ex.) exception checklist to the regional environmental office for signature. (See [Attachment 2B - Categorical Exclusion Exception Checklist.](#))
  - See NEPA Handbook Chapter 3 for directions on completing the checklist.
  - If there is no response within 10 business days, email the regional environmental office with copies to the Regional Director, the Realty Officer and Central Office Division of Environmental and Cultural Resources Management for status of the pending categorical exclusion.
  - If there is still no response after another five business days, draft a memo from the Regional Director to the regional environmental office requesting status.

**Step 9:** Secure consent of the landowner for the negotiated lease.


- Provide the applicant with the lease forms. These lease forms are only model forms – there are no required lease forms.
  - Upon written request, provide the names, mailing addresses, percentage of undivided interest, and the location of the parcel to prospective lessees.
  - Consent is required of the owners of the applicable percentage of interests as established under ILCA (25 U.S.C. 2218), as follows:
    - (A) If there are five or fewer owners of the undivided interest in the allotted land, the applicable percentage shall be 90 percent;
    - (B) If there are more than five such owners, but fewer than 11 such owners, the applicable percentage shall be 80 percent;
    - (C) If there are more than 10 such owners, but fewer than 20 such owners, the applicable percentage shall be 60 percent;
    - (D) If there are 20 or more such owners, the applicable percentage shall be a

majority of the interests in the allotted land.

- In Alaska, business leases of Indian lands may be negotiated by the Indian landowners or their representatives who may execute leases under § 162.601, provided:
  - (A) The owners of a majority of the interests have negotiated a lease satisfactory to BIA;
  - (B) BIA consents to the lease on behalf of those persons for whom BIA is authorized to do so under paragraph (c) of this section; and
  - (C) BIA consent, when combined with the consent of the owners, provides 100 percent consent.

REVIEW		
Revision #	Change	Effective Date
0	Initial Issuance	

**END OF PROCEDURE**



Advertised Competitive-Bid  
Lease Sale

## ADVERTISED COMPETITIVE-BID LEASE SALE

### Purpose

This procedure includes advertisement of available Indian-owned tracts for potential individual leases or multiple tracts that may be included in a unitized lease. The primary purpose is to successfully conduct a lease sale and the preparation of a draft lease for execution on behalf of the Indian landowners to obtain the highest and best use.

### Scope

The activities to prepare new leases will occur in each case of an advertised sale.

**NOTE: This procedure applies to leasing of allotted tracts. Advertised lease sales of tribally-owned tracts are conducted in accordance with tribal laws, resolutions, and direction.**

### Process

**Step 1:** Appraisal for the establishment of the fair market value (FMV) must be initiated and obtained before any advertisement of tracts for competitive advertised bid sale. (See the Appraisal Handbook for appraisal compliance.)

**Step 2:** Advertise available tracts.

- Prepare lease advertisement. (See [Attachment 10B - Sample Advertised Sale Notice.](#))
  - Advertisement must address the following items:
    - No bidder preference
    - 25% bid deposit requirement with bid
    - Only sealed bids with bid deposit will be accepted
    - No ingress/egress guaranteed to the lessee
    - Date, time, and place where bids will be accepted and opened
    - List of available tracts by tract number and legal description
    - A statement of oral auction provision to follow bid opening, if required
    - Notification to high bidder
    - Right to reject any bid for any reason
    - A claim of owner's use must be made known to the agency at least 24 hours prior to bid opening
    - Bid deposit is forfeited if the high bidder fails to complete the requirements stated in the award letter

- Notify prospective lessee(s) either by mail or by a public posting of the advertisement for lease. The bid opening will be within 30-days of the written notification or public posting.
- Publish a revision to the advertisement to remove tracts that become unavailable for bid.

**Step 3:** Conduct the bid opening.

- Authorized collection officer is in attendance.
- Determine the successful bidder. The successful bidder will normally be the highest bidder.
  - The agency superintendent reserves the right to reject any or all bids and to disapprove or reject any lease submitted on an accepted bid prior to approval. Maintain sufficient documentation to defend the bid rejection.
  - Reasons a superintendent may reject include:
    - Bidder's history of delinquent or deficient payments
    - Bidder's history of lease violations for unauthorized use
    - Bidder's lease non-compliance

**Step 4:** Award the successful bidder. (See [Attachment 11B - Sample Award Letter.](#))

- Within 10 days of the receipt of the award letter, the remaining 75% rental and administrative fees are due.
- A performance bond in an amount equal to 100% of the annual rental may be required.
- An irrigation bond is required, if applicable.
- Ask the lessee to sign the contract and return by a specified date.
- Lease will not be approved if potential lessee fails to comply with the requirements in the award letter.
- Bid deposit is forfeited if the potential lessee fails to complete the requirements stated in the award letter.

**Step 5:** Deposit the successful bid.

- See the *Interagency Procedures Handbook: Management of Trust Funds Derived from Assets and Resources on Trust and Restricted Indian Land*.
- Return bid deposits of unsuccessful bidders after the advertised lease sale is complete.
  - Unsuccessful bidders are either refunded their bids in person if present at the bid opening, or by mail within 48 hours upon the conclusion of the sale. Refunded bids are delivered by certified mail with return receipt requested.



**Step 6:** Prepare abstract of the sale.

- Record all bidders, bid amounts, and for which tracts bids were made.
- Record the results of all oral auctions subsequent to the sealed bid opening, if provided.
- Record any withdrawals or modifications to the advertisement authorized and announced prior to bid opening.

**Step 7:** Prepare the draft lease. (See [Attachment 4B - Sample Business Lease.](#))

- Include standard, mandatory, and optional lease provisions in order to maintain the integrity of the land on behalf of the landowner and uphold the Bureau's trust responsibilities. (See [Exhibit 6 – Mandatory and Optional Lease Provisions.](#))
- Determine the applicable administrative fees.
  - In most cases, the fee is 3% of the annual rent.
- Ensure NEPA compliance. See [Pre-Leasing Activity, Step 4.](#)
- Require a bond to ensure compliance with the terms of the lease.
  - Acceptable bonds can be examined at [25 CFR 162.235.](#)
- Review the checklist to be sure all necessary requirements are included in the draft. (See [Attachment 3B - Business Leasing Checklist.](#))
- Assign identification numbers.
  - A contract number is assigned in accordance with instructions for each automated or manual system.
  - A lessee identification number is assigned in accordance with instructions for each automated or manual system.
  - Prepare a change order to establish a TFAS escrow account, if necessary.

**Step 8:** Send draft lease to the potential lessee for securing of owners signature and execution.

- The draft lease can be mailed with the award letter.

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**REVIEW**

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Revision #	Change	Effective Date
0	Initial Issuance	

**END OF PROCEDURE**



Lease Modification/Amendment

## LEASE MODIFICATION / AMENDMENT

### Purpose

To provide the procedure for processing subsequent subleases, modifications, amendments, assignments, or leasehold mortgage documents.

### Scope

A Realty Specialist (Processor) will manage the lease and process amendments, modifications, subleases, and leasehold mortgages as required, unless the lease specifies otherwise. The document must be approved by the appropriate delegated approving official. All approved transactions must be recorded in the LTRO.

### Process

**Step 1:** Review a proposed lease amendment. (See [Attachment 12B - Sample Business Lease Modification/Amendment.](#))

- Ensure the required consent(s) has been obtained from all parties to the lease or their designated representatives.
- Verify the amendment is in the best interest of the landowner(s) using the same standards as required for approval of the lease.

**Step 2:** Determine the applicable administrative fees.

- Charge an administrative fee each time a lease amendment is approved. These fees will be paid by the lessee to cover the costs in preparing or processing the documents and administering the lease.
- The minimum administrative fee is \$10.00 and the maximum administrative fee is \$500.00. Any administrative fees that have been paid are non-refundable, however, all or part of these administrative fees may be waived.
- If all or part of the expenses of the work is paid from tribal funds, the tribe may establish an additional or alternate schedule of fees.

**Step 3:** Send the lease amendment to the delegated authorized official for approval.

**Step 4:** Send the lease amendment to the LTRO for recordation. (See [Attachment 9B - Recordation Form.](#))

**Step 5:** Record the lease amendment in the agency leasing system.

REVIEW		
Revision #	Change	Effective Date
0	Initial Issuance	

END OF PROCEDURE



Sublease

## SUBLEASE

### Purpose

To provide the procedure for processing subleases.

### Scope

A Realty Specialist (Processor) will manage the lease and process subleases as required. The document must be approved by the appropriate delegated approving official. All approved transactions must be recorded in the LTRO.

### Process

**Step 1:** Review a proposed sublease. (See [Attachment 13B - Sample Business Sublease.](#))

- Unless otherwise specified in the lease, the Indian landowner(s) consent to a sublease in the same manner as the initial lease. Consent cannot be unreasonably withheld.
- A lease may provide for a sublease without further consent of the Indian landowner(s) when:
  - A general plan has been submitted and approved
  - A sublease form for use in the project has been submitted and approved
- Consent to the sublease must be obtained from any sureties if the lease requires.
- Determine if:
  - The sublessee agrees to be bound by the terms of the lease. If there is any dispute between the master lease and sublease, the master lease will prevail
  - The Indian landowner is to receive some or all of any income received by the lessee for the sublease. The master lease should have contained a provision that states: "Termination of this lease, or cancellation, shall operate as an assignment of the sublease to the Lessor." If cancelled, the lessor receives the rent. Also, the lessor may be entitled to receive a percentage or additional rents from the sublease (through mater lessee/sublessor)
  - The value of any part of the leased premises not covered by the sublease would be adversely affected
  - The sublease has provided supporting documents which demonstrate that the sublease will be enforceable against the sublessee, and that the sublessee will be able to perform its obligations under the sublease
- Ensure that the sublease does not relieve the sublessor from any liability nor diminish

any supervisory authority of the Secretary provided for under the master lease.

- Ensure that the master lease is in good standing and no defaults exist.
- Ensure that the sublease includes a provision that assigns the sublease to the lessor/landowner if the master lease is cancelled.
- (See [Exhibit 4 - 25 CFR162.610 Subleases and Assignments.](#))

**Step 2:** Determine the applicable administrative fees.

- Charge an administrative fee each time a sublease is approved. These fees will be paid by the lessee or sublessee to cover the costs in preparing or processing the documents and administering the lease.
- The minimum administrative fee is \$10.00 and the maximum administrative fee is \$500.00. Any administrative fees that have been paid are non-refundable, however, all or part of these administrative fees may be waived.
- If all or part of the expenses of the work is paid from tribal funds, the tribe may establish an additional or alternate schedule of fees.

**Step 3:** Send the lease transaction to the delegated authorized official for approval.

- Subleases require Secretarial approval whether by pre-approval or general approval.

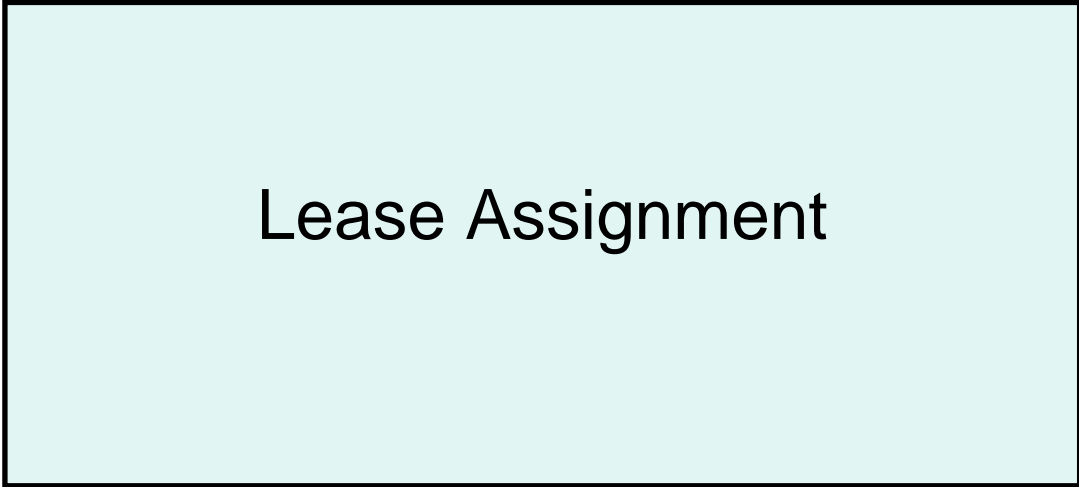
**Step 4:** Send the sublease to the LTRO for recordation. (See [Attachment 9B - Recordation Form.](#))

**Step 5:** Record the sublease in the agency leasing system.

REVIEW		
Revision #	Change	Effective Date
0	Initial Issuance	

END OF PROCEDURE





Lease Assignment

## LEASE ASSIGNMENT

### Purpose

To provide the procedure for processing assignment documents.

### Scope

A Realty Specialist (Processor) will manage the lease and process lease assignments. The document must be approved by the appropriate delegated line-approving official. All approved transactions must be recorded in the LTRO.

### Process

**Step 1:** Review a proposed lease assignment. (See [Attachment 14B - Sample Business Lease Assignment](#).)

- Ensure the proper consent(s) has been obtained.
  - The lease may be assigned without the consent of the Indian landowners:
    - If the lease provides for assignments without further consent of the landowners; and,
    - If the assignee is a leasehold mortgagee or its designee, acquiring the lease either through foreclosure or by conveyance and accepts and agrees to be bound by the terms of the lease.
- If owners' consent is required, the consent standards are the same as required in the lease contract, unless the lease authorizes one or more of the Indian landowners to consent on behalf of all such owners. Consent should not be unreasonably withheld.
- Consent must be obtained from the holders of any bonds or mortgages.
- Determine if:
  - The Indian landowners under the terms of the lease are to receive any income derived by the lessee from the assignment
  - The value of any part of the leased premises not covered by the assignment or sublease would be adversely affected
  - The assignee has bonded its performance and provided supporting documents that demonstrate that the lease or sublease will be enforceable against the assignee and that the assignee will be able to perform its obligations under the lease or sublease

- Ensure the assignment provides for the assignee to pay fair market rent to the Indian landowner(s) if the lease was approved at less than fair market rent and the assignee is not a co-owner or a member of the Indian landowner's immediate family. (For master lease only.)
- Ensure the assignee agrees to be bound by the terms of the lease and there is no compelling reason to withhold approval in order to protect the best interests of the Indian owners.
- Unless otherwise agreed to, the master lessee is to remain liable under the master lease.
- Obtain the signatures of all parties to the assignment.
- An assignment must be approved by the Secretary, except when the assignee is a leasehold mortgagee or its designee, acquiring the lease either through foreclosure or by conveyance, and accepts and agrees to be bound by the terms of the lease. (See [Exhibit 4 - 25 CFR162.610.](#))

**Step 2:** Determine the applicable administrative fees.

- Charge an administrative fee each time a lease assignment is approved. These fees will be paid by the lessee or assignee to cover the costs in preparing or processing the documents and administering the lease.
  - The minimum administrative fee is \$10.00 and the maximum administrative fee is \$500.00. Any administrative fees that have been paid are non-refundable, however, all or part of these administrative fees may be waived.
  - If all or part of the expenses of the work is paid from tribal funds, the tribe may establish an additional or alternate schedule of fees.

**Step 3:** Send the lease transaction to the delegated authorized official for approval.

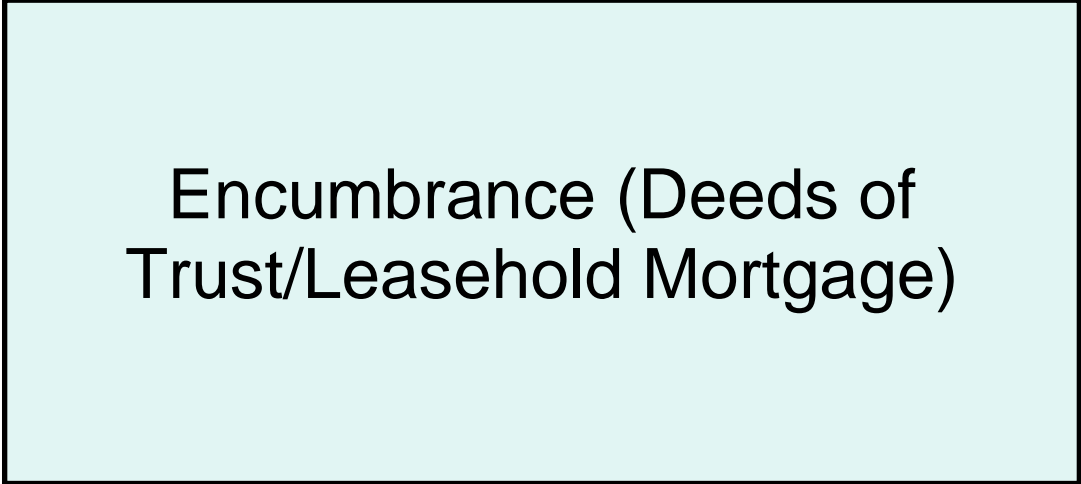
- An assignment must be approved, except when the assignee is a leasehold mortgagee or its designee, acquiring the lease either through foreclosure or by conveyance.

**Step 4:** Send the assignment to the LTRO for recordation. (See [Attachment 9B - Recordation Form.](#))

**Step 5:** Record the assignment in the agency leasing system.

REVIEW		
Revision #	Change	Effective Date
0	Initial Issuance	

**END OF PROCEDURE**



Encumbrance (Deeds of  
Trust/Leasehold Mortgage)

## ENCUMBRANCE (DEEDS OF TRUST/LEASEHOLD MORTGAGE)

### Purpose

To provide the procedure for processing leasehold mortgage documents (Deeds of Trust).

### Scope

A Realty Specialist (Processor) will administer the lease. All actions must be approved by the appropriate delegated line official. All such transactions must be recorded in the LTRO.

### Process

**Step 1:** Review a proposed leasehold mortgage package. (See [Attachment 15B - Sample Deed of Trust and Assignment of Rents with Certificate of Approval.](#))

- Ensure consent(s) has been obtained from the Indian landowners, if required.
- Ensure consent(s) has been obtained from the holders of the lessee's bond.
- Determine if:
  - The mortgage is in the best interests of the Indian landowners
  - The lessee's ability to comply with the lease would be adversely affected by any new loan obligations
  - Remedies for violations that are currently available to the government or to the Indian landowners pursuant to the lease would be further limited
  - There is no compelling reason to withhold approval in order to protect the best interests of the Indian landowners
  - Any rights of the Indian landowners would be adversely affected in the event of a loan default by the lessee
- Ensure the leasehold mortgage is for the purpose of borrowing capital for the development and improvement of the leased premises and the mortgage does not secure any unrelated debts owed by the lessee to the mortgagee.

**Step 2:** Determine the applicable administrative fees.

- Charge an administrative fee each time a leasehold mortgage is approved. These fees will be paid by the lessee to cover the costs in preparing or processing the documents and administering the lease.

- The minimum administrative fee is \$10.00 and the maximum administrative fee is \$500.00. Any administrative fees that have been paid are non-refundable; however, all or part of these administrative fees may be waived.
- If all or part of the expenses of the work is paid from tribal funds, the tribe may establish an additional or alternate schedule of fees.

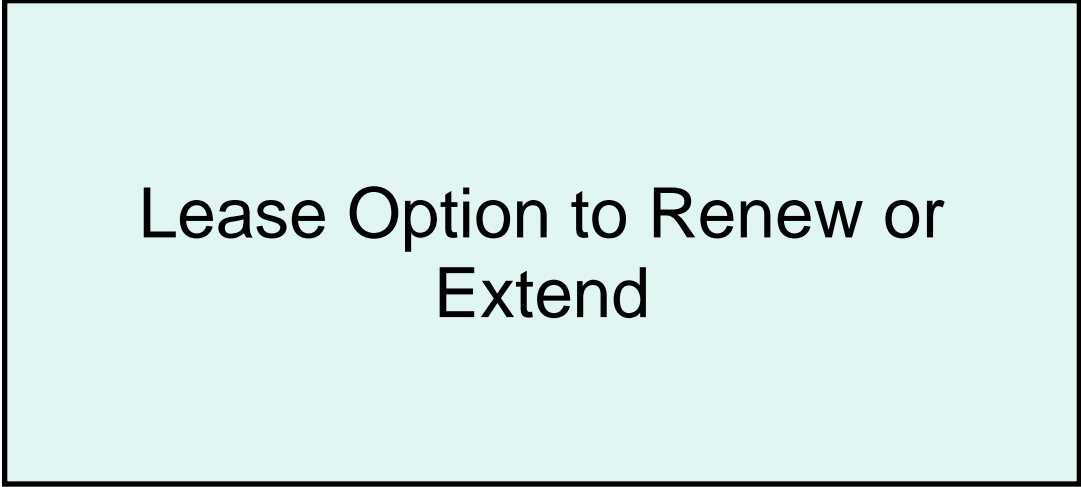
**Step 3:** Send the lease transaction to the delegated authorized official for approval.

**Step 4:** Send the mortgage to the LTRO for recordation. (See [Attachment 9B - Recordation Form.](#))

**Step 5:** Record the mortgage in the agency leasing system.

REVIEW		
Revision #	Change	Effective Date
0	Initial Issuance	

**END OF PROCEDURE**



Lease Option to Renew or  
Extend



## LEASE OPTION TO RENEW OR EXTEND

### Purpose

To provide the procedure for lease renewals or extensions. The option to renew or extend must be specified in the lease document. If the option is not specified, the applicant contacts the agency to exercise the renewal or extension of lease, if applicable.

### Scope

A Realty Specialist (Processor) will administer the lease extension and renewal process. All actions must be approved by the appropriate delegated line official. All such transactions must be recorded in the LTRO.

### Process

**Step 1:** If contacted by lessee/tenant, initiate the Intake Data Work Sheet and accommodate the request for renewal or extension. (See [Attachment 1B - Data Intake Worksheet](#).)

- The lessee provides all applicable documentation for review and approval.

**Step 2:** All required fees are submitted and paid.

**Step 3:** Approve the document.

**Step 4:** Submit the document for recording with LTRO. (See [Attachment 9B - Recordation Form](#).)

REVIEW		
Revision #	Change	Effective Date
0	Initial Issuance	

**END OF PROCEDURE**



Unitization for Leasing

## UNITIZATION FOR LEASING

### Purpose

This procedure provides instruction and requirements for processing requests for unitized business leases. These multiple tracts are negotiated in accordance with § 162.609 Unitization for Leasing.

**NOTE: This procedure applies to leasing of more than one tract; advertised lease sales of tribally-owned tracts are conducted in accordance with tribal laws, resolutions, and direction.**

### Scope

This procedure is developed for BIA agency programs, self-governance tribes and Tribal programs that have secured program responsibility through 638 Self-Determination contracts. The procedures outlined are to be used for most locations, but local, federal and tribal legal requirements may result in modifications to these general outlines. In those cases, Regional Addenda to the procedure are applied.

### Process

**Step 1:** Respond to contact from a prospective lessee or landowner requesting negotiation of a business lease.

- Assist the applicant in completing an intake worksheet. (See [Attachment 1B - Data Intake Worksheet.](#))
- Verify the identity of the applicant (i.e., tribal membership card, other valid identification).
- If the applicant is a tribal entity, a Tribal Resolution or a copy of the authorizing document must be submitted along with the application requesting the lease.

**Step 2:** Submission of proposed lease.

- The applicant may submit a proposed lease with supporting documentation for BIA review and approval.
- Upon request, assist the applicant in completing a proposed lease.
- A lease cannot be entered into more than 12 months prior to commencement of the term of the lease. The lease may not provide any preferential right to future leases nor provisions for renewal, except as otherwise provided in accordance with 25 CFR

162.604 (e).

**Step 3:** Conduct a preliminary consultation.

- The parties that should attend this meeting include:
  - The landowner(s)
  - BIA/tribal personnel (Realty, Environmental, Land Operations, Archaeological etc.)
  - Prospective lessee
  - Developers, subcontractors, etc.
  - Indian Health Services (if they are providing water)
  - Other necessary parties

**Step 4:** Verify land ownership.

- Request the appropriate title documents which may include a Title Status Report, agency ownership files, and state and county records. (See [Attachment 5B - TSR Request Form.](#))
- Review probate records to see if the land has undetermined estates.
  - Where a tract of land is in sole ownership and in estate status, a lease cannot be approved for more than two years. (See [Exhibit 4 - 25 CFR 162.607\(b\).](#))

**Step 5:** Identify the land description of the proposed lease site. Generally, a survey is obtained by the potential lessee and is the responsibility of the lessee.

- A land description must be provided by the potential lessee.
- Submit the survey plat of the lease to the Regional BLM Indian Lands Surveyor for review if necessary. See the BIA Indian Lands Trust Boundary Standards Handbook for details.

**Step 6:** Obtain a site plan for the application that identifies all utilities, driveways, improvements, etc.

- Review the site plan to insure:
  - There is ingress and egress to the proposed site
  - The development does not conflict with current and/or proposed use

**Step 7:** Determine fair annual rental/value.

- An appraisal or other appropriate valuation may be needed to establish fair market value. (See [Attachment 6B - Appraisal Request Form.](#)) See the Appraisal Handbook for more information.
- Trust land appraisals not prepared by the Office of Appraisal Services (OAS) must be reviewed by OAS before approval of a trust land or resource transaction, even if the

appraisal was prepared by a compacted or contracted tribe. The review of appraisals has been declared an inherently federal function. (See [Attachment 7B - Review of Land Appraisals](#).)

- A determination of fair annual rental/value must be provided to the landowner even if the lease consideration negotiated is less than the fair annual rental.
- Leases may be approved by the Secretary at less than the fair annual rental when a determination is made that it is in the best interest of the landowners.

**Step 8:** Determine, in consultation with regional environmental staff and the Regional Archeologist, the actions necessary to ensure compliance with the National Environmental Policy Act (NEPA), National Historic Preservation Act (NHPA), and Endangered Species Act (ESA).

- For further discussion, see the Bureau's NEPA Handbook.
- In certain instances, the cost of NEPA, NHPA, and ESA analyses may be passed on to the applicant.
- If the proposed lease is categorically excluded, no consultation is necessary. Send the categorical exclusion (cat.ex.) exception checklist to the regional environmental office for signature. (See [Attachment 2B - Categorical Exclusion Exception Checklist](#).)
  - See NEPA Handbook Chapter 3 for directions on completing the checklist.
  - If there is no response within 10 business days, email the regional environmental office with copies to the Regional Director, the Realty Officer, and Central Office Division of Environmental and Cultural Resources Management for status of the pending categorical exclusion.
  - If there is still no response after another five business days, draft a memo from the Regional Director to the regional environmental office requesting status.

**Step 9:** Secure consent of the landowner(s) for the negotiated unitized lease. Each tract is counted separately when using ILCA and AIPRA.

- Provide the applicant with the lease forms.
  - Upon written request, provide the names, mailing addresses, percentage of undivided interest, and the location of the parcel to prospective lessees.
  - The consent required of the owners of the applicable percentage of interests as required under ILCA (25 U.S.C. 2218), is as follows:
    - (A) If there are five or fewer owners of the undivided interest in the allotted land, the applicable percentage shall be 90 percent;
    - (B) If there are more than five such owners, but fewer than 11 such owners, the applicable percentage shall be 80 percent;

- (C) If there are more than 10 such owners, but fewer than 20 such owners, the applicable percentage shall be 60 percent;
  - (D) If there are 20 or more such owners, the applicable percentage shall be a majority of the interests in the allotted land.
- In Alaska, business leases of Indian lands may be negotiated by the Indian landowners, or their designated representatives who may execute leases under § 162.601, provided:
    - (A) The owners of a majority of the interests have negotiated a lease satisfactory to BIA;
    - (B) BIA consents to the lease on behalf of those persons for whom BIA is authorized to do so under paragraph (c) of this section; and
    - (C) BIA consent, when combined with the consent of the owners, provides 100 percent consent.

<b>REVIEW</b>		
<b>Revision #</b>	<b>Change</b>	<b>Effective Date</b>
0	Initial Issuance	

**END OF PROCEDURE**



Lease Compliance and  
Cancellation



## LEASE COMPLIANCE AND CANCELLATION

### Purpose

A lease may be terminated or canceled if any of the provisions of the lease have been violated and remain uncorrected after a notice to correct has been given to the lessee and its sureties.

**Note: Not all the following may be required nor are the steps sequential.**

### Scope

Realty, Office of the Special Trustee and Land Operations staff all participate in the monitoring of leases for financial and use compliance.

### Process

**Step 1:** Monitor for financial compliance.

- Review rental reports to determine non-payment and/or delinquent payment.
- Determine appropriate penalties for late payment and assess the lessee.
  - Late payment penalties are determined by regulation or policy.
- See the Interagency Procedures Handbook for more information.

**Step 2:** Monitor for compliance with the lease terms.

- Periodically inspect lease activity on-site.
  - Provide advance notice to conduct lease inspection and ask that the lessee or representative be in attendance during the visit.
  - The inspection may include the following specific compliance determinations:
    - Are the premises free from hazardous materials and unsafe situations that may endanger the general public or have potential to cause damage to the business site if left unattended?
    - Are there activities that are not specifically authorized by the terms of the lease?
    - Is the activity in compliance with any specific tribal code or law governing such activities?
    - Has the lessee maintained the appearance and facilities of the leased property in accordance with lease terms?
    - Are there appropriate displays of certificates for various applicable health,

weights and measures (e.g., on gasoline pumps) visible and current?

- Record the compliance inspection in the lease file.
- The Lease Compliance Inspection Report is used to document inspections of the lease premises throughout the duration of the lease term. This report will also track any violations that may have been found, resolved, and the amount of funds collected for the violation.
- Discuss any issues or problems with lessee at the site.

**Step 3:** Attempt to resolve a violation, if required.

- Lease violations may be initiated as a result of the following:
  - Site visits by realty staff to determine compliance with the terms of the lease
  - Complaint from the landowner(s)
  - Complaint from a neighboring landowner
  - Notification of a trespass
  - Non-payment of lease rental
- Initiate an appropriate investigation within five business days of notification of the potential violation.
- Mail a violation notice to the lessee and its sureties within five business days. (See [Attachment 16B - Sample 10 Day Show Cause Notice](#).)
  - The five (5) day period begins when the agency is notified or becomes aware of a potential non compliance, usually for non-payment or for damages.
  - The letter contains the following:
    - The grounds or reason for the cancellation
    - Reference to any previous contact
    - Any unpaid rent, interest charges, and/or penalties
    - Any permit/lease stipulations or conservation plan elements that apply
    - If the violation is location-specific, a citation of the location
    - A statement that the violator must cure the violation and notify BIA that it has been corrected; dispute the violation with explanation; and/or request additional time to cure the violation
  - The 10 days during which the lessee must show cause or correct the violation starts when the lessee receives notice.
  - Notices of violation are sent by certified mail with return receipt requested, or hand delivered with acceptance or refusal documented. Return receipts are attached to the file copy of the notice as a part of the official record. Law enforcement officers and other Officers of the Court can deliver notices and verify delivery or refusal of the notice. The Regional Office is informed of any notice refusal, lack of correction, or other negative response to a notice of violation.

- Accept one of the following responses:
  - The violation has been cured.
  - The lessee disputes the violation and the grounds for doing so.
  - A requested extension of time to cure the violation. If additional time is granted, document the reason for extension and have all parties agree on the time line for completing the corrective actions and subsequent inspections. Verify that the violation has been corrected, and if corrections are not made according to the agreed deadline, make the violator aware of potential punitive actions.
  - A negotiated remedy to resolve violation with the landowner consent. Regulations provide for negotiated remedies; however, it is not advisable to negotiate away arrangements previously agreed to in the lease or conservation plan.
  
- If a violation is not remedied within the allotted time period:
  - Notify the bonding agent and known lien holders. Under threat that the lease, permit and/or bond may be lost, lien holders and bonding agents can have considerable influence on their clients.
  - Consult with the Indian landowner(s) to determine if the lease should be cancelled or if there is another remedy that should be initiated. Any other remedy must be specifically stipulated under the lease.
  - The performance bond may be forfeited.

**Step 4:** Issue a cancellation notice at Superintendent's discretion as a result of continued non-compliance after the 10 days expire unless an extension has been granted or the violation has been cured. (See [Attachment 17B - Sample Cancellation Letter.](#))

- The cancellation letter must include the following:
  - The reason for cancellation
  - Notification of the right to appeal pursuant to 25 CFR Part 2
  - The amount of any appeal bond that must be posted with an appeal of the cancellation decision bond to cover the amount of revenue that the landowner(s) may lose as a result of the appeal process
  - An order for the lessee to vacate the property within 30 days of the date of his/her receipt of the cancellation letter, if the lessee has not filed an appeal
  
- Send the cancellation letter to the lessee and sureties within five business days of the decision to cancel.
  
- A cancellation decision is effective on the 31st day after the lessee signs receipt for the cancellation letter or on the 41st day from the date the letter is mailed, whichever is earlier.
  
- Unless the cancellation decision is made effective immediately, it will be stayed if the lessee files an appeal.

- While a cancellation decision is stayed (ineffective), the lessee must continue to pay rent and comply with the other terms of the lease or permit.

REVIEW		
Revision #	Change	Effective Date
0	Initial Issuance	

**END OF PROCEDURE**



Revocable Use Permits

## REVOCABLE USE PERMITS

### Purpose

This procedure includes the issuance of Revocable Use Permits.

### Scope

This procedure is developed for Realty staff who are responsible for the management of leases. A Revocable Use Permit can only be used for short term occupancy to preserve and protect the improvements and may be revoked at the discretion of the Secretary.

### Process

**Step 1:** Process a permit.

- Draft a permit for business use. (See [Attachment 18B - Sample Revocable Use Permit.](#))
- Justify the circumstances for the issuance of a permit.
- Determine the appropriate rental.
- Even if the permit is issued on an emergency basis, it is still a Federal action under NEPA and a Federal undertaking under the NHPA; therefore, clearances are required. Consult the Regional Environmental Scientist to determine the appropriate level of environmental and cultural resources review required for the particular permit.
- Recommend/obtain approval of permit.

**Step 2:** Monitor the permit.

- Site visits by realty staff to determine compliance with the terms of the permit.

**Step 3:** Terminate the permit.

- Terminate the permit once the circumstances for the issuance of the permit have expired. (This may be due to the pending issuance of a business lease, or a foreclosure, or other circumstances so that the premises will be protected.)

REVIEW		
Revision #	Change	Effective Date
0	Initial Issuance	

**END OF PROCEDURE**

## 5.0 ATTACHMENTS

The following samples and forms are an integral part of the operating procedures.



# Attachment 1B

## Data Intake Worksheet

**SAMPLE**

Bureau of Indian Affairs							
LEASING & PERMITTING DIVISION							
Data Intake Worksheet							
(Negotiated & Advertised Leases (Unitized), Permits, Assignments, Subleases, Modifications, Cancellations							
Amendment, Encumbrance							
Please Check Proper Transaction Below with an X:							
<b>Case No.</b>			<b>Region:</b>				
<b>Date:</b>			<b>Agency:</b>				
			<b>Tribe:</b>				
<b>TYPE OF CONTACT:</b>		Mark an X	<b>Reservation:</b>				
Letter/Fax			<b>Land Area Code:</b>				
Walk-in		x	<b>Community:</b>				
Phone call			<b>Allotment/Tract No.(s)</b>				
e-mail			<b>County/Parrish/Borough</b>				
Provided Application to complete		x			x = NA		x
<b>Name:</b>							
	(Lessor/Sublessor/Permitter/Assignor)						
<b>Address:</b>							
Phone No.							
<b>Purpose/Need of Transaction:</b>							
<b>Legal Description/General/Location:</b>							
				<b>Interest Affected:</b>			Indicate whole or in part
<b>Acres Affected:</b>				<b>Check type of transaction</b>			
<b>Share:</b>				Neg.Lease:	x		Adver. Lease:
<b>Percentage</b>				Modification:			Cancellation:
<b>Numeric:</b>				Amendment:			
<b>Fraction:</b>				Sublease:			Assignment:
				Encumbrance (Leasehold):			
				Unitized			
<b>Name:</b>							
	(Lessee/Sublessee/Permittee/Assignee)						
<b>Address:</b>							
Phone No.							
<b>Option to Renew:</b>			<b>Beginning Date:</b>		<b>Rental Amount</b>		
			<b>Expiration Date:</b>		<b>Payment Schedule</b>		
							(Monthly, annually,

					etc..)
<b>Summary/Decision</b>					
<b>Improvements</b>		<b>Yes:</b>	x	<b>Type:</b>	
		<b>No:</b>			
Approximate \$ Amount intended for Improvements:				Estimated Completion Dates:	
Other Information, instruction & notes:					
Name of Processor:					
<b>Potential Lessee/Sublessee/Permittee/Assignee may be required by BIA to Submit:</b>					
	1.	Financial Statement	6.	Other:	
	2.	Three(3) Letters of Reference	7.		
	3.	Three letters of Credit	8.		
	4.	Corporate & Partnership Qualifications	9.		
	5.	Proforma (if applicable)	10.		

## SAMPLE

<b>Bureau of Indian Affairs</b>				
<b>Attachments for Business Lease File</b>				
(Completion of the following attachment will facilitate the process & ensure all documentation is submitted)				
	Required:	NA	Administrative Fees & Documentation	DATE COMPLETED
1.			Lease	
2.			Modification/Amendment	
3.			Supplemental Agreement	
<b>Supporting Documents</b>				
1.			Appraisal	
2.			Archaeological Report	
3.			NEPA Compliance (EIS, EA, Cat-Ex)	
4.			Certified Survey Requested	
5.			Tribal, Local, County, State Permits, if applicable	
6.			Site Plan	
<b>Corporations</b>				
1.			Articles of Incorporation	
2.			Statement of Officers	
3.			Evidence of Authority to Sign	
4.			Financial Statement(s)	
5.			Certificate of Good Standing	
6.			Corporate Resolution	
7.			Credit Report( if foreign corp.) or CA Filing Report	
<b>Limited Liability Corporations</b>				
1.			Articles of Organization or Certificate of Formation	
2.			Operating Agreement	
3.			Evidence of Authority to Sign	
4.			Financial Statement(s)	
<b>Individual</b>				
1.			Financial Statement(s)	
2.			Individual Credit Report	
<b>Partnership</b>				
1.			Partnership Agreement	
2.			Evidence of Authority to Sign	
3.			Financial Statement(s)	
4.			Certificate of Limited Partnership	
<b>Joint Venture Agreements</b>				
<b>Other</b>				
1.			Certificate of Insurance	
2.			Surety (Rental Bond)	
3.			Proforma	
4.			Business Plan	
5.			Feasibility Analysis	
6.			Fictitious Name Filing	

# Attachment 2B

## Categorical Exclusion Exception Checklist

**SAMPLE**  
**EXCEPTION CHECKLIST FOR BIA CATEGORICAL EXCLUSIONS**

Project: \_\_\_\_\_

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

Nature of Proposed Action:

516 DM 10.5 Exclusion category and number:

Evaluation of Exceptions to use of Categorical Exclusion:

- |     |   |    |     |
|-----|---|----|-----|
| 1.  | This action would have significant adverse effects on public health or safety.  | No | Yes |
| 2.  | This action would have an adverse effect on unique geographical features, such as wetlands, wild or scenic rivers, refuges, floodplains, rivers placed on nationwide river inventory, or prime or unique farmlands.                             | No | Yes |
| 3.  | The action will have highly controversial environmental effects.  | No | Yes |
| 4.  | The action will have highly uncertain environmental effects or involve unique or unknown environmental risks.   | No | Yes |
| 5.  | This action will establish a precedent for future actions.  | No | Yes |
| 6.  | This action is related to other actions with individually insignificant, but cumulatively significant environmental effects.  | No | Yes |
| 7.  | This action will affect properties listed or eligible for listing in the National Register of Historic Places.  | No | Yes |
| 8.  | This action will affect a species listed, or proposed to be listed as endangered or threatened.   | No | Yes |
| 9.  | This action threatens to violate federal, state, local or tribal law or requirements imposed for protection of the environment.   | No | Yes |
| 10. | This action will have a disproportionately high and adverse effect on low income or minority populations.   | No | Yes |
| 11. | This action will limit access to, and ceremonial use of Indian sacred sites on federal lands by Indian religious practitioners, or significantly adversely affect the physical integrity of such sacred sites.                                  | No | Yes |
| 12. | This action will contribute to the introduction, continued existence, or spread of noxious weeds or non-native invasive species known to occur in the area, or may promote the introduction, growth, or expansion of the range of such species. | No | Yes |

A "yes" to any of the above exceptions will require that an EA be prepared.  
NEPA Action - - - CE\_\_\_\_\_ EA\_\_\_\_\_

Preparer's Name and Title: \_\_\_\_\_

Regional Archeologist Concurrence with Item 7: \_\_\_\_\_

Concur: \_\_\_\_\_ Date: \_\_\_\_\_  
Regional Director/Superintendent

Concur: \_\_\_\_\_ Date: \_\_\_\_\_  
Regional Office/Agency Environmental Coordinator

# Attachment 3B

## Business Leasing Checklist



**SAMPLE**

**Bureau of Indian Affairs  
Check Sheet for Business Leases**

<b>Date:</b>						<b>Lease No.</b>						
<b>Agency:</b>						<b>Tribe:</b>						
						<b>Allottee:</b>						
<b>Reservation:</b>												
<b>Allotment/Parcel/Tract No.</b>												
<b>Pre-Lease Procedures:</b>						<b>Date</b>	<b>Yes</b>	<b>No</b>	<b>N A</b>			
1.	Title Status Report(TSR)											
2.	Appraisal Completed											
3.	Negotiated Terms Stipulated											
4.	Check Land Description or Survey & Acres											
5.	Site plan											
6.	Lessee's Name& Address											
7.	Check Schedule of owners& payment											
8.	Check for minors & estates											
9.	Lease Drafted & Reviewed											
10.	Lease /Permit sent to Lessee/Permittee											
11.	Lease /Permit returned by Lessee/Permittee											
12.	NEPA & NHPA (106) Compliance Addressed											
13.	Business Documents (Corp., Partnership, or LLC)											
<b>Item # and Notes:</b>												
<b>Approval Procedures</b>												
	1.	<b>Fee:</b>	<b>CV #:</b>		<b>Date Paid:</b>							
<b>Signatures:</b>												
	2.	Lessee (lease bond, 2 witnesses or notary )										
	3.	Lessor (2 witnesses) or notary										
	4.	Bond (Bondsmen sign as surety										
	5.	Insurance Requirement Addressed										
	6.	Statutory & Redelegated Authorities cited										
<b>Post - Lease Procedures</b>												
	1.	Place Lease/Permit into leasing system										
	4.	Enter Lease/Permit into Log										
	5.	Conduct Post-Lease Site Inspection										
	6.	Document sent to LTRO for Recording										
	7.	Sent copies of approved documents to:										
	8.											
<b>Final Instructions for Lessee/Permittee to Complete</b>												
Prepare a transmittal memorandum with recommendation,												
lease, and additional documentation to												
Authorized Representative												

# Attachment 4B

## Sample Business Lease

**SAMPLE**

**UNITED STATES DEPARTMENT OF THE INTERIOR  
BUREAU OF INDIAN AFFAIRS  
BUSINESS DEVELOPMENT LEASE**

Lease No. \_\_\_\_\_.

Allotment No. \_\_\_\_\_

Tract No. \_\_\_\_\_

**ARTICLE 1**

**Parties.**

THIS BUSINESS DEVELOPMENT LEASE (the "Lease"), in \_\_\_\_\_ is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 200\_, by and between the parties duly identified below as "Lessor" and "Lessee."

Lessor:

Lessee:

under the provisions of the Act of August 9, 1955, as amended, 25 U.S.C. § 415, as amended, and as supplemented by Part 162 – Leasing and Permitting, - Code of Federal Regulations – Title 25 – INDIANS, any amendments thereto relative to Business Leases on trust or restricted Indian lands, all of which by reference are made part hereof.

**ARTICLE 2**

**Addenda to Lease.**

Prior to execution of this lease, Addenda Nos. 1 through \_\_\_\_\_, were added to this lease and made a part hereof.

**ARTICLE 3**

**Legal Description.**

For and in consideration of the rents, covenants, and agreements hereinafter set out, the Lessor hereby leases to the Lessee the described, and identified in Addendum No. 1.

If all or any part of the leased premises is described by metes and bounds, a survey of such area will be provided by the Lessee at the Lessee's sole expense. A surveyor licensed in the State where the land is located, to include a plat, and a written description, which shall include acreage of the land described, shall make such survey. Plats should show the tie-in to the nearest

corner of the public survey, all courses and distances, exceptions, and tract acreages. Not less than three (3) copies shall be furnished to the Secretary.

#### **ARTICLE 4**

##### **Definitions.**

- A. "Secretary" means the Secretary of the United States Department of the Interior or his authorized representative, delegate or successor.
- B. "Gross Receipts" means all income, including money and any other thing of value, received by or paid to lessee or its affiliates, whether individuals, corporation, partnership, or other legal entity, or received by or paid to others for Lessee's or its affiliate's use and benefit, derived from business done, sales made or services rendered directly or indirectly from the subleasing, sub renting, permitting, contracting, or other uses of the leases premises, or any portion thereof. All income accruing from credit transactions shall be treated as "gross receipts" as of the date credit is extended. "Gross receipts" shall include any ad valorem taxes paid by other than the Lessee for the account of the Lessee, and receipts from the resale of electricity, gas, telephone, and television cable services, if any.
- "Gross receipts" shall include: 1) Amounts collected and paid out for a sale or excise tax imposed by a governmental authority where such tax is billed to the purchaser as a separate item; 2) credit for the exchange of goods or merchandise between the 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 or indirectly from or on the leased premises; 3) the amount of any refund where the merchandise sold, or some part thereof, is returned by the purchaser and accepted by Lessee and its affiliates; 4) income from the sale of fixtures, or good will, or the sale of improvements, including but not limited to condominium units, cooperative units, apartment houses and single family residences.
- C. "Approved Encumbrance" herein shall mean an encumbrance and any addition or extension thereto on the Leasehold interest approved by the Secretary.
- D. "Encumbrancer" herein shall mean the owner and holder of an Approved Encumbrance, as well as its successors and assigns.
- E. "Acquirer" shall mean an Encumbrancer who acquires the Leasehold by foreclosure or assignment in lieu of foreclosure.

#### **ARTICLE 5**

##### **Term.**

The Term of this Lease shall be \_\_\_\_\_ years, beginning on the date this lease is approved by the Secretary, or the date contained in Addendum No. \_\_\_\_ of this lease, which date shall be the anniversary date of this lease.

## **ARTICLE 6**

### **Purpose.**

For and on behalf of the Lessor, Lessee shall use the leased premises for the specific purposes described in Addendum No. 2. If the Lessee uses the leased premises for any purpose not set forth herein without written consent of the Lessor and approval of the Secretary, such use shall constitute grounds for cancellation of this lease.

## **ARTICLE 7**

### **Rentals.**

The Lessee, in consideration of the foregoing, agrees to pay in lawful money of the United States of America, a guaranteed minimal annual rental and as additional rental over and above guaranteed minimum annual rental, or adjusted guaranteed minimum annual rental, a sum equal to the difference between said minimum annual rental and percentages of gross receipts of businesses, regarding of whether such businesses are operated by Lessee, Sublessee, Assignee or Concessionaire. Tithe schedule of rents and percentages shall be set forth in Addendum No. 3. In addition, unless specifically provided otherwise in Addendum No. 3, the minimum annual rental shall be adjusted upward at the end of the first five (5) year period thereafter by the same percentage as the cost of living index has changed during the said five (5) year period, provided that in no event shall the adjusted minimal rental be less than the guaranteed minimum rental provided for in Addendum No. 3. The cost of living index to be used is that reflected by the Revised Consumer Price Index for Urban Wage Earners and Clerical Workers, as published by the Bureau of Labor Statistics, U.S. Department of Labor. If, for any reason whatsoever, there is any change in the method of calculation or formulation of said price index, or if that index shall no longer be published, then another index generally recognized as authoritative shall be substituted by agreement. It is agreed for the purpose of this lease, that the base index shall be that of the month and year this lease commences, and shall be incorporated herein as Exhibit "A."

## **ARTICLE 8**

### **Payment of Rents.**

Guaranteed rentals shall be paid in advance, in \_\_\_\_\_ installments, the first payment to be deposited with the Secretary on behalf of Lessor, prior to approval of this lease, at the address set forth herein. Subsequent installments shall be paid directly to the Lessor (or to the Superintendent of the \_\_\_\_\_ Agency on behalf of Lessor) at the address specified herein on or before \_\_\_\_\_, unless and until Lessee is notified in writing by the Secretary to do otherwise.

An additional consideration for this lease is based primarily on percentages of income produced by the activities conducted upon the land described herein and from the improvements thereon. Such percentages are as set forth below (or as described in Addendum No. \_\_\_\_\_, attached hereto and made a part hereof.

Upon receiving written notice from the Secretary, Lessee shall make rent payment accordingly, commencing with the next rental due date and, if requested by the Secretary, will furnish surety bond as provided in Article \_\_\_\_\_, RENTAL BOND.

In the event of death of the Lessor(s) during the term of this lease and while the leased premises are in trust or restricted status, all rents remaining due and payable to the decedent under the provisions of the lease shall be paid to the office of the Bureau of Indian Affairs having jurisdiction over the land.

While the leased premises are in trust or restricted status, the Secretary may, in his discretion, suspend any direct rental payments, if any, in which even and upon written notice to that effect, the rentals shall be paid to the official of the Bureau of Indian Affairs having jurisdiction over the land.

All rents shall be paid without prior notice or demand and shall be deemed "past due" if not paid within \_\_\_\_ days of its due date. Past due rental shall bear interest at \_\_\_\_ percent (\_\_\_\_%) per annum from the due date until paid, but this provision shall not be construed to relieve the Lessee from his obligation to make timely rental payments. In addition to interest, past due rentals shall have a late charge of \_\_\_\_ percent (\_\_\_\_%) assessed on the amount past due.

## **ARTICLE 9**

### **Plans and Designs.**

Within one hundred eighty (180) days after the Commencement Date, the Tenant shall submit to the Secretary for approval, a site plan that sets forth the location of all improvements to be located on the Premises ("Site Plan"). The Secretary shall not assume any responsibility whatsoever for detailed design of structure or structures or violation of any state, county, or city law or ordinance. The Secretary shall either approve or state in detail its reason for disapproval of the Site Plan within a reasonable time after its submission. If the Secretary disapproves the Site Plan, Tenant shall have the right to resubmit a revised Site Plan, which shall be approved by the Secretary if the revised Site Plan remedies the Secretary's previous objections. Notwithstanding the foregoing, Lessee shall be permitted, without the Secretary's consent, to make reasonable changes to the approved Site Plan during the normal course of development.

The Secretary shall have the right to approve each of the following, which approval shall not be unreasonably withheld, conditioned or delayed:

- (1) Any map which Lessee proposes to accept as a tentative map;
- (2) Any governmental application or other submission or request by or on behalf of Lessee to a governmental authority concerning zoning, use, or other entitlements with respect to the Premises or any portion thereof or the development of same;
- (3) Any material modification of any of the foregoing; and
- (4) A schedule of the construction of improvements on the Premises.

The Secretary shall either approve or state its reasons for disapproval of any of the foregoing within a reasonable time after the submission of any, all in writing, and shall not unreasonably withhold, condition or delay any such approval. Upon completion of development of the Premises, Tenant shall deliver to the Secretary copies of all preliminary and/or final surveys, maps, studies or any other materials relating to the development of any portion of the Premises, with the understanding that all Lessee's rights to said materials shall revert to Lessor upon

termination of this Lease; provided, however, Lessee makes no representations or warranties with respect to such surveys, maps, studies and other materials.

## **ARTICLE 10**

### **Completion of Development.**

The Tenant shall “substantially complete” construction of the golf course and hotel (collectively, “Minimum Development”), within ten (10) years from the Commencement Date. If the Tenant fails to complete the Minimum Development within such time period, the GMAR shall increase five percent (5%) at the beginning of the eleventh (11<sup>th</sup>) Lease Year. For each full Lease Year thereafter that the Tenant fails to complete the Minimum Development, the GMAR shall be increased by an additional five percent (5%). Should Tenant fail to complete such Minimum Development by the end of the twentieth (20<sup>th</sup>) Lease Year, Landlord or Secretary may terminate the Lease without cause.

## **ARTICLE 11**

### **Improvements.**

All buildings and improvements on the Premises shall be owned in fee by Tenant during the term of this Lease provided that such buildings and improvements (excluding removable personal property and trade fixtures) shall remain on the Premises after the termination of this Lease and shall thereupon become the property of the Landlord, unless Landlord notifies Tenant not less than 240 days prior to expiration of the term of this Lease that Tenant shall be required to raze, demolish and remove all buildings and improvements from the Premises. Tenant shall complete any such required demolition and removal within one hundred eighty (180) days after the termination of the Lease at which point Tenant shall be responsible for delivering the Premises in the condition stated in ARTICLE \_\_ of this Lease.

## **ARTICLE 12**

### **No responsibility Notices.**

Prior to the commencement or construction of each improvement on the Premises, or any repair or alteration thereto, or work or labor thereon, the Tenant shall give the Secretary ten (10) days advance notice in writing of intention to begin said activity, in order that non-responsibility notices may be posted and recorded as provided by state law. Nothing contained herein shall be construed as a waiver of immunity of trust or restricted land from mechanic’s or material men’s liens or obligate the Secretary or Landlord to post non-responsibility notices while the Premises are in a trust or restricted status.

## **ARTICLE 13**

### **Fire and Damage Insurance.**

Tenant shall, from the date of approval of this Lease, cause to be carried fire insurance with extended coverage endorsements, vandalism, and malicious mischief, jointly in the names of Lessee and Lessor, covering not less than 95% of the replacement cost of all improvements on the Premises, excepting footings and foundations. Lessee shall pay all premiums and other charges payable in respect to such insurance, and shall provide the Secretary and Landlord with evidence of payment thereof upon demand. In the event of damage to any improvement on the

Premises, the Lessee shall reconstruct the improvement in compliance with applicable laws and building regulations provided Lessee has actually received insurance proceeds sufficient to pay for the cost of reconstruction. Insurance proceeds paid to an Encumbrancer and not made available to Tenant for reconstruction shall be deemed to be received by Tenant. Tenant shall not be obligated to reconstruct if Lessee does not receive sufficient proceeds from insurance to reconstruct damaged improvements. Subject to the foregoing, reconstruction shall commence within six (6) months after the damage occurs provided Tenant has received the insurance proceeds. No approval of Landlord or the Secretary shall be required in connection with such reconstruction. Insurance proceeds shall be deposited in escrow ("Escrow") with an institution approved by the Secretary or Landlord. 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 certificate. All money in escrow after reconstruction has been completed shall be paid to Tenant. Lessee shall also cause to be carried or cause its contractors to carry builder's risk insurance on an "all risks" basis, providing coverage against fire, theft, vandalism and malicious mischief and loss of stored materials, in such commercially reasonable amounts as Tenant shall determine during all periods of time in which any improvements are under construction. Full and correct copies of said policy or policies or a current certificate of insurance shall be deposited with the Secretary, and Tenant shall pay or cause to be paid all premiums and other charges payable in respect to such insurance, and shall deposit with the Secretary the receipt for each premium or other charges as paid, or satisfactory evidence thereof.

In the event of damage to the extent of seventy-five (75%) percent or more of the total value of all improvements on the Premises during the last five (5) years of the Term of this Lease, Lessee shall have the option whether or not to reconstruct said improvement. Should Tenant elect not to reconstruct during the last five (5) years of the Term of the Lease, the Premises shall be cleared at Tenant's expense and, upon the completion of such clearing, this Lease shall terminate, any outstanding balance owed on an Approved Encumbrance shall be paid in full from any insurance proceeds, and the balance, if any, of the insurance proceeds shall be paid to the Landlord.

Any Encumbrancer shall be named as the loss payee under a standard lender loss payable endorsement or named insured, as appropriate, under all insurance policies required to be maintained by Lessee pursuant to this Lease. In the event of loss or damage to the buildings on the Premises while an Approved Encumbrance remains unpaid, all insurance proceeds (but not exceeding the amount of the outstanding balance of the Approved Encumbrance) shall be paid to the Encumbrancer. Notwithstanding anything set forth in this Lease to the contrary, if such amount to be paid to the Encumbrancer is sufficient to repair the loss or damage, or if Landlord and/or Tenant elects within thirty (30) days after the determination of the amount of the insurance proceeds payable for such damage or destruction, to contribute any short-fall in the insurance proceeds necessary for the full repair of the loss or damage, then all insurance proceeds and any Lessor or Lessee contributions shall be deposited into Escrow and made available to Lessee for reconstruction in accordance with the terms of this Lease.

## **ARTICLE 14**

### **Public Liability Insurance.**

From and after the Commencement Date or Tenant's earlier commencement of occupancy of the Premises during the Term, Tenant shall cause to be carried and maintained in effect the following policies of insurance:



- A. Commercial general liability insurance, written on an occurrence basis, if available, naming Tenant as the named insured and naming Landlord, the United States Government and any Encumbrancer as additional insured for bodily injury and death and/or for property damage occurring, in, upon or about the Premises or the improvements or resulting there from, in an amount not less than One Million Dollars (\$1,000,000) combined single limit per occurrence, and containing provisions for severability of interests. Such insurance shall include the following protections: (i) Premises and operations coverage with X, C, and U exclusions deleted, if applicable; (ii) owners; and contractors' protective coverage; (iii) products and completed operations coverage; (iv) blanket contractual coverage, including both oral and written contracts; (v) personal injury coverage; (vi) broad form property damage coverage, including completed operations; and (vii) an endorsement providing not less than thirty (30) days notice to Landlord in the event of cancellation or non-renewal (and, if reasonably available, material reduction in coverage);
- B. Business automobile liability insurance covering all owned, non-owned and hired or borrowed vehicles of Tenant used in connection with any of the construction, maintenance and operation of the Improvements, naming Tenant as the named insured and covering Landlord, the United States Government and any Encumbrancer, insuring against liability for bodily injury and death and/or for property damage in an amount not less than \$500,000 combined single limit per accident;
- C. Workers' compensation insurance and any and all other statutory forms of insurance now or hereafter prescribed by applicable law, providing statutory California coverage for all persons employed by Tenant in connection with this Lease;
- D. Excess or umbrella liability insurance, written on an occurrence basis, naming Tenant as the named insured and naming Landlord, the United States Government and any Encumbrancer as additional insured, in an amount not less than Two Million Dollars (\$2,000,000) per occurrence and in the aggregate for bodily injury and death and/or property damage liability combined, such policy to be written on an excess basis above the coverages required hereinabove;
- E. Current certificate of insurance or copy of said policy and all renewals shall be furnished to the Secretary. Neither the Landlord 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 Tenant or subtenant or of any other person whomsoever, caused by any use of the 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 cause whatsoever; and Tenant, as a material part of the consideration for this Lease, and except in the case of negligence or willful misconduct, waives on Tenant's behalf all claims against Landlord and/or the United States Government and agrees to hold Landlord 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 Tenant, together with all costs and expenses in connection therewith;

## **ARTICLE 15**

### **Indemnification.**

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 (including without limitation, death) to the person or property of the Lessee or subtenants or any other person whomsoever, caused by any use of the 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 cause whatsoever; and Lessee, as a material part of the consideration for this Lease, hereby waives on Lessee's behalf all claims against Lessor and the United States Government and agrees to hold Lessor and 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 Lessor, together with all costs and expenses in connection therewith, except to the extent caused by the negligence or willful misconduct of Landlord or the United States Government or any of their representatives, successors, assigns or agents.

## **ARTICLE 16**

### **Removal of Improvements.**

All buildings and improvements, excluding removable personal property and trade fixtures of Lessee, on the lease property shall remain on said property after termination of this lease and shall thereupon become the property of the Lessor.

## **ARTICLE 17**

### **Construction, Maintenance, Repair, Alteration.**

All improvements placed on the leased premises shall be constructed in a good and workmanlike manner and in compliance with applicable laws and building codes. All part of buildings exposed to perimeter properties shall represent a pleasant appearance and all service areas shall be screened from public view. Subject to ARTICLE \_\_, NONRESPONSIBILITY NOTICES, and approval of the Lessor, the Lessee shall have the right at any time during the term of this lease to make limited alterations, additions, or repairs to any improvement on the premises. Removal or demolition of any improvement shall not be made without the prior approval of the Lessor. The Lessee shall at all times during the tenure of this lease maintain the premises and all improvements therein in good order and repair and in a neat, sanitary and attractive condition and in compliance with applicable law, ordinance or regulation.

## **ARTICLE 18**

### **Rental Bond.**

At anytime during the term of this lease, the Secretary may require the Lessee to post a bond satisfactory to the Secretary in a penal sum of not less than the succeeding year's minimum rent, which bond shall be deposited with the Secretary. If minimum rent is being paid at less than annual periods, the Secretary may accept a bond in amount smaller than the said amount of rent due. Any other type of security of security which may be offered by Lessee to satisfy the requirement of this Article will be given reasonable consideration by the Secretary, but it is agreed that acceptance of other security shall be at the sole discretion of the Lessor and the Secretary. It is agreed that a bond required by this provision will guarantee payment of rent only.

## **ARTICLE 19**

### **Performance Bond.**

Before beginning construction of each improvement, Lessee agrees to provide security to guarantee completion of improvements and payment in full of claims of all persons for work performed on or materials furnished for construction. Lessee may provide said security by either:

- (a) Posting a corporate surety bond in an amount equal to the cost of each building or other improvement, said bond to be deposited with the Secretary and to remain in effect until the improvement is completed; or
- (b) Depositing in escrow with an institution acceptable to the Secretary, negotiable United States Treasury bonds or cash, in an amount sufficient to cover the costs of improvements. The escrow instructions shall provide for disbursement in installments upon certification of Lessee's architect, engineer or contractor as construction progresses; or
- (c) Entering into a building loan agreement with financial institutions, which building loan agreement and the amount of equity of the Lessee in the improvements to be constructed with the loan shall be approved by the Lessor. A copy of any such loan agreement shall be provided to the Secretary.

## **ARTICLE 20**

### **Companies Bonding and Insuring.**

All corporate surety bonds provided by Lessee in compliance with this lease shall be furnished by companies holding certificates of authority from the Secretary of the Treasury as acceptable sureties of Federal bonds. Insurance policies shall be furnished and maintained by such responsible companies as are rated A plus—Class XI or better in the current edition of Best's Insurance Guide.

## **ARTICLE 21**

### **Sublease, Assignment, Transfer**

- A. **Sublease.** The Lessee shall have the right to sublease any right to or interest in this Lease or any of the improvements on the Premises and the sublessee shall in turn have the right to encumber and assign its subleasehold interest and any improvements on the subleased premises as collateral for a loan to the sublessee for any purpose, all without the written consent of the Landlord or approval of the Secretary. Any such sublease shall provide that in the event of a conflict between the provisions of this Lease and of said sublease, the provisions of this Lease shall govern. No sublease shall release the Lessee from any obligation under this Lease or substitute the subtenant for the Lessee hereunder.
- B. **Assignment or Transfer.** The Lessee shall not, unless otherwise expressly authorized herein, assign this Lease without the written consent of the Lessor and approval of the Secretary and sureties. Consent will not be unreasonably withheld, conditioned, delayed or denied; provided, that the requirements for approvals of any assignment or transfer necessary for the Lessee to secure an encumbrance on a leasehold interest shall be

governed by the provisions of Paragraph \_\_\_\_, Leasehold Encumbrance. No such assignment or transfer shall be valid or binding without said consent and approval, and then only upon the condition that assignee or other successor in interest, shall agree in writing to be bound by each and all of the covenants and conditions of this Lease. The term of any sublease shall not exceed the term of this lease. No sublease shall release the Lessee from any obligation under this lease or substitute the sublessee for the Lessee hereunder. Any sublease made, except as aforesaid, shall be deemed a breach of this lease.

If a proposal to assign this lease to a qualified assignee or other successor in interest is submitted while a default in this lease exists, neither the Secretary or the Lessor will be obligated to consider said proposal until the lease is restored in good standing. The Lessor and/or Secretary shall either approve or state their reasons for disapproval of an assignment with thirty (30) days after the assignment is submitted for approval.

## **ARTICLE 22**

### **Status of Subleases.**

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

## **ARTICLE 23**

### **Agreements for Utility Facilities.**

Tenant shall have the right to enter into agreements with public utility companies and the State of California or any of its political subdivisions to provide utility services, including, but not limited to gas, water, electricity, telephone, television, and sewer facilities, necessary to the full enjoyment of the Premises and the development thereof in accordance with the provisions of this Lease, which agreement shall be binding upon any subtenant or other occupant of the Premises; provided, that no such agreement shall cover land not included in this Lease.

Upon entering into such agreement or agreements, the Tenant shall furnish the Secretary executed copies thereof together with a plat or diagram showing the true location of the utility lines to be constructed in accordance therewith.

Subtenant shall have the right to enter into such facility agreements if all improvements to be used by such subtenant are constructed prior to the subleasing of same, except that Tenant shall not be obligated to enter into any facility agreement on behalf of subtenant; subtenants shall, however, have the right to contract for utility services or any third-party provider of same, subject to Tenant's approval.

## **ARTICLE 24**

### **Rights-of-Way for Streets and Utility Facilities.**

Landlord hereby consents to the granting of rights of way by dedication of fee, easement or otherwise for streets and utility facilities necessary for the full enjoyment of the Premises and development thereof during the term of this Lease. Such rights of way are to be granted by the Secretary pursuant to the Act of February 5, 1948, and any amendments thereto, as implemented

by regulations of the Secretary, 25 U.S.C. § 323, *et seq.*, and the implementing regulations found at 25 C.F.R. Part 169. If Tenant shall at any time elect to dedicate any such right(s) of way, Landlord and Secretary shall cooperate with Tenant to effect such dedications(s), and shall execute such documents as may be required, provided that neither Landlord nor Secretary shall bear any cost or expense in connection therewith

## **ARTICLE 25**

### **Approved Encumbrance.**

The lease or any right to or interest in, this lease, or any of the improvements on the lease premises, may be encumbered with the written approval of the Secretary. No such encumbrance shall be valid without said approval.

## **ARTICLE 26**

### **Liens, Taxes, Utilities Charges.**

Lease shall not permit to be enforced against the premises, or any part thereof, any liens arising from any work performed, materials furnished, or obligations incurred by Lessee, and Lessee shall discharge or post bond against all such liens before taking any action is brought to enforce same. Lessee shall pay, when and as the same becomes 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, all interests therein and property thereon for which either the Lessee or the Lessor may become liable. Upon written request, the Lessee shall furnish the Secretary written evidence, duly certified, that any and all taxes required to be paid by Lessee have been paid, satisfied, or otherwise discharged. Lessee shall have the right to contest any claim, tax, or assessment against the property by posting bond to prevent enforcement of any lien resulting there from, and Lessee agrees to protect and hold harmless the Lessor, the 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 there from 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 all charges for water, sewage, gas, electrify, telephone and other utility services to said premises as they become due.

Lessee hereby acknowledges that the recordation of this lease at the Office of the County Recorder of Riverside County, and, with the exception of non-responsibility notices, the recordation of any document relating to this lease, is not the responsibility of the Lessor or the Secretary. The Secretary hereby reserves the right to notify the County of Riverside of the existence of this lease upon its approval. A Memorandum of Lease may be filed in the County Recorder's Office within twelve (12) months of the approval date of this lease.

## **ARTICLE 27**

### **Lessor's Paying Claims.**

Lessee shall have the option to pay any lien charge payable by lessee under this lease, or settle any action therefore, if the Lessee after written notice from Lessor or Secretary fails to pay or to post bond against enforcement. All sums paid by Lessor, as well as costs and other expenses incurred by Lessor, in so doing shall be paid to Lessor by Lessee upon demand with

interest at the rate of ten percent (10%) per annum from date of payment until repaid. Failure to make such repayment on demand shall constitute a breach of the covenants of this lease.

## **ARTICLE 28**

### **Unlawful Use.**

The Lessee agrees not to use or cause to be used any part of the leased premises for any unlawful conduct or purpose.

## **ARTICLE 29**

### **Eminent Domain.**

If, 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 the premises so taken shall forthwith cease and terminate. All compensation awarded by reason of the taking of the lease premises shall be awarded to the Lessee and the Lessor as the interests appear at the time of such taking, unless an encumbrance of the leasehold has been approved, and in which case the compensation or award, only insofar as it is awarded for damages to the improvements on the leased property, to the extent of the unpaid balance of any Approved Encumbrance, shall be paid to the Encumbrancer. As between Lessor and Lessee or sublessor and sublessee, as the case may be, such amount shall be deemed paid to the Lessee or sublessee and if such amount exceeds the amount to which Lessee or sublessee is entitled under the other terms of this Lease, Lessee or sublessee shall pay any such excess to Lessor or sublessor, as appropriate.

The rental thereafter payable hereunder for the remainder of the term of this Lease shall be adjusted by agreement of the parties subject to the approval of the Secretary.

If after condemnation, continuation of the lease is no longer feasible, the lease may be terminated by agreement of the parties, subject to the approval of the Secretary.

Any disputes arising under this Article which cannot be resolved by the parties, shall be arbitrated pursuant to Article 31, ARBITRATION, hereof.

## **ARTICLE 30**

### **Arbitration.**

If the parties hereto are unable to resolve disputes regarding an interpretation of the terms of this lease, and it becomes necessary to submit the matter to arbitration for settlement, an Arbitration Board shall be established. Said Arbitration Board shall consist of three persons, one member to be selected by the Lessor, one member to be selected by the Lessee, and the third to be selected by the other two members. The costs of such Arbitration Board shall be shared equally by the Lessee and Lessor. It is further understood and agreed that the Secretary may be expected to accept any reasonable decision reached by said Arbitration Board, but he cannot be legally bound by any decision, which might conflict with the interest of the Indians or the United States Government.

## **ARTICLE 31**

### **Default.**

Time is of the essence of this lease. In the event of default by Lessee in any of the covenants and conditions of this lease, Lessee and its sureties shall be given notice citing the defaults in the lease and allowing Lessee ten (10) days from receipt of said notice to show cause why this lease should not be cancelled. Lessor and/or the Secretary may grant an extension of time beyond the said ten (10) days, at their discretion, if Lessee so requests.

If Lessee fails to show cause to the satisfaction of the Lessor and the Secretary why this lease should not be cancelled, the Secretary may terminate this lease and the Lessee shall quit and surrender the leased premises to Lessor. The Secretary may proceed by suit or otherwise to enforce collection of rents or compliance with other obligations or provisions of the lease.

Any action taken or suffered by Lessee as a debtor under any insolvency or bankruptcy act shall constitute a breach of this lease. In such event, subject to the provisions of the Bankruptcy Act of the United States, the Lessor and Secretary may enter the premises and remove all persons and property therefrom, excluding the persons and property belonging to authorized sublessees and re-let the premises without terminating the lease.

Prior to termination of this lease for default by the Lessor, the Secretary shall give notice in writing to the encumbrancer in the form of a copy of the ten (10) day show cause notice to Lessee. If the default(s) can be cured by the payment or expenditure of money, this lease will not be terminated if the encumbrancer will properly notify the Secretary of its intent to cure said default(s) within a thirty (30) day period. When the default or breach cannot be cured by the payment of money, this lease may not be cancelled if the encumbrancer shall properly notify the Secretary of its intent to foreclose and diligently pursue completion of proceedings for foreclosure and sale pursuant to the terms of the encumbrance.

During such proceedings, the encumbrancer shall pay any guaranteed rents due and shall otherwise pay all other obligations that may be due and payable.

### **ARTICLE 32**

#### **Attorney's Fees**

If action is brought by Lessor or Lessee 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 reasonable attorney's fees of the prevailing party, to be fixed by the Court as a part of the costs in any such action. Nothing in this paragraph will constitute a waiver by the United States of any exception it may have for the payment of attorney's fees.

### **ARTICLE 33**

#### **Holding Over.**

Holding over by the Lessee after the termination or expiration of this lease shall not constitute a renewal or extension thereof or give the Lessee any rights hereunder on, in or to the leased premises.

### **ARTICLE 34**

#### **No Partnership; Operation of Business.**

Regardless of the fact that terms of rental of this lease may be in part on a percentage basis, Lessee and Lessor are not joint ventures or in partnership. Lessee is not and shall not be deemed to be an agent or representative of Lessor.

Lessee agrees that, at all times during the term of this lease, it will diligently attempt to keep the leased premises and all parts thereof actively used.

All businesses on the leased premises shall be conducted in good faith during the regular and customary hours of such business and on all business days, so that Lessor will, at all times, receive the maximum income under the percentage rental provision of this lease.

### **ARTICLE 35**

#### **Termination of Federal Trust.**

Nothing contained in this lease shall operate to delay or prevent a termination of federal trust responsibilities with respect to the land by the issuance of a fee patent or otherwise during the term of the lease; however, such termination shall not serve to abrogate the lease. The owners of the land and the Lessee and his surety(ies) and Encumbrancer(s) shall be notified of any such change in the status of the land.

### **ARTICLE 36**

#### **Lessee's Obligations.**

While the leased premises are held in trust by the United States or subject to a restriction against alienation imposed by the United States, all of the Lessee's obligations under this lease and the obligations of Lessee's sureties, are to the United States, as well as to the owners of the land.

If the Lessee is a corporation, joint venture, partnership, limited liability company or is partially comprised of such an entity, Lessee shall furnish the Secretary documentary evidence of any change in name or structure of its organization within thirty (30) days of such change. Lessee shall also keep the Secretary informed of any change of person and/or persons authorized to represent Lessee and execute documents on behalf of Lessee and shall furnish Secretary documentary evidence of such change in authority within thirty (30) days of any such change.

### **ARTICLE 37**

#### **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 delivered in person or sent by certified or registered mail, return receipt requested, or recognized overnight delivery. Service of any notice or demand shall be deemed complete ten (10) days after mailing or on the date actually received, whichever occurs first. Copies of all notices and demands shall be sent to the Secretary in care of the Agency Office of the Bureau of Indian Affairs.

### **ARTICLE 38**

#### **Inspection.**



The Secretary and the Lessor and their authorized representatives shall have the right, at any reasonable times 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.

#### **ARTICLE 39**

##### **Delivery of Premises.**

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 acts of God excepted.

#### **ARTICLE 40**

##### **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.

#### **ARTICLE 41**

##### **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 contract or to any benefit that may arise therefrom, but the provision shall not be construed to extend to this contract if made with a corporation or company for its general benefit.

#### **ARTICLE 42**

##### **Validity**

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

#### **ARTICLE 43**

##### **LESSOR'S DETERMINATIONS, CONSENTS OR APPROVALS.**

Whenever in this lease it is provided that the lease may exercise any rights or discussions or make any determinations, consents, or approvals, except changes in guaranteed minimum rentals, percentage rentals, participation of the parties in rentals, terms or surrender of the lease, and the leased land is in multiple ownership (undivided interests), the action of those Lessors holding the majority interest in the leased premises, in accordance with the Indian Land Consolidation Act Amendments of 2000, 25 U.S.C. § 2218, shall constitute the action of all the Lessors for the purposes of this lease and any extension thereof.

#### **ARTICLE 44**

##### **Declaration of Covenants, Conditions and Restrictions.**

Where applicable, Lessor hereby consents to Lessee's execution of a Declaration of Covenants, Conditions and Restrictions in accordance with governing laws, rules, regulations and ordinances. Said Declaration shall not contain any provisions in conflict with the provisions of this lease and the subleases with which it is to be used.

#### **ARTICLE 45**

##### **Approval by Lessor and/or Secretary.**

Whenever under the terms of this lease the acceptance, consent or approval of the Lessor and/or Secretary is required, said acceptance, consent or approval shall not be unreasonable withheld.

#### **ARTICLE 46**

##### **Tax Immunity.**

Nothing contained in this lease shall be deemed to constitute waiver of applicable laws providing tax immunity to trust or restricted property or any interest or income therefrom.

#### **ARTICLE 47**

##### **Force Majeure.**

Whenever under this instrument a time is stated within which or by which original construction, repairs or reconstruction of said improvements shall be completed, and if during such period a general or sympathetic strike or lockout, war or rebellion or some other event occurs that is beyond Lessee's power to control, the period of delay so caused shall be added to the period allowed herein for the completion of work. This provision is in no way intended to extend the term of this lease.

#### **ARTICLE 48**

##### **Environmental Protection Requirements.**

It is agreed that it shall be the responsibility of the Lessee to satisfy all environmental protection requirements as set forth in the National Environmental Policy Act of 1969 (NEPA), and its implementing regulations and guidelines. It is further agreed that Lessee will furnish the Secretary, at Lessee's sole cost and expense, a copy of all environmental assessments and/or environmental impact statements. It is additionally agreed that Lessee may be authorized by an appropriate representative of the Secretary to issue the initial notice to the public of the availability of all environmental assessments or environmental impact statements or reports, and if so authorized, will provide the Secretary with appropriate evidence of said notice and any comments received. It is agreed to and understood by lessee that no ground disturbing activities shall occur unless or until the Secretary has issued a Finding of No Significant Impact and/or Record of Decision and this lease has been subsequently approved. Should Lessee be required to conduct testing upon the leased premises, which requires ground disturbance, prior approval of the Secretary shall be obtained. Mitigation of any adverse impacts shall be to the satisfaction of the Secretary or his designated representative.

#### **ARTICLE 49**

##### **Archaeological, Cultural and Historic Resource Protection.**

Tenant agrees that in the course of construction on the Premises involving ground disturbing activities; a qualified archaeologist (specified at 43 CFR 7.8) will periodically monitor the construction site to insure that if archaeological or historical resources are uncovered, the construction activity shall immediately be halted and the involved area evaluated regarding the significance of the discovered resource. Within twelve (12) hours of the discovery, the Director, Bureau of Indian Affairs, Palm Springs Field Office, shall immediately be notified by the Tenant's archaeologist. Upon notification of the discovery, the Director, or his designee, will initiate a preliminary resource assessment. At the completion of the assessment, the Bureau of Indian Affairs will initiate consultation with the State Historic Preservation Officer and the Advisory Council on Historic Preservation pursuant to the required procedures at 36 CFR 800 (Protection of Historic Properties) and specifically at 36 CFR 800.11 (Properties discovered during implementation of as an undertaking) to determine the disposition of the resource. The Tenant will comply with any mitigation measures determined appropriate as a result of the consultation completed pursuant to 36 CFR 800.11. The cost of any required archaeological evaluation, mitigation, analysis, and curation shall be borne by the Tenant.

## **ARTICLE 50**

### **Hazardous Materials.**

**Definition of Hazardous Materials.** For purposes of this Lease, the Term "hazardous materials" shall include, without limitation, asbestos, petroleum, petroleum products, storage tanks, substances defined as "hazardous substances", "hazardous waste" and/or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601 et seq., Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., and/or any other applicable federal or local laws, statutes, rules, ordinances, orders and/or requirements related to hazardous materials, hazardous waste and/or toxic substances, and any publications promulgated pursuant thereto.

- A. **Notification.** The parties shall immediately advise each other and the Secretary in writing as soon as they have actual notice of (i) any and all enforcement, clean-up, removal or other governmental or regulatory actions instituted, completed or threatened pursuant to any applicable Federal, State or local laws, ordinances, or regulations relating to any hazardous materials affecting the Premises ("Hazardous Materials Laws"); (ii) any and all claims made or threatened by third parties claiming or regulating damage, contribution, cost recovery compensation, loss or injury as a result of hazardous materials on or emanating from the Premises (the matters set forth in Sections (i) and (ii) above are hereinafter referred to as "Hazardous Materials Claims"; and (iii) all occurrences or conditions on any real property adjoining or in the vicinity of the Premises that could cause the Premises or any part thereof to be subject to any restrictions on the ownership, occupancy, transferability or use of the Premises under any Hazardous Materials Laws.
- B. **Indemnity.** Landlord shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Materials Claims regardless of whether Landlord is legally liable or responsible therefore, and, if Tenant is liable or responsible therefore pursuant to this paragraph, Landlord's reasonable attorneys' fees in connection therewith shall be paid by Tenant. Tenant shall be solely responsible for, and shall indemnify and hold harmless Landlord, its directors, officers, employees, agents, successors and assigns from and against, any loss, damage,

cost, expense or liability directly or indirectly arising out of or attributable to the Tenant's use, generation, storage, release, threatened release, discharge, disposal, or presence of Hazardous Materials on, under or about the Premises during the Term of the Lease, including, without limitation: (a) all foreseeable consequential damages; (b) the costs of any required or necessary repair, clean-up or detoxification of the Premises, and the preparation and implementation of any closure, remedial or other required plans; and, (c) all reasonable costs and expenses incurred by Landlord in connection with Sections (a) and (b), including but not limited to reasonable attorneys' fees. The various rights and remedies reserved to Landlord herein, including those not specifically described herein, shall be cumulative, and, except as otherwise provided by California in force and effect at the time of the execution hereof, Landlord may pursue any or all of such rights and remedies, whether at the same time or otherwise.

The foregoing indemnity shall further apply to any residual contamination on or under the Premises, or affecting any natural resources, and to any contamination of any property or natural resources arising in connection with Tenant's generation, use, handling, storage, transport or disposal of any such Hazardous Materials, and irrespective of whether any of such activities were or will be undertaken in accordance with applicable laws, regulations, codes and ordinances.

- C. Remediation. Without Landlord's, and Secretary's prior written consent, which shall not be unreasonably withheld, Tenant shall not take any remedial action in response to the presence of any hazardous Materials on, under, or about the Premises, nor enter into any settlement agreement, consent decree, or other compromise in respect to any Hazardous Material Claims, which remedial action, settlement, consent or compromise might, in Landlord's, and Secretary's reasonable judgment impair the value of Landlord's interest hereunder; provided, however, that Landlord's and Secretary's prior consent shall not be necessary in the event that the presence of Hazardous Materials on, under, or about the Premises either poses an immediate threat to the health, safety or welfare of any individual or is of such a nature that an immediate remedial response is necessary and it is not possible to obtain Landlord's consent before taking such action, provided that in such event Tenant shall notify Landlord as soon as practicable of any action so taken. Landlord and Secretary agree not to withhold consent, where such consent is required hereunder, if either: (i) a particular remedial action is ordered by a court of competent jurisdiction, or (ii) Tenant establishes to the reasonable satisfaction of Landlord that there is no reasonable alternative to such remedial action which would result in less impairment of Landlord's security hereunder.
- D. Additional Environmental Agreements. Tenant agrees, within three (3) years prior to the expiration of the Lease, to cause a Phase I environmental study to be performed on the Premises. In the event the Phase I environmental study shows the presence or possible presence of hazardous materials on or under the Premises, then a Phase II environmental study shall be performed. If the Phase I shows the presence of hazardous materials, then Tenant shall immediately cause a plan of Remediation to be prepared and submitted to the Secretary for approval. Within one (1) year prior to the expiration of the Lease, Landlord shall cause the Premises to be remediated in accordance with the plan approved by the Secretary; provided, however, if such remediation cannot occur without interruption of businesses on the Premises, Tenant shall have the right to post a bond in

an amount equal to 125% of the estimated cost of the remediation, subject to approval by the Secretary.

## **ARTICLE 51**

### **Accountings and Audits.**

The Lessee shall, not later than forty-five (45) days after the \_\_\_\_\_ day of \_\_\_\_\_, of each year, which date shall be the end of the first year of this lease, submit to the Lessor and the Secretary, an annual audit report prepared by a Certified Public Accountant, licensed in the State of \_\_\_\_\_, in conformity with the most current statement on generally accepted Auditing Standards issued by the American Institute of Certified Public Accountants. Each audit shall be accompanied by an unqualified opinion, along with any percentage rent still due.

The acceptance by Lessor of any monies paid to Lessor by Lessee as percentage rental for the leased premises as shown by the audit report furnished by Lessee shall not be an admission of the accuracy of the report, or the sufficiency of the amount of said percentage rental payment, but Lessor or the Secretary shall be entitled at any time within four (4) years after receipt of any such percentage rental payment to question the sufficiency of the amount thereof and/or the accuracy of the audit report or reports furnished by Lessee to justify the same, and shall have the right to examine and/or conduct a single audit as hereinbefore described; to be concluded within forty-five (45) days. Therefore, Lessee shall for said period of four (4) years after submission to Lessor or the Secretary of any such report keep safe and intact all of Lessee's records, books, accounts and other data, which bear upon or are required to justify in detail any such report.

## **ARTICLE 52**

### **General Provisions.**

- A. No Merger. There shall be no merger of this lease nor the leasehold estate created by this lease, with the fee estate in the land or with the interest or estate of any leasehold mortgage by reason of the fact that this lease or any such leasehold estate may be held, directly or indirectly, by or for the account of any person or persons who shall own a beneficial interest in the land, or shall hold any leasehold mortgage.
- B. Entire Agreement. This lease sets forth all the agreements, conditions and understandings between Lessor and Lessee relative to the leasing of the Premises, and there are no promises, agreements, conditions, understanding, warranties or representations, oral or written, expressed or implied, between them other than as set forth or referred to herein.
- C. No Oral Modification. No statement, action or agreement hereafter made shall be effective to change, amend, waive, modify, discharge, terminate or effect an abandonment of this lease in whole or in part unless such agreement is in writing and signed by the party against whom such change, amendment, waiver, modification, discharge, termination or abandonment is sought to be enforced.
- D. Headings. The Table of Contents and Article headings are inserted herein only for convenience and are in no way to be construed as part of this lease, or indicative of the

meaning of the provision of the lease or the intention of the parties, or as limitation in the scope of the particular clauses to which they refer.

- E. Severability; Invalidity of Particular Provisions. If any term or provision of this lease, or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this lease, or the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each other term and provision of this lease shall be valid and enforceable to the fullest extent permitted by laws.
- F. Time is of the Essence. Except as otherwise specifically provided in this lease, time is of the essence in this lease and in each and every provisions hereof on Lessor's and Lessee's.
- G. Construction. The parties agree that each party has review and revised this lease and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to their interpretation of the lease or any amendments or exhibits thereto.
- H. Governing Law. The lease shall be governed exclusively by the provisions hereof, and by the laws of the United State, tribal laws, and to the extent applicable, state law.
- I. Lessor's Right to Defend. Notwithstanding anything to the contrary in this lease, Lessor shall have the right to undertake and continue to defend, at Lessee's reasonable costs and expense, any claim, action or proceeding which is brought against Lessor and which Lessee is obligated under this Lease to defend, if following ten (10) days notice to Lessee, Lessee has failed to diligently defend.
- J. Quiet Enjoyment. Lessor covenants and agrees that upon Lessee's paying the rent reserved herein and timely performing and observing all of the covenants and provision of this lease on Lessee's part to be performed and observed, Lessee shall peaceably and quietly enjoy the Leased Premises without disturbance by Lessor or anyone claiming by, through or under Lessor.
- K. No third Party Beneficiary. The covenants and obligations set forth in this lease are to benefit the parties hereto, and the Approved Encumbrance as specified in this lease, and shall not be for the benefit of any third party.

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

LESSOR: \_\_\_\_\_

LESSEE: \_\_\_\_\_

**(All signatures acknowledged for recordation.)**

Attachment 5B

TSR Request Form

**SAMPLE**

**REQUEST FOR TITLE STATUS REPORT**

TO: Land Titles & Records Office

Date:

FROM:

Please furnish this office with a Title Status Report on the following tract of land:

Land Area Code and Tract Number:

Allotment Name:

Legal Description and Acreage:

Priority (Please Indicate in how many days you need this Title Status Report):

( ) 1-10 Days

( ) 10-20 Days

( ) 21-30 Days

Urgent – No Later than:

List any new documents or probates since last TSR:

-----  
Signature

Title:

=====  
(For Title Plant Use Only)

New TSR	( )	Logged In	:
Reissue	( )	Examination Started	:
No. of Docs/Probates/Mods	:	Examination Completed	:
No. of Lines Chained	:	Total Time to Examine	:
Modifications Created	:	Signed and Mailed	:
:			



# Attachment 6B

## Appraisal Request Form

## REQUEST FOR REAL ESTATE APPRAISAL SERVICES

All requests for real estate appraisal services will be made only after an Agency or tribal line officer has approved an action involving the transfer or encumbrance of interests in real property or an Office of Hearing and Appeals (OHA) deciding official has requested appraisals for probate and/or consolidation purposes.

All requests for appraisal services shall be submitted to the respective Office of Appraisal Services (OAS) regional office on the standardized "Request for Real Estate Appraisal Services" request form by the Bureau of Indian Affairs and P.L. 93-638 Contract or Self-Governance Compact tribal realty programs.

It is highly recommended that the requesting office consult with the respective Regional Supervisory Appraiser (RSA), as needed, to determine the type of appraisal service necessary, e.g., Appraisal, Appraisal Review, Appraisal Update, and/or Real Property Consultation.

- All approved appraisal requests shall be submitted directly to the appropriate OAS Regional Appraisal Office.
  - Attach supporting documentation:
    - Title status reports (TSR)
    - Survey Plats & Maps of Definite Location
    - Partition plan
    - Tribal resolution
    - Letter of intent
    - Letter of Consent
    - Right of Way Agreement or Application, and Proposed Leases and Permits
    - Quantified Water Rights, if any
- Incomplete appraisal requests will not be accepted. An incomplete request will be returned to the requestor within five working days with a statement providing reasons for canceling the appraisal request.
- Any appraisal request submitted to OAS to obtain an appraisal intended for loan/mortgage purposes by a financial institution shall be rejected (in accordance with the 1989 Financial Institutions Reform, Recovery and Enforcement Act, as amended, which require financial institutions to obtain appraisals to conduct internal risk management.)
- For appraisal requests for opinions of value with effective date other than current date, the requests shall identify whether the opinion of value is prospective or retrospective and provide the date to be used by the appraiser.
  - Prospective Value Opinion – A forecast of the value expected at a specific future date. A prospective value opinion is most frequently sought in connection with real estate projects that are proposed, under construction, or under conversion to a new use, or those that have not achieved sellout or stabilized level of long-term occupancy at the time the appraisal report is written.
  - Retrospective Value Opinion – An opinion of value that is likely to have applied as of a specified historic date. A retrospective value opinion is most frequently sought in connection with appraisals for estate tax, condemnation, inheritance tax, and similar purposes.

Appraisal requests should not be submitted to OAS for real estate transactions that do not require Secretarial approval, e.g., valuations for landowner personal use & knowledge,

valuations of non-fixed portable classrooms, HUD tribal housing development program's subsidized loan originations, etc.

**U.S. DEPARTMENT OF THE INTERIOR  
OFFICE OF THE SPECIAL TRUSTEE FOR AMERICAN INDIANS  
OFFICE OF APPRAISAL SERVICES  
REQUEST FOR REAL ESTATE APPRAISAL SERVICES**

**SAMPLE**  
AGENCY:  
AGENCY CASE NO:  
RESERVATION:  
BIA REGIONAL OFFICE:

TO: REGIONAL SUPERVISORY APPRAISER,  
REGION

APPRAISAL SERVICE: ( ) APPRAISAL ( ) APPRAISAL REVIEW ( ) APPRAISAL UPDATE ( ) REAL PROPERTY CONSULTATION

GRANTOR/LESSOR: \_\_\_\_\_ GRANTEE/LESSEE: \_\_\_\_\_

PURPOSE OF APPRAISAL: ( ) MARKET VALUE ( ) MARKET RENTAL VALUE ( ) JUST COMPENSATION  
( ) DAMAGE ESTIMATE ( ) USE FEE ESTIMATE

LEASE TYPE: ( ) Cash Lease ( ) Crop Share Lease ( ) Percentage Lease ( ) Gross Lease  
( ) Index Lease ( ) Net lease Lease No. \_\_\_\_\_

<u>TRANSACTION TYPE</u>	<u>PROPERTY TYPE</u>	<u>UTILITIES</u>	<u>LEASE</u>
( ) SALE ( ) LEASEHOLD	( ) AGRICULTURAL ( ) PUBLIC WATER OR	( ) CURRENT	( ) CURRENT
( ) ACQUISITION ( ) LEASED FEE	( ) RESIDENTIAL ( ) DOMESTIC WELL	( ) LEASE	LEASE
( ) EXCHANGE ( ) RENTAL ADJUSTMENT	( ) COMMERCIAL ( ) SEWER OR ( ) SEPTIC	( ) ATTACHED	ATTACHED
( ) EASEMENT/RIGHT OF WAY	( ) INDUSTRIAL ( ) ELECTRICITY	or	or
( ) PARTITIONMENT	( ) RECREATIONAL ( ) TELEPHONE	( ) PROPOSED	( ) PROPOSED
	( ) OTHER ( ) GAS	LEASE	LEASE
		ATTACHED	ATTACHED

<u>AGRICULTURAL</u>	<u>RECREATIONAL</u>	<u>RESIDENTIAL</u>	<u>COMMERCIAL / INDUSTRIAL</u>
( ) PRODUCTION HISTORY	___ NO. OF FRONT FEET	( ) PURCHASE	( ) FINANCIAL
( ) IRRIGATABLE ACRES AND/OR	ON LAKE/RIVER	AGREEMENT/	STATEMENTS
WATER RIGHTS DATA	( ) PURCHASE	CONTRACT	( ) PURCHASE
( ) PURCHASE AGREEMENT/ CONTRACT	AGREEMENT/	( ) PHYSICAL DATA OF	AGREEMENT/
( ) CARRYING CAPACITY (AUM's)	CONTRACT	STRUCTURE, E.G., AGE,	CONTRACT
( ) WATER SOURCE: SPRING, PUMPS,	( ) STUMPAGE VALUE	FLOOR PLAN, ETC.	( ) FLOOR PLAN
WELLS	( ) HUNTING/FISHING	( ) OWNERSHIP DATA OF	
	RIGHTS	HOME & OTHER	
		STRUCTURES	

LEGAL DESCRIPTION: (ATTACH SURVEY AND TITLE STATUS REPORT, IF AVAILABLE)

ALLOTMENT NO.(S): \_\_\_\_\_ CONTAINING \_\_\_\_\_ ACRES, MORE OR LESS

IDENTIFY LAND CHARACTER AND/OR IMPROVEMENTS TO BE APPRAISED:

SPECIAL INSTRUCTIONS/REMARKS (INCLUDE DEVELOPMENT, IMPROVEMENT AND RENOVATION COSTS, IF ANY):

THE APPROVING OFFICIAL HAS REVIEWED THE NEED FOR APPRAISAL OF THE DESCRIBED PROPERTY FOR THE PURPOSE INDICATED AND CERTIFIES THAT THE APPRAISAL IS NEEDED AND REQUESTS THAT IT BE PREPARED ON A: ( ) ROUTINE OR ( ) RUSH PRIORITY BASIS.

DATE REQUESTED \_\_\_\_\_ SIGNATURE \_\_\_\_\_ REQUESTING OFFICIAL

DATE APPROVED \_\_\_\_\_ SIGNATURE \_\_\_\_\_ APPROVING OFFICIAL

FOR REGIONAL OFFICE USE

DATE RECEIVED: \_\_\_\_\_  
DATE ASSIGNED: \_\_\_\_\_  
APPRAISER: \_\_\_\_\_  
REPORT TYPE CODE: \_\_\_\_\_  
DATE OF VALUATION: \_\_\_\_\_

PROJECT NUMBER:  
OPINION OF VALUE: \$  
DATE COMPLETED:  
DATE APPROVED:  
TRANSMITTAL DATE:  
REVIEWER:

# Attachment 7B

## Review of Land Appraisals



IN REPLY REFER TO:

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS  
Washington, D.C. 20240

88  
Copy - BES Staff

Office of Trust Services

OCT 6 2005

Memorandum

To: All Regional Directors

From: Director, Bureau of Indian Affairs

Subject: Review of Land Appraisals by the Office of Appraisal Services

An issue has arisen concerning whether controls exist to insure that land appraisals conducted by Indian tribes pursuant to compact or contract agreements have been reviewed by the Office of Appraisal Services (OAS). Discussion concerning this issue with the personnel of the National Business Center, OAS, confirmed their policy responsibility to review land appraisals conducted by Indian tribes pursuant to a contract or compact agreement before the execution and approval of a trust land or resource transaction. Further, they stated that the responsibility to review land appraisals has been declared to be an inherently Federal function in OMB Circular A-76.

We must ensure that the Bureau of Indian Affairs follows the existing policy and practice of the OAS to review land appraisals performed by contract and compact Indian tribes prior to the approval of a land or natural resource transaction. Therefore, the Agency Superintendents, Regional Directors, and other Bureau personnel, with the authority to approve a trust or natural resource transaction, to declare that the land appraisal conducted by a compact or contract Indian tribe has been reviewed by the OAS. Documentation of the OAS review of the land appraisal will be the evidence of the declaration and this evidence of the declaration will become part of the transaction file. An example of the declaration is attached to this memorandum.

If you have any questions or require further information, please contact my office or contact the Deputy Director, Trust Services, at (202) 208-5831.

Attachment

EXAMPLE

**Declaration of Appraisal Review**

I, \_\_\_\_\_, do hereby declare that the land appraisal for  
\_\_\_\_\_ (state tract number or land description) was  
performed pursuant to a contract/contract with the \_\_\_\_\_ Tribe  
and was reviewed by the Office of Appraisal Services, as evidenced by the review  
documentation attached hereto.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Superintendent

# Attachment 8B

## Sample Evidence of Authority of Officers to Execute Documents



**SAMPLE**

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF INDIAN AFFAIRS

**EVIDENCE OF AUTHORITY OF OFFICERS TO EXECUTE PAPERS**

*(To be sworn to by the President or Secretary of a Corporation and sealed with its seal)*

I solemnly swear that \_\_\_\_\_ was on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ the duly appointed \_\_\_\_\_ of \_\_\_\_\_, a corporation organized under the laws of the State of Alaska at which time he/she executed the application for \_\_\_\_\_ and in behalf of said corporation, covering certain Restricted Indian lands in the State of Alaska; that \_\_\_\_\_ was fully empowered to execute said instrument and all papers in connection therewith, and that \_\_\_\_\_ action in executing the same binds the said corporation to full performance of all obligations there under.

[CORPORATE SEAL]

\_\_\_\_\_

Name Title

Date

STATE OF ALASKA

)

)ss

\_\_\_ JUDICIAL DISTRICT

)

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2002 by

\_\_\_\_\_ .

[SEAL]

Notary Public

\_\_\_\_\_

My commission expires:

**Attachment 9B**

**Recordation Form**



# Attachment 10B

## Sample Advertised Sale Notice

**SAMPLE ADVERTISED SALE NOTICE (TO BE ADDED)**

# Attachment 11B

## Sample Award Letter

**SAMPLE AWARD LETTER (TO BE ADDED)**

# Attachment 12B

## Sample Business Lease Modification/Amendment



**SAMPLE BUSINESS LEASE MODIFICATIONS/AMENDMENT (TO BE ADDED)**

# Attachment 13B

## Sample Business Sublease

# SAMPLE BUSINESS SUBLEASE

## SHOPPING CENTER LEASE

NAME OF CENTER: PLAZA DEL SOL SHOPPING CENTER

### 1. PARTIES.

This Lease, dated as of this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, is made by and between Palm Springs Plaza Del Sol, LLC (herein called "Landlord") and (hereinafter called "tenant").

### 2. PREMISES.

Landlord does hereby lease to Tenant and Tenant hereby leases from Landlord that certain space (herein called "Premises"), having dimensions of approximately \_\_\_\_\_ feet in frontage by \_\_\_\_\_ feet in depth and containing approximately \_\_\_\_\_ square feet of floor area, located where indicated on Exhibit "A" attached hereto and incorporated by reference herein. Said Premises are located in the City of Palm Springs, County of Riverside, State of California.

This Lease is subject to the terms, covenants and conditions herein set forth and the Tenant covenants as a material part of the consideration for this Lease to keep and perform each and all of said terms, covenants and conditions by it to be kept and performed.

Landlord is the owner of a leasehold estate created by Business Lease PSL-183 ("Master Lease") approved by the Bureau of Indian Affairs of the Department of Interior ("B.I.A") on November 24, 1975. The Lessor of the Master Lease is Allottee ("Master Lessor").

### 3. USE.

Tenant shall use the Premises for the operation of a \_\_\_\_\_ and shall not use or permit the Premises to be used for any other purpose without the prior written consent of Landlord.

### 4. MINIMUM RENT.

4.A. Tenant agrees to pay to Landlord as Minimum Rent, without notice or demand, the monthly sum of \_\_\_\_\_ in advance, on or before the first day of each and every successive calendar month during the term hereof, except the first month's rent shall be paid upon the execution hereof. The rental shall commence (Mark applicable

Paragraph Below):

On the 1st day of \_\_\_\_\_ 20\_\_\_\_, if the Premises are being leased in an "as is" condition or subject only to such incidental work as is to be performed by Landlord prior to said date (this work, if any, to be set forth in the attached Exhibit "B" and in this latter event, the rental shall commence on said date only if Landlord shall have substantially completed said work):

30 days after substantial completion of Landlord's Work as set forth in Exhibit "B" attached hereto and incorporated herein by reference, or when the Tenant opens for business, whichever is sooner. Landlord agrees that it will, at its sole cost and expense as soon as is reasonably possible after the execution of this Lease, commence and pursue to completion the improvements to be erected by Landlord to the extent shown on the attached Exhibit "B" labelled "Description of Landlord's Work and Tenant's Work". The term "substantial completion of the Premises" is defined as the date on which Landlord or its Architect notifies Tenant in writing that the Premises are substantially complete to the extent of Landlord's Work specified in Exhibit "B" hereof, with the exception of such work as Landlord cannot complete until Tenant performs necessary portions of its work. Tenant shall commence the installation of fixtures, equipment, and any of Tenant's Work as set forth in said Exhibit "B" promptly upon substantial completion of Landlord's work in the Premises and shall diligently prosecute such installation to completion, and shall open the Premises for business not later than the expiration of said 30-day period.

Rent for any period which is for less than one (1) month shall be a prorated portion of the monthly installment herein based upon a thirty (30) day month. Said rental shall be paid to Landlord, without deduction or offset, in lawful money of the United States of America and at such place as Landlord may from time to time designate in writing.

4.B. THE MINIMUM RENTAL as set forth in 4.A. above shall be increased if the Consumer Price Index - Los Angeles-Long Beach-Anaheim, California - All Urban Consumers (Index) as published by the United States Department of Labor's Bureau of Labor Statistics, increases over the base period Index. The base period Index shall be the Index for the calendar month which is four months prior to the month in which rentals commence. The base period Index shall be compared with the index for the same calendar month for each subsequent year (comparison month). If the Index for any comparison month is higher than the base period Index, the then minimum rental for the next year shall be increased by the identical percentage commencing with the next rental commencement month. In no event shall the Minimum Rental be less than the sum in effect for the preceding twelve (12) month period. (By way of illustration only, if Tenant commenced paying rent in June of 1977, then the base period Index is that for February 1977 (assume 176.3) and

that Index shall be compared to the Index for February 1978 (assume 185.8), and because the Index for February 12978 is 5.38% higher, the minimum rental commencing June, 1978, shall be 5.39% higher; likewise the Index for February 1979 shall be compared with the Index for February 1977).

Should the Bureau discontinue the publication of the above Index, or publish same less frequently, or alter same in some other manner, then Landlord shall adopt a substitute procedure which reasonably reflects and monitors consumer prices and minimum rent shall be increased according to such substantiated procedure.

5. TERM.

The lease term shall be ( ) full-calendar months, plus the partial month in which the rental commences. The parties hereto acknowledge that certain obligations under various articles hereof may commence prior to the lease term, i.e., construction, hold harmless, liability insurance, etc., and the parties agree to be bound by these articles prior to commencement of the lease term.

6. SECURITY DEPOSIT.

Concurrently with Tenant's execution of this Lease, Tenant has deposited with Landlord the sum of \$ . Said sum shall be held by Landlord as security for the faithful performance by Tenant of all the term, covenants, and conditions of this Lease to be kept and performed by Tenant during the term hereof. If Tenant defaults with respect to any provision of this Lease, including, but not limited to the provisions relating to the payment of rent, Landlord may (but shall not be required to) use, apply or retain all or any part of this security deposit for the payment of any rent or any other sum in default, or for the payment of any amount which Landlord may spend or become obligated to spend by reason of Tenant's default, or to compensate Landlord for any other loss or damage which Landlord may suffer by reason of Tenant's default. If any portion of said deposit is so used or applied Tenant shall, within five (5) days after written demand therefor, deposit cash with Landlord in an amount sufficient to restore the security deposit to its original amount and Tenant's failure to do so shall be a default under this Lease. Landlord shall not be required to keep this security deposit separate from its general funds, and Tenant shall not be entitled to interest on such deposit. If Tenant shall fully and faithfully perform every provision of this Lease to be performed by it, the security deposit or any balance thereof shall be returned to Tenant (or, at Landlord's option, to the last assignee of Tenant's interest hereunder) within ten (10) days following expiration of the Lease term. In the event of termination of Landlord's interest in this Lease, Landlord shall transfer said deposit to Landlord's successor in interest.

7. RENT ADJUSTMENTS.

7.A. In addition to the Minimum Rent provided in Paragraph 4 hereinabove, and commencing at the same time as any rental commences under this Lease Tenant shall pay to Landlord the following items herein called Adjustments:

(1) All real estate taxes and insurance premiums on the Premises, including land, building, and improvements thereon. Said real estate taxes shall include all real estate taxes and assessments that are levied upon and/or assessed against the Premises, including any taxes which may be levied on rents (excluding Federal and State income taxes). Said insurance shall include all insurance premiums for fire, extended coverage, liability, and any other insurance that Landlord deems necessary on the Premises. Any increase in fire insurance costs caused by, or related to the tenant occupancy of these premises, shall be borne by the Tenant. Said taxes and insurance premiums for purposes of this provision shall be reasonably apportioned in accordance with the total floor area of the Premises as it relates to the total floor area of all buildings in the Shopping Center which are from time to time completed as of the first day of each calendar quarter, (provided, however, that if any tenants in any building or buildings pay taxes directly to any taxing authority or carry their own insurance, as may be provided in their leases, their square footage shall not be deemed as part of the total floor area).

(2) That percent of the total cost of the following items that Tenant's total floor area bears to the total floor area of all buildings in the Shopping Center which are from time to time completed, as of the first day of each calendar quarter:

(i) All real estate taxes, including assessments, all insurance costs, and all costs to maintain, repair, and replace common areas, parking lots, sidewalks, driveways, and other areas used in common by or for the benefit of the tenants, occupants or customers of the Shopping Center.

(ii) All costs to maintain, repair and replace structural portions, including without limitation, exterior walls and roofs of all buildings in the Shopping Center, except those for which the Tenant or Tenants thereof pay such costs pursuant to the provisions in this Lease. All costs for air conditioning/heating maintenance as set forth in Section 11. REPAIRS.

(iii) A reserve for periodic major repairs and replacements such as parking lot and driveway resurfacing, repainting exterior building walls, etc.

(iv) All costs to supervise and administer the common areas, parking lots, sidewalks, driveways, and other areas

used in common by or for the benefit of the tenants, occupants or customers of the Shopping Center and all costs to administer items (i) through (iii) above. Said costs shall include such fees as may be paid to a third party in connection with same and shall in any event include a fee to Landlord to supervise and administer same in an amount equal to ten percent (10%) of the total costs of (i) through (iii) above.

(v) Any utilities surcharges, or any other costs levied, assessed or imposed by, or at the direction of, or resulting from statutes or regulations, or interpretations thereof, promulgated by any governmental authority in connection with the use or occupancy of the Premises or the parking facilities serving the Premises.

7.B. Upon commencement of rental Landlord shall submit to Tenant a statement of the anticipated monthly Adjustments for the period between such commencement and the following January and Tenant shall pay these Adjustments on a monthly basis concurrently with the payment of the Rent. Tenant shall continue to make said monthly payments until notified by Landlord of a change thereof. By March 1 of each year Landlord shall endeavor to give Tenant a statement showing the total Adjustments for the Shopping Center for the prior calendar year and Tenant's allocable share thereof, prorated from the commencement of rental. In the event the total of the monthly payments which Tenant has made for the prior calendar year be less than the Tenant's actual share of such Adjustments then Tenant shall pay the difference in a lump sum within ten days after receipt of such statement from Landlord and shall concurrently pay the difference in monthly payments made in the then calendar year and the amount of monthly payments which are then calculated as monthly Adjustments based on the prior year's experience. Any over-payment by Tenant shall be credited towards the monthly Adjustments next coming due. The Adjustments for the prior year shall be used for purposes of calculating the anticipated monthly Adjustments for the then current year with actual determination of such Adjustments after each calendar year as above provided. Even though the term has expired and Tenant has vacated the Premises, when the final determination is made of Tenant's share of said Adjustments for the year in which this Lease terminates, Tenant shall immediately pay any increase due over the estimated Adjustments previously paid and, conversely, any overpayment made shall be immediately rebated by Landlord to Tenant. Failure of Landlord to submit statements as called for herein shall not be deemed to be a waiver of Tenant's requirement to pay sums as herein provided.

#### 8. USES PROHIBITED.

Tenant shall not do or permit anything to be done in or about the Premises nor bring or keep anything therein which is not within

the permitted use of the Premises or which will in any way increase the existing rate of or affect any fire or other insurance upon the Building or any of its contents, or cause a cancellation of any insurance policy covering said Building or any part thereof or any of its contents. Tenant shall not do or permit anything to be done in or about the Premises which will in anyway obstruct or interfere with the rights of other tenants or occupants of the Building or injure or annoy them or use or allow the Premises to be used for any improper, immoral, unlawful or objectionable purpose; nor shall Tenant cause, maintain or permit any nuisance in, on or about the Premises. Tenant shall not commit or allow to be committed any waste in or upon the Premises.

9. COMPLIANCE WITH LAW.

Tenant shall not use the Premises, or permit anything to be done in or about the Premises, which will in any way conflict with any law, statute, ordinance or governmental rule or regulation now in force or which may hereafter be enacted or promulgated. Tenant shall, at its sole cost and expense, promptly comply with all laws, statutes, ordinances and governmental rules, regulations or requirements now in force or which may hereafter be in force and with the requirements of any board of fire underwriters or other similar bodies now or hereafter constituted relating to or affecting the conditions, use or occupancy of the Premises, excluding structural changes not related to or affected by Tenant's improvements or acts. The judgment of any court of competent jurisdiction or the admission of Tenant in any action against Tenant, whether Landlord be a party thereto or not, that Tenant has violated any law, statute, ordinance or governmental rule, regulation or requirement, shall be conclusive of that fact as between Landlord and Tenant.

10. ALTERATIONS AND ADDITIONS.

Tenant shall not make or allow to be made any alterations, additions or improvements to or of the Premises or any part thereof without first obtaining the written consent of Landlord and any alterations, additions or improvements to or of said Premises, including but not limited to, wall covering, paneling and built-in cabinet work, but excepting movable furniture and trade fixtures, shall at once become a part of the realty and belong to Landlord and shall be surrendered with the Premises. In the event Landlord consents to the making of any alterations, additions or improvements to the Premises by Tenant, the same shall be made by Tenant at Tenant's sole cost and expense. Upon the expiration or sooner termination of the term hereof, Tenant shall, upon written demand by Landlord, given at least thirty (30) days prior to the end of the term, at Tenant's sole cost and expense, forthwith and with all due diligence, remove any alterations, additions, or improvements



made by Tenant, designated by Landlord to be removed, and Tenant, shall, forthwith and with all due diligence, at its sole cost and expense, repair any damage to the Premises caused by such removal.

11. REPAIRS.

11.A. By entry hereunder, Tenant shall be deemed to have accepted the Premises as being in good, sanitary order, condition and repair. Tenant shall, at Tenant's sole cost and expense, keep the Premises and every part thereof in good condition and repair including without limitation, the maintenance, replacement and repair of any storefront doors, windows, window casements, glazing, plumbing, pipes, electrical wiring and conduits, heating and air condition system. Landlord shall obtain and Tenant shall pay for a service contract for repairs and maintenance of said system, said maintenance contract to conform to the requirements under the warranty, if any, on said system. Tenant shall pay for the maintenance service as defined in 7.B Adjustments. Tenant shall, upon the expiration or sooner termination of this Lease hereof, surrender the Premises to Landlord in good condition, broom clean, ordinary wear and tear and damage from causes beyond the reasonable control of Tenant excepted. Any damage to adjacent premises caused by Tenant's use of the Premises shall be repaired at the sole cost and expense of Tenant.

11.B. Landlord shall repair and maintain the structural portions of the Building in which the Premises are located, including the exterior walls and roof and bill the same as an Adjustment as provided in 7.B. above, unless such maintenance and repairs are caused in part or in whole by the act, neglect, fault or omission of any duty by Tenant, its agents, servants, employees, invitees, or any damage caused by breaking and entering, in which case Tenant shall pay to Landlord the actual cost of such maintenance and repairs. Landlord shall not be liable for any failure to make such repairs or to perform any maintenance unless such failure shall persist for an unreasonable time after written notice of the need of such repairs or maintenance is given to Landlord by Tenant. Except Landlord by reason of any injury to or interference with Tenant's business arising from the making of any repairs, alterations or improvements in or to any portion of the Building or the Premises or in or to fixtures, appurtenances and equipment therein. To the extent allowed by law, Tenant waives the right to make repairs at Landlord's expense under any law, statute or ordinance now or hereafter in effect.

12. LIENS.

Tenant shall keep the Premises and the property in which the Premises are situated free from any liens arising out of any work performed, materials furnished or obligations incurred by or on behalf of Tenant. Landlord may require, at Landlord's sole option,

that Tenant shall provide to Landlord, at Tenant's sole cost and expense, a lien and completion bond in an amount equal to one and one-half (1½) times the estimated cost of any improvements, additions, or alterations in the Premises which Tenant desires to make, to insure Landlord against any liability for mechanics' and materialmen's liens and to insure completion of the work.

13. ASSIGNMENT AND SUBLETTING.

Tenant shall not either voluntarily, or by operation of law, assign, transfer, mortgage, pledge, hypothecate or encumber this Lease or any interest therein, and shall not sublet said Premises or any part thereof, or any right or privilege appurtenant thereto, or allow any other person (the employees, agents, servants and invitees of Tenant excepted) to occupy or use said Premises, or any portion thereof, without first obtaining the written consent of Landlord, which consent shall not be unreasonably withheld. A consent to one assignment, subletting, occupation or use by any other person shall not be deemed to be a consent to any subsequent assignment, subletting, occupation or use by another person. Consent to any such assignment or subletting shall in no way relieve Tenant of any liability under this Lease. Any such assignment or subletting without such consent shall be void, and shall, at the option of Landlord, constitute a default under the terms of this Lease. Landlord shall waive initial sublease request from Tenant at time of signature of the Lease.

In the event that Landlord shall consent to a sublease or assignment hereunder, Tenant shall pay Landlord reasonable fees, not to exceed Three Hundred Dollars (\$300.00), incurred in connection with the processing of documents necessary to giving of such consent.

Initial \_\_\_\_\_

14. HOLD HARMLESS.

Tenant shall indemnify and hold harmless Landlord, B.I.A. and the Master Lessor against and from any and all claims arising from Tenant's use of the Premises or from the conduct of its business or from any activity, work, or other things done, permitted or suffered by Tenant in or about the Premises, and shall further indemnify and hold harmless Landlord, B.I.A. and the Master Lessor against and from any and all claims arising from any breach or default in the performance of any obligation on Tenant's part to be performed under the terms of this Lease, or arising from any act or negligence of Tenant, or any officer, agent, employee, guest, or invitee of Tenant, and from all costs, attorneys' fees, and liabilities incurred in or about the defense of any such claim or any action or proceeding brought thereon and in case any action or

proceeding be brought against Landlord, B.I.A. and the Master Lessor by reason of such claim, Tenant, upon notice from Landlord, B.I.A. and the Master Lessor shall defend the same at Tenant's expense by counsel reasonably satisfactory to Landlord, B.I.A. and the Master Lessor. Tenant, as a material part of the consideration to Landlord, B.I.A. and the Master Lessor, hereby assumes all risk of damage to property or injury to persons in, upon or about the Premises, from any cause other than Landlord's negligence; and Tenant hereby waives all claims in respect thereof against Landlord, Tenant shall give prompt notice to Landlord, B.I.A. and the Master Lessor in case of casualty or accident in the Premises.

Landlord, B.I.A. and the Master Lessor or its agents shall not be liable for any loss or damage to persons or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water or rain which may leak from any part of the Building or from the pipes, appliance or plumbing works therein or from the roof, street or subsurface or from any other place resulting from dampness or any other cause whatsoever, unless caused by or due to the negligence of Landlord, its agents, servants or employees. Landlord or its agents shall not be liable for interference with the light, air, or for any latent defect in the Premises.

Landlord or its agents shall not be liable for any loss, damage or injury to the property or person of any person whomsoever at any time occasioned by or arising out of any act or omission of the Tenant, or of anyone holding under Tenant or the occupancy or use of the Premises or any part thereof or the parking lot by or under the Tenant, or directly or indirectly from any state or condition of the Premises or any part during the term of this Lease.

#### 15. SUBROGATION.

As long as their respective insurers so permit, Landlord and Tenant hereby mutually waive their respective rights of recovery against each other for any loss insured by fire, extended coverage and other property insurance policies existing for the benefit of the respective parties. Each party shall apply to their insurers to obtain said waivers. Each party shall obtain any special endorsements, if required by their insurer to evidence compliance with the aforementioned waiver.

#### 16. LIABILITY INSURANCE.

Tenant shall, at Tenant's expense, obtain and keep in force during the term of this Lease a policy of comprehensive public liability insurance insuring Landlord, Master Lessor and Tenant against any liability arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto.

Such insurance shall be in the amount of not less than \$600,000.00 for injury or death of one person in any one accident or occurrence and in the amount of not less than \$1,000,000.00 for injury or death of more than one person in any one accident or occurrence. Such insurance shall further insure Landlord, Master Lessor and United States Department of Interior, B.I.A., and Lessee

against liability for property damage of at least \$100,000.00. The limit of any such insurance shall not, however, limit the liability Tenant hereunder. Tenant may provide this insurance under a blanket policy, provided that said insurance shall have a Landlord's and Master Lessor's protective liability endorsement attached thereto. If Tenant shall fail to procure and maintain said insurance, Landlord, and/or Master Lessor may, but shall not be required to procure and maintain same, but at the expense of Tenant. Insurance required hereunder shall be in companies rated A:V or better in "Best's Key Rating Guide". Tenant shall deliver to Landlord and to the B.I.A. on behalf of the Master Lessor prior to right of entry, copies of policies of liability insurance required herein or with loss payable clauses satisfactory to Landlord and B.I.A. No policy shall be cancelable or subject to reduction of coverage. All such policies shall be written as primary policies not contributing with and not in excess of coverage which Landlord and/or Master lessor may carry.

17. UTILITIES.

Tenant shall pay for all water, gas, heat, light, power, sewer charges, telephone service and all other services and utilities supplied to the Premises, together with any taxes thereon. If any such services are not separately metered to Tenant, Tenant shall pay a reasonable portion to be determined by Landlord of all charges jointly metered with other premises.

18. PERSONAL PROPERTY TAXES.

Tenant shall pay, or cause to be paid, before delinquency any and all taxes levied or assessed and which become payable during the term hereof upon all Tenant's leasehold improvements, equipment, furniture, fixtures, and any other personal property located in the Premises. In the event any or all of Tenant's leasehold improvements, equipment, furniture, fixtures and other personal property shall be assessed and taxed with the real property, Tenant shall pay to Landlord its share of such taxes within ten (10) days after delivery to Tenant by Landlord of a statement in writing setting forth the amount of such taxes applicable to Tenant's property.

19. RULES AND REGULATIONS.

Tenant shall faithfully observe and comply with the rules and

regulations that Landlord shall from time to time promulgate and/or modify. The rules and regulations shall be binding upon Tenant upon delivery of a copy of them to Tenant. Landlord shall not be responsible to Tenant for the nonperformance of any said rules and regulations by any other tenants or occupants.

20. HOLDING OVER.

If Tenant remains in possession of the Premises or any part thereof after the expiration of the term hereof with the express written consent of Landlord, such occupancy shall be a tenancy from month to month.

Furthermore if Tenant has not vacated the Premises as required herein, a new monthly rent shall be due and payable upon the expiration of this Lease. The new monthly rent will be twice the monthly rent in existence of the expiration of this Lease plus all other charges payable hereunder, including without limitation, percentage rents and adjustments.

21. ENTRY BY LANDLORD.

Landlord reserves, and shall at any and all times have, the right to enter the Premises to inspect the same, to submit said Premises to prospective purchasers or tenants, to post notices of non-responsibility, to repair the premises and any portion of the Building of which the Premises are a part that Landlord may deem necessary or desirable, without abatement of rent, and may for that purpose erect scaffolding and other necessary structures where reasonably required by the character of the work to be performed, always providing that the entrance to the Premises shall not be unreasonably blocked thereby, and further providing that the business of Tenant shall not be interfered with unreasonably. Tenant hereby waives any claim for damages or for any injury or inconvenience to or interference with Tenant's business, any loss of occupancy or quiet enjoyment of the Premises, and any other loss occasioned thereby. For each of the aforesaid purposes, Landlord shall at all times have and retain a key with which to unlock all of the doors in, upon and about the Premises, excluding Tenant's vaults, safes and files, and Landlord shall have the right to use any and all means which Landlord may deem proper to open said doors in an emergency, in order to obtain entry to the Premises without liability to Tenant except for any failure to exercise due care for Tenant's property and any entry to the Premises obtained by Landlord by any of said means, or otherwise, shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into, or a detainer of, the Premises, or an eviction of Tenant from the Premises or any portion thereof.

22. TENANT'S DEFAULT.

The occurrence of any one or more of the following events shall constitute a default and breach of this Lease by Tenant.

22.A. The vacating or abandonment of the Premises by Tenant.

22.B. The failure by Tenant to make any payment of rent or any other payment required to be made by Tenant hereunder, as and when due, where such failure shall continue for a period of three (3) days after written notice thereof by Landlord to Tenant.

22.C. The failure by Tenant to observe or perform any of the covenants, conditions or provisions of this Lease to be observed or performed by Tenant, other than described in Article 22.B. above, where such failure shall continue for a period of thirty (30) days after written notice thereof by Landlord to Tenant; provided, however, that if the nature of tenant's default is such that more than thirty (30) days are reasonably required for its cure, then Tenant shall not be deemed to be in default if Tenant commences such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion.

22.D. To the maximum extent allowed by law, the making by Tenant of any general assignment or general arrangement for the benefit of creditors; or the filing by or against Tenant of a petition to have Tenant adjudged a bankrupt, or a petition or reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Tenant, the same is dismissed within sixty (60) days); or the appointment of a trustee or a receiver to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where possession is not restored to Tenant within thirty (30) days; or the attachment, execution or other judicial seizure of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where such seizure is not discharged within thirty (30) days.

23. REMEDIES IN DEFAULT.

In the event of any such default or breach by Tenant, Landlord may at any time thereafter, in his sole discretion, with or without notice or demand and without limiting Landlord in the exercise of any other right or remedy which Landlord may have been reason of such default or breach:

23.A. Terminate Tenant's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Tenant shall immediately surrender possession of the Premises to Landlord. In such event Landlord shall be entitled to recover from Tenant all damages incurred by Landlord by reason of Tenant's

default including, but not limited to, the cost of recovering possession of the Premises; expenses of reletting, including necessary renovation and alteration of the Premises; reasonable attorneys' fees; that portion of any leasing commission paid by Landlord and applicable to the unexpired term of this Lease; and (1) the worth at the time of award of the unpaid rent and other charges and adjustments which had been earned at the time of termination; (2) the worth at the time of award of the amount by which the unpaid rent and other charges and adjustments which would have been earned after termination until the time of award exceeds the amount of such rental loss that the Tenant proves could have been reasonably avoided; (3) the work at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided; and (4) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under Lease or which in the ordinary course of things would be likely to result therefrom. The "worth at the time of award" of the amounts referred to in subparagraphs (1) and (2) above is computed by allowing interest at the maximum lawful rate. The worth at the time of award of the amount referred to in subparagraph (3) above is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%). Unpaid installments of rent or other sums shall bear interest from the date due at the maximum legal rate; or

23.B. Maintain Tenant's right to possession, in which case this lease shall continue in effect whether or not Tenant shall have abandoned the Premises. In such event Landlord shall be entitled to enforce all of Landlord's rights and remedies under this Lease, including the right to recover the rent and any other charges and Adjustments as may become due hereunder; or

23.C. Pursue any other remedy now or hereafter available to Landlord under the laws or jurisdictional decisions of the state in which the Premises are located.

#### 24. DEFAULT BY LANDLORD.

Landlord shall not be in default unless Landlord fails to perform obligations required of Landlord within a reasonable time, but in no event later than thirty (30) days after written notice by Tenant to Landlord and to the holder of any first mortgage or deed of trust covering the Premises whose name and address shall have theretofore been furnished to Tenant in writing, specifying wherein Landlord has failed to perform such obligation; provided, however, that if the nature of Landlord's obligation is such that more than thirty (30) days are required for performance then Landlord shall not be in default if Landlord commences performance within such thirty (30) day period and thereafter diligently prosecutes the

same to completion. In no event shall tenant have the right to terminate this Lease as a result of Landlord's default and Tenant's remedies shall be limited to damages and/or injunction.

## 25. RECONSTRUCTION.

In the event the Premises are damaged by fire or other perils covered by extended coverage insurance, Landlord agrees to forthwith repair same, and this Lease shall remain in full force and effect, except that Tenant shall be entitled to a proportionate reduction of the Minimum Rent from the date of damage and while such repairs are being made, such proportionate reduction to be based upon the extent to which the damage and making of such repairs shall reasonably interfere with the business carried on by Tenant in the Premises. If the damage is due to the fault or neglect of Tenant or its employees, there shall be no abatement of rent.

In the event the Premises are damaged as a result of any causes other than the perils covered by fire and extended coverage insurance, the Landlord shall forthwith repair the same, provided the extent of the destruction be less than ten percent (10%) of the then full replacement cost of the Premises. In the event the destruction of the Premises is to an extent of ten percent (10%) or more of the full replacement cost then Landlord shall have the option to: (1) to repair or restore such damage, this Lease continuing in full force and effect, but the Minimum rent to be proportionately reduced as hereinabove in force and effect, but the Minimum Rent to be proportionately reduced as hereinabove in this Article provided; or (2) give notice to Tenant at any time within sixty (60) days after such damage, terminating this Lease as of the date specified in such notice, which date shall be no more than thirty (30) days after the giving of such notice. In the event of giving such notice, this Lease shall expire and all interest of Tenant in the Premises shall terminate on the date so specified in such notice and the Minimum rent, reduced by a proportionate reduction, based upon the extent, if any, to which such damage interfered with the business carried on by Tenant in the Premises, shall be paid up to the date of such termination.

Notwithstanding anything to the contrary contained in this Article, Landlord shall not have any obligation whatsoever to repair, reconstruct or restore the Premises when the damage resulting from any casualty covered under this Article occurs during the last twenty-four (24) months of the term of this Lease or any extension thereof.

Landlord shall not be required to repair any injury or damage by fire or other cause, or to make any repairs or replacements of any leasehold improvements, fixtures, or other personal property of Tenant.



26. EMINENT DOMAIN.

If more than twenty-five percent (25%) of the Premises shall be taken or appropriated by any public or quasi-public authority under the power of eminent domain, either party hereto shall have the right, at its option, within sixty (60) days after said taking, to terminate this Lease upon thirty (30) days written notice. If either less than or more than 25% of the Premises are taken (and neither party elects to terminate as herein provided), the Minimum Rent thereafter to be paid shall be equitably reduced. If any part of the Shopping Center other than the Premises may be so taken or appropriated, Landlord shall within sixty (60) days of said taking have the right at its option to terminate this Lease upon written notice to Tenant. In the event of any taking or appropriation whatsoever, Landlord shall be entitled to any and all awards and/or settlements which may be given and Tenant shall have no claim against Landlord for the value of any unexpired term of this Lease.

27. PARKING AND COMMON AREAS.

Landlord covenants that upon completion of the Shopping Center an area approximately equal to the common and parking areas as shown on the attached Exhibit "A" shall be at all times available for the non-exclusive use of Tenant during the full term of this Lease or any extension of the term hereof, provided that the condemnation or other taking by any public authority, or sale in lieu of condemnation, of any or all of such common and parking areas shall not constitute a violation of this covenant. Landlord reserves the right to change the entrances, exits, traffic lanes and the boundaries and locations of such parking area or areas, provided, however, that anything to the contrary notwithstanding contained in this Article 27, said parking area or areas shall at all times be substantially equal or equivalent to that shown on the attached Exhibit "A".

27.A. Prior to the date of Tenant's opening for business in the Premises, Landlord shall cause said common and parking area or areas to be graded, surfaced, marked and landscaped at no expense to Tenant.

27.B. Landlord shall keep said automobile parking and common areas in a neat, clean and orderly condition and shall repair any damage to the facilities thereof, but all expenses in connection with said automobile parking and common areas shall be charged and prorated in the manner as set forth in Article 7 hereof.

27.C. Tenant, for the use and benefit of Tenant, its agents, employees, customers, licensees and subtenants, shall have the non-exclusive right in common with Landlord, and other present and future owners, tenants and their agents, employees, customers, licensees and subtenants, to use said common and parking areas

during the entire term of this lease, or any extension thereof, for ingress and egress, and automobile parking.

27.D. Tenant, in the use of said common and parking areas, agrees to comply with such reasonable rules, regulations and charges for parking as Landlord may adopt from time to time for the orderly and proper operation of said common and parking areas. Such rules may include but shall not be limited to the following: (1) the restricting of employee parking to a limited, designated area or areas; and (2) The regulation of the removal, storage and disposal of Tenant's refuse and other rubbish at the sole cost and expense of Tenant.

28. SIGNS.

Tenant may affix within thirty-six (36) inches of any window or upon the exterior walls of the Premises only such signs, advertising placards, names, insignia, trademarks and descriptive materials as shall have first received the written approval of Landlord as to type, size, color, location, copy nature and display qualities. Anything to the contrary in this Lease notwithstanding, tenant shall not affix any sign to the roof. Tenant shall, however, erect one sign on the front of the Premises not later than the date tenant opens for business, in accordance with a design to be prepared by Tenant and approved in writing by Landlord. Tenant agrees to comply with the sign program of the Shopping Center adopted by Landlord.

29. DISPLAYS.

Tenant may not display or sell merchandise or allow grocery carts or other similar devices within the control of Tenant to be stored or to remain outside the defined exterior walls and permanent doorways of the Premises. Tenant further agrees not to install any exterior lighting, amplifiers or similar devices or use in or about the Premises any advertising medium which may be heard or seen outside the Premises, such as flashing lights, searchlights, loudspeakers, phonographs or radio broadcasts.

30. AUCTIONS.

Tenant shall not conduct or permit to be conducted any sale by auction in, upon or from the premises whether said auction be voluntary, involuntary, pursuant to any assignment for the payment of creditors or pursuant to any bankruptcy or other insolvency proceeding.

31. MERCHANTS' ASSOCIATION.

If a majority of tenants in the Shopping Center shall determine that it is in the best interests of the Shopping Center, Tenant will become a member of, and participate fully in, and remain in good standing in the Merchants' Association (as soon as the same has been formed), organized for tenants occupying premises in the Shopping Center, and Tenant will abide by the regulations of such Association. Each member tenant shall have One (1) vote, and Landlord shall also have one (1) vote in the operation of said Association. The objects of such Association shall be to encourage its members to deal fairly and courteously with their customers, to encourage ethical business practices, and to assist the business of the tenants by sales promotion and center-wide advertising. Tenant agrees to pay minimum dues to the Merchants' Association, provided however, that in no event shall the dues paid by Tenant in any fiscal year of said Association be in excess of twenty cents (20¢) per square foot of Premises leased to Tenant. Default in payment of dues shall be treated in similar manner to default in rent with like rights of Landlord at its option to the collection thereof on behalf of the Merchants' Association.

32. GENERAL PROVISIONS.

(32.A.) Plats and Riders. Exhibits, clauses, plats, riders and addendums, if any, affixed to this Lease are a party hereof.

(32.B.) Waiver. The waiver by Landlord of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of rent hereunder by Landlord shall not be deemed to be a waiver of any preceding default by Tenant of any term, covenant or condition of this Lease, when than the failure of Tenant to pay the particular rental so accepted, regardless of Landlord's knowledge of such preceding default at the time of the acceptance of such rent.

(32.C.) Joint Obligation. If there be more than one Tenant the obligations hereunder imposed shall be joint and several.

(32.D.) Marginal Headings. The marginal headings and article titles to the articles of this Lease are not part of the Lease and shall have no effect upon the construction or interpretation of any part hereof.

(32.E.) Time. Time is of the essence of this Lease and each and all of its provisions in which performance is a factor.

(32.F.) Successors and Assigns. The covenants and conditions herein contained, subject to the provisions as to assignment, apply

to and bind the heirs, successors, executors, administrators and assigns of the parties hereto.

(32.G.) Recordation. Neither Landlord nor Tenant shall record this Lease, but a short form memorandum hereof may be recorded at the request of Landlord.

(32.H.) Quiet Possession. Upon Tenant paying the rent reserved hereunder and observing and performing all of the covenants, conditions and provisions on Tenant's part to be observed and performed hereunder, Tenant shall have quiet possession of the Premises for the entire term hereof, subject to all of the provisions of this Lease.

(32.I.) Late Charges. Tenant hereby acknowledges that late payment by Tenant to Landlord of rent or other sums due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon Landlord by terms of any mortgage or trust deed covering the Premises. Accordingly, if any installment of rent or any sum due from Tenant shall not be received by Landlord or Landlord's designee when due, Tenant shall pay to Landlord a late charge equal to the maximum amount permitted by law (and in the absence of any governing law, ten percent (10%) of such overdue amount), plus any attorneys' fees incurred by Landlord by reason of Tenant's failure to pay rent and/or other charges when due hereunder. The parties hereby agree that such late charges represent a fair and reasonable estimate of the cost that Landlord will incur by reason of the late payment by Tenant. Acceptance of such late charges by Landlord shall in no event constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent Landlord from exercising any of the other rights and remedies granted hereunder.

(32.J.) Prior Agreement. This Lease contains all of the agreements of the parties hereto with respect to any matter covered or mentioned in this Lease, and no prior agreements or understandings pertaining to any such matters shall be effective for any purpose. No provision of this Lease may be amended or added to except by an agreement in writing signed by the parties hereto or their respective successors in interest. This Lease shall not be effective or binding on any party until fully executed by both parties hereto.

(32.K.) Inability to Perform. This Lease and the obligations of Tenant hereunder shall not be affected or impaired because Landlord is unable to fulfill any of its obligations hereunder or is delayed in doing so, if such inability or delay is caused by reason of strike, labor troubles, acts of God, or any other cause beyond the reasonable control of Landlord.

(32.L.) Partial Invalidity. Any provision of this Lease which shall prove to be invalid, void, or illegal shall in no way affect, impair or invalidate any other provision hereof and such other provision shall remain in full force and effect.

(32.M.) Cumulative Rights. No remedy or election hereunder shall be deemed exclusive but shall, whenever possible, be cumulative with all other remedies at law or in equity.

(32.N.) Choice of Law. This Lease shall be governed by the laws of the State in which the Premises are located.

(32.O.) Attorneys' Fees. In the event of any action or proceeding brought by either party against the other under this Lease the prevailing party shall be entitled to recover for the fees of its attorneys in such action or proceeding, including costs of appeal, if any, in such amount as the court may adjudge reasonable as attorneys' fees. In addition, should it be necessary for Landlord to employ legal counsel to enforce any of the provisions herein contained, Tenant agrees to pay all attorneys' fees and court costs reasonably incurred.

(32.P.) Sale of Premises by Landlord. In the event of any sale of the Premises by Landlord, Landlord shall be and is hereby entirely freed and relieved of all liability under any and all of its covenants and obligations contained in or derived from this Lease arising out of any act, occurrence or omission occurring after the consummation of such sale; and the purchaser, at such sale or any subsequent sale of the Premises shall be deemed, without any further agreement between the parties or their successor in interest or between the parties and any such purchaser, to have assumed and agreed to carry out any and all of the covenants and obligations of Landlord under this Lease.

(32.Q.) Subordination, Attornment. Upon request of Landlord, Tenant will in writing subordinate its rights hereunder to the lien of any mortgage or deed of trust, to any bank, insurance company or other lending institution, now or hereafter in force against the Premises, and to all advances made or hereafter to be made upon the security hereof.

In the event any proceedings are brought for foreclosure, or in the event of the exercise of the power of sale under any mortgage or deed of trust made by Landlord covering the Premises, Tenant shall attorn to the purchaser upon any such foreclosure or sale and recognize such purchaser as the Landlord under this Lease.

The provisions of this Article to the contrary notwithstanding, and so long as Tenant is not in default hereunder, this Lease shall remain in full force and effect for the full term hereof.

(32.R.) Notices. All notices and demands which may or are to be required or permitted to be given by either party on the other hereunder shall be in writing. All notices and demands by Landlord to Tenant shall be sent by United States Mail, postage prepaid, addressed to Tenant at the Premises, and to the address hereinbelow, or to such other place as Tenant may from time to time designate in a notice to Landlord. All notices and demands by Tenant to Landlord shall be sent by United States Mail, postage prepaid, addressed to Landlord at the address set forth herein, and to such other person or place as Landlord may from time to time designate in a notice to Tenant.

To Landlord at: 300 S. Palm Canyon Drive  
Palm Springs, California 92262

To Tenant at:

(32.S.) Tenant's Statement. Tenant shall at any time and from time to time, upon not less than three (3) days prior written notice from Landlord, execute, acknowledge and deliver to Landlord a statement in writing (a) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease as so modified is in full force and effect), and the date to which the rental and other charges are paid in advance, if any, and (b) acknowledging that there are not, to Tenant's knowledge, any uncured defaults on the part of Landlord hereunder, or specifying such defaults if any are claimed, and (c) setting forth the date of commencement of rents and expiration of the term hereof. Any such statement may be relied upon by the prospective purchaser or encumbrancer of all or any portion of the real property of which the Premises are a part.

(32.T.) Authority of Tenant. If tenant is a corporation, each individual executing this Lease on behalf of said corporation represents and warrants that he is duly authorized to execute and deliver this lease on behalf of said corporation, in accordance with the Bylaws of said corporation, and that this Lease is binding upon said corporation.

### 33. BROKERS.

Tenant warrants that it has had no dealings with any real estate broker or agents in connection with the negotiation of this Lease and it knows of no real estate broker or agent who is entitled to a commission in connection with this Lease.

34. CONSULT YOUR ATTORNEY.

If this Lease has been filled in it has been prepared for submission to your attorney for his approval. No representation is made by Landlord or its agents or employees as to the legal sufficiency, legal effect, or tax consequences of this Lease.

34.A. Priority of Master Lease. The Premises covered by this Lease are a portion of the lands held in trust by the United States of America and under the administration of the Secretary of the Interior (the Secretary), or his authorized representative within the B.I.A. This lease is subject to the conditions and requirements of the Master Lease, and Tenant hereunder agrees that in the event of conflict between the Master Lease and this Lease, the provisions of the Master Lease shall prevail. Tenant understands that this Lease is not valid or binding on the Master Lessor or B.I.A. without the approval of the Master Lessor and the B.I.A. Such approval will not be unreasonably withheld.

34.B. Termination of Master Lease. In the event of termination of the Master Lease, by cancellation or otherwise, it shall not serve to cancel this Lease. Additionally, in the event of termination of the Master Lease during the term of this Lease, the Tenant hereunder, upon receipt of written notice from an authorized representative of the Secretary of the Interior, shall pay to the B.I.A. for the benefit of the Master Lessor, at the address so specified, all rents due pursuant to this Lease.

LANDLORD:

TENANT:

By: \_\_\_\_\_

JOHN WESSMAN

EXHIBIT "A"

Street Address: 1555 South Palm Canyon Drive., Palm Springs,  
California 92264

LEGAL DESCRIPTION

That certain tract of land located in the City of Palm Springs, County of Riverside, State of California, described as follows:

Being a portion of the East 1/2 of the East 1/2 of the Southeast 1/4 of Section 22, Township 4 South, Range 4 East, San Bernardino Base and Meridian;

COMMENCING at the Southeast corner of said Section 22;

THENCE along the East line of said Section 22, North  $0^{\circ} 18' 02''$  East, 329.54 feet to the Southeast corner of the North 1/2 of the Southeast 1/4 of the Southeast 1/4 of said Section 22, said point being the TRUE POINT OF BEGINNING:

THENCE continuing along said East line, North  $0^{\circ} 18' 02''$  East, 989.27 feet to the Northeast corner of the Southeast 1/4 of the Southeast 1/4 of said Section 22;

THENCE continuing along said East line, North  $0^{\circ} 17' 37''$  East, 329.17 feet, to the Northeast corner of the South 1/2 of the Southeast 1/4 of the Northeast 1/4 of the Southeast 1/4 of said Section 22;

THENCE along the North line of said South 1/2 of the Southeast 1/4 of the Northeast 1/4 of the Southeast 1/4, North  $89^{\circ} 49' 52''$  West, 656.01 feet to the Northwest corner of said South 1/2 of the Southeast 1/4 of the Northeast 1/4 of the Southeast 1/4;

THENCE along the West line of said South 1/2 of the Southeast 1/4 of the Northeast 1/4 of the Southeast 1/4, South  $0^{\circ} 22' 06''$  West, 329.79 feet, to the Southwest corner thereof, said point also being the Northwest corner of the East 1/2 of the Southeast 1/4 of the Southeast 1/4;

THENCE along the West line of said East 1/2 of the Southeast 1/4 of the Southeast 1/4, South  $0^{\circ} 38' 02''$  West, 986.75 feet to the Southwest corner of the North 1/2 of the Southeast 1/4 of the Southeast 1/4 of the Southeast 1/4 of said Section 22;

THENCE along the South line of said North 1/2 of the Southeast 1/4 of the Southeast 1/4 of the Southeast 1/4, South  $89^{\circ} 39' 47''$  West, 662.18 feet, to the TRUE POINT OF BEGINNING.



EXHIBIT "B"

Landlord will lease to Tenant the unit described in Exhibit "A", complete with the following improvements; restroom (1), acoustical ceiling, fluorescent lights, heating and cooling system, all walls painted off-white, and concrete floor.

SIGNS: In accordance with section 28, SIGNS, the Landlord has, or will have, a sign program that is, or will be, approved by the appropriate government agency. All signs shall have working drawings, including colors and types of materials, and shall be submitted to the Landlord and the government agency for approval. Landlord shall approve in writing and governing agency shall issue permit before any working commences on such signs.

LANDLORD:

TENANT:

By: \_\_\_\_\_

By: \_\_\_\_\_

ADDENDUM "A"

LEASE SUBJECT TO MASTER LEASE

XXXX Lessor is the owner of a leasehold estate under that certain Business Lease No. \_\_\_\_\_, Contract No. \_\_\_\_\_, by and between \_\_\_\_\_, referred to as "Master Lessor", and \_\_\_\_\_ Lessee, and approved by the Area Director, Bureau of Indian Affairs, Department of Interior, on November 24, 1975. Said Lease covers that certain real property described as the North half of the Northeast Quarter of the Southeast Quarter of the Southeast Quarter (N $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ ), Section 22, Township 4 South, Range 4 East, SBM., containing 5.00 acres, more or less. This Lease and the interest of the parties hereto and any successor in interest of the Lessee herein, are subject to all of the covenants, conditions and restrictions set forth in the Master Lease and amendments thereto, and to the rights and interest of the Master Lessor. Reference is made to the Master Lease for particulars, and the same is incorporated as a part of this Lease as if set forth at length herein. In the event of conflict, the terms and conditions of the Master Lease shall prevail.

LANDLORD:

TENANT:

By: \_\_\_\_\_

By: \_\_\_\_\_

EXHIBIT "E"

OPTION

If, at the expiration of this Lease term, Tenant has fulfilled all obligations and specifications of this Lease to the satisfaction of Landlord, Landlord hereby grants to Tenant the Option to Renew said Lease Term for an additional five (5) years.

In the event Tenant exercises the Option for an additional Lease Term as set forth above, the additional Lease Term shall be subject to each and every term of the within Lease, including, but not limited to the provisions of Section 4.B.

In the event the Tenant desires to exercise the Option to renew, he must so notify Landlord in writing at least sixty (60) days prior to the end of the term.

Time is of the essence, and the failure of Tenant to notify Landlord within the time period specified above shall result in the termination of Tenant's right to renew.

LANDLORD:

TENANT:

BY: \_\_\_\_\_

\_\_\_\_\_

# Attachment 14B

## Sample Business Lease Assignment

**SAMPLE BUSINESS LEASE ASSIGNMENT (TO BE ADDED)**

## Attachment 15B

Sample Deed of Trust and Assignment  
of Rents with Certificate of Approval

**SAMPLE DEED OF TRUST AND ASSIGNMENT OF RENTS WITH CERTIFICATE OF APPROVAL**

RECORDING REQUESTED BY:

-

WHEN RECORDED MAIL TO:

-

---

**LEASEHOLD DEED OF TRUST AND ASSIGNMENT OF RENTS**

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THIS DEED OF TRUST is made this            day of            200 (the "Deed of Trust"), between           , a Corporation,            L.L.C., a limited liability company,            RESORT DEVELOPMENT, L.L.C., A limited liability company and            VALLEY RESORT, INC., a corporation, by the President or Manager of all of them. herein called "**Trustor**," whose address is            and the            Springs Community Corporation, a            nonprofit corporation organized and existing under the laws of the State of Nevada, herein called "**Trustee and Beneficiary**," as applicable.

WITNESSETH: For good and valuable consideration Trustor hereby irrevocably grants, transfers and assigns to Trustee, its successors and assigns, in trust, with power of sale and right of entry and possession, for the benefit and security of Beneficiary a security interest, all right, title and interest of Trustor now or hereinafter acquired in and to the leasehold and subleasehold estates in the property located within the            Indian Reservation and within the geographic boundaries of the County of            State of            described as:

[Legal Description is attached hereto and incorporated herein by this reference as Exhibit A and referred to herein as the "**Premises**";

This Deed of Trust reaches the Leasehold interest of            Resort, Inc. found in that certain Lease dated           , with the            Indian Tribe, including Lease modifications 1-8 (collectively) and the Subleases with Amendments, thereunder. This Deed of Trust is subject and subordinate to the terms of said Lease and Subleases as well as the terms of the consent of the            Indian Tribe given to this Deed of Trust. Trustee and Beneficiary obtain no rights greater than those of Trustor found in said Lease and Subleases. Nothing in this Deed of Trust shall effect or interfere with in any way the ability of the            Indian Tribe to collect the rents or other amounts due to it under the Lease. In addition, notwithstanding anything to

the contrary in this Deed of Trust, in the Promissory Note (as defined hereinbelow), in the Development Finance Agreement (as defined hereinbelow) or in any other agreement or instrument relating to any of the foregoing, in the event of a termination of a portion of Lessee's leasehold estate in the premises subject to said Lease and of Sublessee's subleasehold estate in the premises subject to said Subleases pursuant to Paragraphs 7C or 7E of said Lease, Trustee and Beneficiary acknowledge that all right, title and interest of Trustee and Beneficiary in the subject portion of said leasehold estate and in the subject subleasehold estate and sublease under this Deed of Trust shall thereupon immediately and automatically terminate and be deemed released from the lien of this Deed of Trust. In such case, Trustee and Beneficiary shall promptly file appropriate release instruments in all offices in which this Deed of Trust has been recorded to further evidence said termination and release.

TOGETHER WITH all and singular the tenements, hereditaments, rights, rights of way, easements, privileges and appurtenances thereunto belonging, or in anyway appertaining (all as part of the Premises hereby conveyed) which shall be deemed to include but not to be limited to: (i) all rents, issues, profits, royalties and revenue therefrom, subject, however, to any right, power and authority hereinafter given to and conferred upon Beneficiary to collect the same; (ii) all buildings, improvements and fixtures (whether or not annexed thereto) now or hereafter used in connection therewith.

FOR THE PURPOSE OF SECURING:

ONE: Payment of the indebtedness evidenced by an Installment Promissory Note Secured By the Deed of Trust (the "**Promissory Note**"), dated \_\_\_\_\_, in the principal sum of Twelve Million Seven Hundred Fifty Thousand Dollars (\$12,750,000.00), the final payment on which is due on or before \_\_\_\_\_, 2010, executed by Trustor and delivered to Beneficiary, together with the interest thereon and late charges as provided by the Promissory Note which is made a part hereof by reference, attached hereto as Exhibit B.

TWO: Payment of all other moneys herein agreed or provided to be paid by Trustor.

THREE: Performance of each agreement of Trustor herein contained or incorporated herein by reference, particularly that certain agreement titled "Development Finance Agreement" (the "**Agreement**"), dated as of \_\_\_\_\_, the original of which is a on file at the offices of the Beneficiary, which is located at \_\_\_\_\_.

FOUR: Payment of any sums expended by Trustee and/or Beneficiary, their agents or assignees, under this Deed of Trust and the Promissory Note.

TRUSTOR AGREES:

1. To pay: (a) ten (10) days before delinquent, all taxes and assessments of every type or nature affecting the Premises; (b) all other charges and



encumbrances which now are or shall hereafter be or appear to be a lien prior to the lien of this Deed of Trust, when due and in accordance with their terms.

2. To keep the Premises insured against loss or damage by fire, the perils against which insurance is afforded by the Extended Coverage Endorsement. The policy or policies of such insurance shall be in the form in general use from time to time in the State of \_\_\_\_\_, shall be in an amount not less than the indebtedness from time to time secured hereby and by any senior encumbrances, shall be issued by a company or companies rated A XIII or better in Best's Insurance Guide, and shall contain the Standard Mortgagee Clause with loss payable to Beneficiary. Trustor shall provide Beneficiary with a certificate evidencing such insurance from the issuing company. Such policy or policies shall provide that they will not be canceled without thirty (30) days prior written notice to Beneficiary. Whenever required by Beneficiary in writing mailed to Trustor at Trustor's last address known to Beneficiary, copies of such policies shall be delivered immediately to Beneficiary. Any and all amounts received by Beneficiary under any of such policies shall be applied in accordance with paragraph 27 of this Deed of Trust.

3. To keep the Premises in good condition and repair, and not to commit or permit waste thereof; not to remove or demolish, nor impair the structural character or integrity of any building, fixture, equipment, fence, canal, well or other improvement now or hereafter situated upon the Premises, without the prior written consent of Beneficiary (which shall not be unreasonably withheld or delayed); to complete or restore promptly and in good and workmanlike manner any building or improvement which may be constructed, damaged or destroyed thereon and to pay when due all claims for work, labor or services performed and materials furnished therefor; to comply with all laws affecting the Premises or requiring any alterations or improvements to be made thereon.

4. Trustor hereby represents and warrants that there are no hazardous substances on the Premises and that it will not allow any hazardous substances to become located on the Premises. In the event that hazardous substances become located on the Premises, Trustor shall immediately inform the Authority and the Trustee in writing and remove the same.

5. Not to discriminate upon the basis of sex, marital status, race, color, creed, religion, national origin, or ancestry in the sale, lease, sublease, transfer or rental, or in the use, occupancy, tenure or enjoyment of the Premises or any improvements thereon, or of any part thereof. Nor shall the Trustor or anyone claiming under or through the Trustor, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenancy, lessees, subtenants, sublessees, or vendees in the Premises. Each and every deed, lease, and contract entered into with respect to the Premises shall be subject to nondiscrimination or nonsegregation clauses identical to those set forth in Nevada law.

6. That if, during the existence of this trust, there be commenced or pending any action or proceeding affecting the Premises, or the title thereto, or if any adverse claim for or against the Premises be made, and if Trustor fails to do so or is

otherwise in default hereunder, Trustee or Beneficiary, or both, may appear in said action or proceeding and retain counsel therein and defend the same, or otherwise take such action therein as they or either of them may deem advisable, and may settle or compromise the same or the said adverse claim; and in that behalf, and for any of the said purposes, may pay and expend such sums of money as they, or either of them may deem to be reasonable and necessary.

7. To comply with all laws, ordinances, regulations, covenants, conditions and restrictions affecting the Premises, and not to suffer or permit any act to be done in or upon the Premises in violation thereof.

8. That, if Trustor fails to do so, Beneficiary, without demand or notice and as in its sole judgment it may consider necessary, may do any or all things required of Trustor by any of the provisions herein contained and incur and pay all reasonable and necessary expenses in connection therewith.

9. To pay to Trustee and Beneficiary, respectively, promptly and within thirty (30) days of receipt of written demand, the amounts of all sums of money which they shall respectively pay pursuant to any of the provisions herein contained, including but not limited to reasonable attorney fees and the cost of evidence of title or any guarantee thereof, together with interest upon each of said amounts, until repaid, from the time of the payment thereof, at the rate of ten percent (10%) per annum.

10. That upon default by Trustor in payment of any indebtedness secured hereby or in performance of any material agreement hereunder or under the Promissory Note or Agreement or in occurrence of an Event of Default (as defined in the Agreement), Beneficiary may deliver a written notice of default (as set forth in Section 14 of the Agreement and herein referred to as "Notice of Default") and of election to cause the Premises to be sold, which notice Trustee shall cause to be filed for record, and Beneficiary may also declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default. After the lapse of such time as may then be required by law following the recordation of said Notice of Default, and Notice of Sale having been given as then required by law, Trustee, without demand on Trustor, shall sell the Premises at the time and place fixed by it in said Notice of Sale, either as a whole or in separate parcels, and in such order as Beneficiary may determine, subject to any statutory right which Trustor may have to direct such order, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of the Premises by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to such purchaser its deed conveying the Premises so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee or Beneficiary may purchase at such sale. After deducting all costs, fees and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale, Trustee shall apply the proceeds of sale to payment of: all sums expended under the terms hereof, not then repaid, with accrued interest at ten percent (10%) per annum; all

other sums then secured hereby; and the remainder, if any, to the person or persons legally entitled thereto.

11. In case default be made in payment of any indebtedness secured hereby or in performance of any of Trustor's material agreements herein contained or under the Promissory Notes or Agreement or the occurrence of an Event of Default as defined in the Agreement, Beneficiary shall be entitled at any time without notice, in its sole discretion, either by their agents, attorneys, employees, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, to enter upon and take possession of the above Premises or any part thereof, and to do and perform any acts that Beneficiary may deem necessary or proper to conserve the value thereof, and to collect and receive all rents, issues and profits thereof, including those past due and unpaid as well as those accruing thereafter. Trustor further agrees that Beneficiary may also take possession of, and use, any and all personal property contained in the Premises and used by Trustor in the rental or leasing of the Premises or any part thereof, if any. Beneficiary may apply all such rents, issues and profits collected or received by it in the manner hereinabove specified in respect of proceeds of sale of the Premises, or any part or all of such moneys may be released by Beneficiary at its sole option. The expense (including receivers' fees, if any, and compensation to any agent appointed by Beneficiary, and reasonable counsel fees and costs and disbursements) incurred in taking possession and effecting such collection or attempting to take possession and effect collection, shall be deemed a portion of the expense of this trust to be paid by Trustor and secured hereby. Neither the entering upon and taking possession of the Premises nor the collection of such rents, issues and profits and the application or release thereof as aforesaid, shall cure or waive any default or Notice of Default hereunder or invalidate any act done pursuant to such Notice.

12. That all judgments, awards of damages and settlements hereafter made as a result of or in lieu of any condemnation or other proceedings for public use of, or for any damage to, the Premises or the improvements and any award for change of grade of streets thereon are hereby assigned and shall be paid to Beneficiary. Trustor agrees to execute such further assignments of any such award, judgment or settlement as Beneficiary may require, and to deliver to Beneficiary all proceeds of any such award, judgment or settlement which may be received by Trustor. Beneficiary shall apply any and all such sums in accordance with paragraph 28 of this Deed of Trust.

13. Without affecting the liability of Trustor or any other person (except any person expressly released in writing) for payment of any indebtedness secured hereby or for performance of any obligation contained herein, and without affecting the rights of Beneficiary with respect to any security not expressly released in writing, Beneficiary may, at any time and from time to time, either before or after the maturity of the Promissory Notes, and without notice or consent:

- a. Release any person liable for payment of all or any part of the indebtedness or for performance of any obligation;
- b. Make any agreement extending the time or otherwise

altering the terms of payment of all or any part of the indebtedness, or modifying or waiving any obligation, or subordinating, modifying or otherwise dealing with the lien or charge hereof;

c. Exercise or refrain from exercising or waive any right Beneficiary may have;

d. Accept additional security of any kind;

e. Release or otherwise deal with any property, real or personal, securing the indebtedness, including all or any part of the Premises.

14. At any time when an unrescinded Notice of Default of this Deed of Trust is not of record, on written request of the Trustor, partial reconveyances from the lien or charge of the Deed of Trust shall be granted by the Beneficiary (through the Trustee), subject to the following:

a. Trustor's request for reconveyance shall contain a certificate (hereafter referred to as the "Certificate") by a civil engineer licensed to practice in Nevada specifying in acres and fractions of acres the size of each parcel of the property requested to be reconveyed (hereafter referred to as the "Parcel" or "Parcels"); this Certificate shall be conclusive as to the precise number of acres and fractions of acres in computing the amount to be paid pursuant to Subsection (e) of this section.

b. Trustor shall, at Trustor's sole expense, satisfy all requirements of the laws of the State of \_\_\_\_\_, and local ordinances under it, arising in connection with the reconveyance.

c. No Parcel shall be reconveyed if, by reason of the reconveyance, the portion of the Premises remaining subject to this Deed of Trust would be left without legal access to a public street or road.

d. Any reconveyance under this Section shall be only of one or more whole lots or parcels as set forth in a recorded parcel or final subdivision map. The Trustor shall have the right to request that the Beneficiary (through the Trustee) release and reconvey only those whole lots or parcels set forth in a recorded parcel or final subdivision map.

e. Trustor shall pay the Beneficiary (through the Trustee) a sum to be applied toward the payment of the principal of the Promissory Note as specified in that certain Development Finance Agreement dated September 8, 1999, by and between Trustor and Trustee/ Beneficiary.

f. Trustor shall pay to the Beneficiary (through the Trustee) a sum to be applied to the interest accrued on the Promissory Note.

g. Trustor shall pay to the Trustee the costs of executing and recording the partial reconveyance.

15. That if the indebtedness secured hereby is now or hereafter further secured by chattel mortgages, security interests, deeds of trust, pledges, contracts of guaranty or other additional securities, Beneficiary may, at its option, exhaust any one or more of said securities as well as the security hereunder, either concurrently or independently and in such order as it may determine, and may apply the proceeds received upon the indebtedness secured hereby without affecting the status of, or waiving any right to exhaust all or any other security including the security hereunder and without waiving any breach or default of any right or power, whether exercised hereunder or contained herein, or in any such other security.

16. This Deed of Trust shall not be construed to create a security interest under the provisions of the Uniform Commercial Code, as same together with any amendments or supplements thereto may be in effect, with respect to any goods, equipment, appliances, bank accounts, account receivables, inventory or articles of personal property now attached to or used or hereafter to be attached to or used in connection with the Premises.

17. That acceptance by Beneficiary of any sum in payment, or part payment, of any indebtedness secured hereby, after the same is due or after the recording of a Notice of Default, shall not constitute a waiver of the right to require prompt payment, when due, of all other sums so secured, nor shall such acceptance cure or waive any remaining default or invalidate any sale held pursuant to such Notice for any such remaining default, or prejudice any of the rights of Beneficiary under this Deed of Trust.

18. That Beneficiary may, at any time Beneficiary may desire, appoint another Trustee in the place and stead of said Trustee or any successor in trust, and the title herein conveyed to said Trustee shall be vested in said successor, which appointment shall be in writing and shall be duly recorded in the recorder's office of the county in which the Premises is situated.

19. That the trusts herein created are irrevocable.

20. That default under the terms of any instrument evidencing any debt secured by an encumbrance senior or prior to this instrument shall constitute a default under this Deed of Trust.

21. That default in the terms of any other instrument securing the debt secured hereby shall constitute a default in this Deed of Trust.

22. That the invalidity of any one or more covenants, phrases, clauses, sentences or paragraphs of this Deed of Trust shall not affect the remaining portions of this Deed of Trust or any part thereof and this Deed of Trust shall be construed as if such invalid covenants, phrase, clauses, sentences or paragraphs, if any, had not been inserted herein.

23. Trustor agrees to pay Beneficiary's charge, to the maximum amount permitted by law, for any statement regarding the obligations secured by this Deed of Trust requested by Trustor or in his behalf.

24. If the Premises is income property, Trustor shall deliver to Beneficiary Trustor's signed copy of all leases, or executed counterparts thereof, now existing or hereafter made affecting all or any part of the Premises. Trustor shall not, without Beneficiary's written consent (which shall not be unreasonably withheld or delayed), permit an assignment of any lease or request or consent to the subordination of any lease of all or any part of the Premises to any lien subordinate to this Deed of Trust. If Trustor becomes aware that any tenant proposes to do, or is doing, any act or thing which may give rise to any right of set-off against rent, Trustor shall (i) take such steps as shall be reasonably calculated to prevent the accrual of any right to a set-off against rent, and (ii) take such steps as shall effectively discharge such set-off and as shall effectively assure that rents thereafter due shall continue to be payable without set-off or deduction. Upon Beneficiary's taking possession of the Premises by receiver or otherwise, Trustor shall be deemed to have assigned to Beneficiary all leases now existing or hereafter made of all or any part of the Premises and all security deposits made by tenants in connection with such leases of the Premises for so long as Beneficiary remains in possession; thereupon, Beneficiary shall have all of the rights and powers possessed by Trustor prior thereto and Beneficiary shall have the right to modify, extend or terminate such existing leases and to execute new leases, in Beneficiary's reasonable determination.

25. If Trustor shall voluntarily file a petition under the Federal Bankruptcy Act, as such Act may from time to time be amended, or under any similar to successor Federal statute relating to bankruptcy, insolvency, arrangements or reorganizations, or under any state bankruptcy or insolvency act, or file an answer in an involuntary proceeding admitting insolvency or inability to pay debts, or if Trustor shall fail to obtain a vacation or stay of involuntary proceedings brought for the reorganization, dissolution or liquidation of Trustor within sixty (60) days from the date when such proceedings are brought, or if Trustor shall be adjudged a bankrupt, or if a trustee or receiver shall be appointed for Trustor or Trustor's property, or if the Premises shall become subject to the jurisdiction of a Federal bankruptcy court or similar state court, or if Trustor shall make an assignment for the benefit of Trustor's creditors, or if there is an attachment, execution or other judicial seizure of any portion of Trustor's assets and such seizure is not discharged within thirty (30) days, then Beneficiary may, at Beneficiary's option, declare all of the sums secured by this Deed of Trust to be immediately due and payable without prior notice to Trustor, and Beneficiary may invoke any remedies permitted by this Deed of Trust. Any reasonable attorneys' fees and other reasonable expenses incurred by Beneficiary in connection with Trustor's bankruptcy or any of the other aforesaid events shall be additional indebtedness of Trustor secured by this Deed of Trust.

26. Should Trustor sell, convey, transfer or dispose of the Premises, or any part thereof, or any interest therein, or place any lien or encumbrance thereon subordinate to the lien created hereby, or agree to do so (whether voluntarily or by

operation of law), without the written consent of Beneficiary being first obtained, except as permitted in the Agreement, Beneficiary shall have the right, at its option, to declare all sums secured hereby forthwith due and payable. This option may be exercised at any time after the occurrence of such event and the acceptance of one or more installments from any person thereafter shall not constitute a waiver of Beneficiary's option. Consent to one such transaction shall not be deemed to be a waiver of the right to require such consent to future or successive transactions.

27. Notwithstanding the existence of any other security interest(s) in the Premises held by Beneficiary or by any other party, Beneficiary shall have the right to determine the order in which any or all of the Premises shall be subjected to the remedies provided herein. Beneficiary shall have the right to determine the order in which any or all portions of the indebtedness secured hereby are satisfied from the proceeds realized upon the exercise of the remedies provided herein. Trustor, any party who consents to this Deed of Trust and any party who now or hereafter acquires a security interest in the Premises and who has actual or constructive notice hereof hereby waives any and all rights to require the marshaling of assets in connection with the exercise of any of the remedies permitted by applicable law or provided herein.

28. Casualty:

a. Definitions. For purposes of this paragraph 27, the following terms and phrases shall have the meanings indicated:

i. "Restoration" means the restoration, repair, replacement or rebuilding of the Premises and/or the improvements, if any, to a value, condition and character equal to or greater than that immediately prior to the damage, destruction or "Taking," as defined below.

i. i. "Taking" means the taking of all or any part of the Premises and/or the improvements, if any, or any interest therein or right accruing thereto, as the result of the exercise of the right of condemnation or eminent domain, or change of grade effecting the Premises or the improvements, if any, or any part thereof. A conveyance in lieu of or in anticipation of the exercise of any such right of condemnation or eminent domain shall be considered a Taking.

b. Repair. In case of any damage to the Premises or any part thereof, if the reasonable cost of Restoration (and any temporary repairs and property protection pending commencement of the Restoration) exceeds Two Hundred Thousand Dollars (\$200,000.00), Trustor will promptly give written notice of such damage to Beneficiary, describing the nature and extent of such damage and setting forth the best estimate of the cost of Restoration (and such temporary repairs and property protection). In case of any damage to the Premises or any part thereof, Trustor at its expense shall promptly commence and complete the Restoration provided that the Net Casualty Insurance Proceeds (defined

below) are made available to Trustor. All insurance proceeds on account of any damage to the Premises shall be payable to, and deposited with, Beneficiary. Subject to the conditions set forth below, Beneficiary, at its sole option, (i) may apply such insurance proceeds upon the Promissory Note, as the Beneficiary may determine, (ii) may use such insurance proceeds, without reducing the principal balance of the Promissory Note, to accomplish the Restoration, (iii) may release such insurance proceeds, without reducing the principal balance of the Promissory Note to Trustor, or (iv) any such amount may be divided in any manner among any such application, use or release. No such application, use or release shall, however, cure or waive any default or Notice of Default under the Agreement or invalidate any act done pursuant to such Notice. Any unapplied, undisbursed insurance proceeds remaining with the Beneficiary shall inure to the benefit of and pass to the owner or purchaser of the Premises or any part of it at any foreclosure or trustee's sale under the Agreement.

c. Application. In the event that Trustor requests that the insurance proceeds be used to accomplish the Restoration, then any "Net Casualty Insurance Proceeds" (i.e., the casualty insurance proceeds remaining after reimbursement of the Beneficiary for any reasonable costs and expenses of the Beneficiary, including reasonable attorneys' fees, for collection thereof) received by the Beneficiary shall be applied to the cost of Restoration but only if each of the following conditions is satisfied: (A) no default or potential default exists hereunder or under the Promissory Note or Agreement or no Event of Default as defined in the Agreement exists; (B) the Net Casualty Insurance Proceeds, together with such additional funds (the "**Required Equity Funds**") as Trustor shall have deposited with the Beneficiary (and which the Trustor shall be required to deposit with the Beneficiary within one hundred twenty (120) days after the occurrence of such casualty), are sufficient, in the reasonable judgment of the Beneficiary, to pay all costs of (1) the Restoration and (2) interest under the Promissory Note and any other expenses related to the Premises; (C) the anticipated date for completion of Restoration shall, in the reasonable judgment of the Beneficiary, be prior to the date which is six (6) months prior to the then-applicable maturity date of the Promissory Note; and (D) each of the insurance companies from which the Net Casualty Insurance Proceeds are received shall have waived in writing all right of subrogation for the benefit of Trustor and the Beneficiary.

29. Condemnation. In the event of a partial Taking such that the Premises is subject to Restoration, all proceeds and awards shall be paid to Beneficiary to accomplish the Restoration in the event that Trustor requests and satisfies the conditions for the same; and such amount shall be disbursed as set forth in subparagraph 27c (as the same applies to the application of the Net Casualty Insurance Proceeds, with each reference therein to insurance proceeds deemed to include a reference to condemnation proceeds and awards). In the event of a total Taking or in the event Trustor does not elect to apply such award or proceeds to the Restoration, such amount shall be applied as follows, in the order of priority indicated:



- a. To reimburse Beneficiary for all reasonable costs and expenses, including reasonable attorneys' fees, incurred in connection with collecting such proceeds;
- b. To the payment of the accrued and unpaid interest on the Promissory Note;
- c. To the payment of the unpaid principal of the Promissory Note; and
- d. Any remaining balance, if any, shall be paid to the Trustor.

30. Actions By Trustee or Beneficiary to Preserve Trust Estate. If Trustor fails to make any payment or to do any act as and in the manner provided in this Deed of Trust or the Promissory Note or Agreement, Beneficiary and/or Trustee, each in its own discretion, without obligation so to do, without releasing Trustor from any obligation, and without notice to or demand upon Trustor, may make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof. In connection therewith (without limiting their general powers, whether conferred herein, in the Promissory Note, Agreement or by law), Beneficiary and Trustee shall have and are hereby given the right, but not the obligation (a) to enter upon and take possession of the Premises; (b) to make additions, alterations, repairs and improvements to the Premises which they or either of them may consider necessary or proper to keep the Premises in good condition and repair; (c) to appear and participate in any action or proceeding affecting or which may affect the security hereof or the rights or powers of Beneficiary or Trustee; (d) to pay, purchase, contest or compromise any encumbrance, claim, charge, lien or debt which in the judgment of either may affect or appears to affect the security of this Deed of Trust or be prior or superior hereto; and (e) in exercising such powers, to pay necessary expenses, including attorneys' fees and costs or other necessary or desirable consultants. Trustor shall, immediately upon demand therefor by Beneficiary and Trustee or either of them, pay to Beneficiary and Trustee an amount equal to all respective costs and expenses incurred by such party in connection with the exercise of the foregoing rights, including, without limitation, costs of evidence of title, court costs, appraisals, surveys and receiver's, trustee's and attorneys' fees.

31. Preservation of Trust Estate; Further Assurances. Trustor shall do any and all acts which, from the character or use of the Premises, may be reasonably necessary to protect and preserve the lien, the priority of the lien and the security of Beneficiary granted herein, the specific enumerations herein not excluding the general. Without limiting the foregoing, Trustor agrees to execute such documents and take such action as Beneficiary shall determine to be necessary or desirable to further evidence, perfect or continue the perfection and/or the priority of the lien and security interest granted by Trustor herein.

32. Title. Trustor has good and marketable title to the Premises, subject to no lien, charge or encumbrance. This Deed of Trust is and will remain a valid and enforceable lien on the Premises, such lien being first and primary and unsubordinated to

any other lien or claim. Trustor will preserve its interest in and title to the Premises and will forever warrant and defend the same to the Trustee and Beneficiary and will forever warrant and defend the validity and priority of the lien hereof against the claims of all persons and parties whomsoever.

33. Governing Law. The internal law of the State of Nevada shall govern and be used to construe this Deed of Trust and the indebtedness and obligations secured hereby.

34. Notices. Any notice or communication by the Trustor or Beneficiary to any other party hereto shall be given in the manner and to parties and addresses set forth in the Agreement.

35. Trustor Waiver of Rights. Trustor waives to the extent permitted by law (i) the benefit of all laws now existing or that may hereafter be enacted providing for any appraisalment before sale of any portion of the Premises, and (ii) all rights of redemption, valuation, appraisalment, stay of execution, notice of election to mature or declare due the whole of the secured indebtedness and marshaling in the event of foreclosure of the liens hereby created.

UPON WRITTEN REQUEST OF BENEFICIARY stating that all sums secured hereby have been paid, and upon surrender of this Deed of Trust and the Promissory Note to Trustee for cancellation and retention and upon payment by Trustor of its fees, Trustee shall reconvey, without warranty, the estate in the Premises then held by Trustee. The grantee in such reconveyance may be designated and described as the "person or persons legally entitled thereto," or by other appropriate terms.

This Deed of Trust shall inure to and bind the heirs, legatees, devisees, administrators, executors, successors and assigns of the parties hereto, and shall be so construed that wherever applicable with reference to any of the parties hereto, the use of the singular number shall include the plural number, the use of the plural number shall include the singular number, the use of the masculine gender shall include the feminine gender, and shall likewise be so construed as applicable to and including a corporation or corporations that may be a party or parties hereto. The term Beneficiary shall mean the owner and holder of the Promissory Notes secured hereby, whether or not named as Beneficiary herein.

TRUSTOR hereby requests that a copy of any Notice of Default and of any Notice of Sale hereunder be mailed to him at his address hereinbefore set forth.

Signature of Trustor:

COMPANY

A Corporation

By: \_\_\_\_\_  
President

A L.L.C.  
Limited Liability Company

By: \_\_\_\_\_  
, LLC,

A RESORT DEVELOPMENT, L.L.C.  
Limited Liability Company

By: \_\_\_\_\_

A VALLEY RESORT, INC.  
Corporation

By:

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: President

Exhibit "A"  
LEGAL DESCRIPTION

EXHIBIT B

PROMISSORY NOTE

FOR VALUE RECEIVED, in the form of deferred Project Impact Reimbursement Fees to the Developer (as defined in the Indenture, and herein referred to as the "Promisor"), the undersigned promises to pay to \_\_\_\_\_ Community Corporation (herein called "Company"), a non-profit, public benefit corporation at Laughlin, Nevada, the sum of Twelve Million Seven Hundred Fifty Thousand Dollars (\$12,750,000), with interest on the outstanding principal as provided herein below. Payment of principal and interest shall be made to the Company or its assignee or designee in accordance with the following schedule:

<u>Payment</u>		<u>Interest</u>		<u>Interest</u>	<u>Principal</u>
<u>Due</u>	<u>Principal</u>	<u>Rate</u>	<u>Interest</u>	<u>Payment</u>	<u>Balance</u>

Payments due under this note shall be received by the Company or its assignee or designee at least ten days prior to the payment due date shown above.

Promisor may not prepay this note prior to \_\_\_\_\_. On or after August 2004, Promisor may prepay this note, in whole or in part, on any February 15 or August 15 (such prepayment to be received by the Company or its assignee or designee no later than 10 days prior to such prepayment date), commencing \_\_\_\_\_, provided, that, Promisor shall notify the

**UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF INDIAN AFFAIRS  
WESTERN REGIONAL OFFICE**

**APPROVAL  
OF DEED OF TRUST AND ASSIGNMENTS OF RENTS**

The within Deed of Trust and Assignments of Rents between \_\_\_\_\_, a \_\_\_\_\_ Corporation, \_\_\_\_\_, LLC, and \_\_\_\_\_ a Limited Liability Company, , by the President or Manager of all of them, **Trustor**, and the \_\_\_\_\_ Corporation, a nonprofit corporation, organized and existing under the laws of the State of \_\_\_\_\_, **Trustee and Beneficiary**, is hereby approved.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Regional Director  
Western Regional Office  
Bureau of Indian Affairs

Pursuant to the authority delegated by 209 DM 8, 230 DM 1, 3 IAM 4, 10 BIAM 11, as amended, Phoenix Area Release No. 97-1, and any further delegations needed to effectuate The reorganization embodied in DM Release dated 4/21/2003

## Attachment 16B

### Sample 10 Day Show Cause Notice

**SAMPLE**

**UNITED STATES DEPARTMENT OF THE INTERIOR  
BUREAU OF INDIAN AFFAIRS**

**UNITED STATES DEPARTMENT OF THE INTERIOR  
BUREAU OF INDIAN AFFAIRS**

In Reply Refer to:  
Real Estate Services  
(406) 555-1234

December 8, 2003

CERTIFIED MAIL RECEIPT NUMBER 7000 1670 0000 4613

Mr. Brown  
123 Ace Street  
Hometown, WY 12345

Dear Mr. Brown:

This is in reference to your lease on the following allotment:

<u>Allotment No.</u>	<u>Contract No.</u>	<u>Rental Amount Due</u>
0123-A	O-12335	\$10,000.00

In accordance with the Lease Contract and Code of Federal Regulations 162.251, **you are hereby informed that you have ten (10) business days from your receipt of this letter to show cause as to why the above lease(s) should not be cancelled.** No extensions of time will be granted. Be advised that penalties will be assessed for late payments in accordance with the terms of the lease contract(s). A copy of this letter is being forwarded to you by regular mail to insure that you have received it.

You may direct any questions concerning this correspondence to our Realty Estate Services Office at (406) 555-1234.

Sincerely,

Agency Superintendent



# Attachment 17B

## Sample Cancellation Letter

**SAMPLE**

**UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF INDIAN AFFAIRS  
Crow Agency, Montana 59022**

IN REPLY REFER TO:  
Real Estate Services – T&M  
Code 310

February 13, 2004

CERTIFIED MAIL – RETURN RECEIPT REQUESTED – NO. 7000 1670 0000 4613 4130

Name  
P O Box 666  
Lodge Grass, MT 59031

Re: Lease Contract # 0-12345

Dear Mr. Smith:

On October 1, 2003 you were given ten (10) days from the receipt of the letter to pay the past due rental, due on October 1, 2003 and provide proof of payment , or show cause why the above listed lease contract should not be cancelled.

In accordance with the Code of Regulations, Title 25, 162 Part 2, you are notified that lease Contract Number 12345 is hereby CANCELED for non-payment of the lease rental of the contract. Cancellation of the subject lease does not relieve you of your obligations to make full payment of the lease rentals due.

The decision may be appealed to the:

Regional Director, Rocky Mountain Regional Office  
316 North 26<sup>th</sup>, Street  
Billings, MT 59101

In accordance with the regulations in Title 25, Code of Federal Regulation , Part 2 (copy enclosed), your Notice of Appeal must be filed in this office within 30 days of the date you receive this decision. The date of filing your Notice of Appeal is the date it is postmarked or the date it is personally delivered to this office. Your Notice of Appeal must include your name, address, and telephone number. It should clearly identify the decision being appealed. If possible, attach a copy of the decision. The Notice of Appeal must list names and addresses of the interested parties known to you and certify that you have sent then copies of the notice. You must also send a copy of your notice of appeal to the:

Regional Director, Rocky Mountain Regional Office  
316 North 26<sup>th</sup>, Street  
Billings, MT 59101

You must also file a "Statement of Reasons." This statement may be included in or filed with the Notice of Appeal. If it is not filed at the time of the Notice of Appeal, it must be

filed within 30 days after the Notice of Appeal was filed. You may request assistance from this office with the preparation of the appeal.

If no appeal is timely filed, this decision will become final for the Department of the Interior at the expiration of the appeal period. No extension of time may be granted for the filing a Notice of Appeal.

If you have any questions, please contact \_\_\_\_\_, Realty Specialist at 406-555-1212 or \_\_\_\_\_ Realty Officer at 405-555-1313.

Sincerely,

Superintendent

Enclosures

# Attachment 18B

## Sample Revocable Use Permit

**SAMPLE**

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF INDIAN AFFAIRS  
Cherokee Indian Agency  
Cherokee, North Carolina

Permit No. P-000-04/05

REVOCABLE PERMIT

By authority of the Department of the Interior, the Superintendent in charge of the Cherokee Agency, \_\_\_\_\_ whose address is P.O. Box 455, Cherokee, North Carolina, 28719, and P.O. Box 000, Cherokee, North Carolina, 28719, respectively, hereinafter called the Permittor, hereby grants permission to \_\_\_\_\_ whose address is P.O. Box 000, Cherokee, North Carolina, 28719, hereinafter called the Permittee, to enter upon and occupy the following described lands on the Cherokee Indian Reservation, Swain County, North Carolina:

LEGAL DESCRIPTION OF THE PERMITTED AREA OR SQUARE FOOTAGE.

This permit is for a term of One (1) year, with an option to renew for an additional term of one (1) year, and shall take effect and begin on the date of approval by Tribal Business Committee, and shall expire on June 30, 200\_.

The Permittee, in consideration of the foregoing, shall:

1. Pay Permittor rental in the amount of \$\_\_\_\_\_ in twelve (12) monthly payments of \$\_\_\_\_\_ due on or before the 15t day of each month, with first such payment due and payable within ten (10) days following approval hereof. (If rental is ten (10) days late, then a penalty of \$000.00 shall be due with said payment.) *(This is optional; both have to agree to this.)*
2. Permittee shall pay the Tribal Permit Tax in the amount of \$\_\_\_\_\_ in twelve. (12) monthly payments of \$\_\_\_\_\_ with the first such payment due and payable within ten (10) days-following approval hereof.

In consideration of this permission, the Permittee agrees to use the lands for the following purposes, and upon the following conditions, to-wit:

1. The permitted area shall be used and operated as a Business;

If the Permittee uses the permitted premises for any other purposes not set forth above, such use shall constitute grounds for cancellation of this permit.

SPECIAL PROVISIONS (If Permittor wishes this to be in, need to insert.)

1. Permittee shall share in.. electric bill with other tenant and is also responsible for their other utilities on said building.
2. Permittee shall be responsible for the exterior maintenance of the building. 3. Permittee shall mail the Rental Checks to the Permittor.
4. If Permittee is ten (10) days late with Rental Payments, then a charge of \$\_\_\_\_\_ shall be paid at that time.

At all times during the term of this permit, the Permittee shall maintain and carry a general insurance policy in the amount, not less than ONE MILLION DOLLARS (\$1,000,000.00) for bodily injury or property damage or both combined. Permittee shall at all times, during the term of this permit, carry fire insurance with extended coverage endorsement, and vandalism, jointly in the names of the Permittor and Permittee, and United States, covering the full insurable value of all improvements on the Premises. Copy of said policy shall be furnished the Superintendent of the Cherokee Indian Agency. Neither the Permittor, Eastern Band of Cherokee Indians 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 Permittee or of any other person whatsoever, caused by any use of the permitted premises, or by any default in any structure erected thereon, or arising from any accident, fire or casualty on said premises or from any other cause whatsoever, and Permittee, as a material part of the condition of this permit, hereby waives on Permittee's behalf all claims against the Permittor, Eastern Band of Cherokee Indians and/or the United States Government and agrees to hold the Eastern Band of Cherokee Indians and/or the United States Government free and harmless from liability for all claims for loss, damaged, or injury arising from the use of the premises by Permittee, together with all costs and expenses in connection therewith.

It is understood and agreed that this instrument is not a lease and is not to be taken or construed as granting any leasehold interest or right in or to the land described herein, but is merely a temporary permit, terminable and revocable for cause in the discretion of the Permittor at any time, and in any event not to extend beyond \_\_\_\_\_, 200 .

Permittee shall comply with provisions prescribed by the Secretary in the Code of Federal Regulations, Title 25 - Indians, Part 140 entitled "Licensed Indian Traders."

It is understood and agreed by and between the parties hereto that any and all improvements placed upon the premises not stipulated in this permit are to remain thereon at the expiration of the permit and become the property of the Permittor, unless otherwise stipulated and agreed upon by Permittor and Permittee.

The Permittee shall commit no waste on the premises, and they shall not permit any violation of law thereon. It is understood and agreed that upon termination of this permit, whether by normal expiration or otherwise, the Permittee shall leave the permitted premises in a clean and sanitary condition. The Permittee shall keep the premises clean and attractive during the term of this permit.

The Permittee agrees that they will not use, permit, or permit to be used any part of the premises for the manufacture, sale, gift, storage, or drinking of intoxicating liquors or beverages, and that they will not allow gambling, or any illegal practice whatever on or upon said premises .

It is also understood and agreed that in the event this permit is cancelled prior to its expiration through failure on the part of the Permittee, the advance payments made shall become the property of the Permitter.

This permit shall terminate upon the breach of any of the conditions herein, or at the discretion of the Commissioner of Indian Affairs.

PERMITTOR: \_\_\_\_\_

PERMITTEE: \_\_\_\_\_

Address: \_\_\_\_\_

Address: \_\_\_\_\_

NOTARY PUBLIC: \_\_\_\_\_

NOTARY PUBLIC: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

TRIBAL BUSINESS COMMITTEE APPROVAL DATE: \_\_\_\_\_

PRINCIPAL CHIEF

VICE CHIEF

\_\_\_\_\_

\_\_\_\_\_

CHAIRMAN TRIBAL COUNCIL

VICE CHAIRMAN TRIBAL COUNCIL

\_\_\_\_\_

\_\_\_\_\_

EXECUTIVE ADVISOR

EX-OFFICIO SECRETARY

\_\_\_\_\_

\_\_\_\_\_

PURSUANT TO AUTHORITY DELEGATED BY 209 DM 8, SECRETARY'S ORDER NOS. 3150 AND 3177; AND AMENDMENT NO.3, DATED DECEMBER 16, 1996 AND 10 BIAM BULLENTINS 13,9409,9602 AND 9801; AND ADDENDUM 10-3 TO 10 BIAM, DATED OCTOBER 26, 1992 - THIS REVOCABLE PERMIT NO. P-000 0 /0 IS HEREBY APPROVED:

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

SUPERINTENDENT, \_\_\_\_\_ AGENCY