

NOTE: THIS DOCUMENT IS A SAMPLE OF THE LEASE FORM USED ON THE LONE BUTTE INDUSTRIAL PARK. DEPENDING ON THE FACTS OF A PARTICULAR SITUATION, THE DOCUMENT MAY CHANGE. ALSO, THIS SAMPLE LEASE WAS LAST UPDATED ON *AUGUST 7, 2012*; THERE MAY HAVE BEEN CHANGES TO THE FORM SINCE THEN.

SUBLEASE

between

LONE BUTTE DEVELOPMENT CORPORATION,

a corporation chartered by the Gila River Indian Community

(“Lessor”)

and

_____ ,

a _____

(“Lessee”)

TABLE OF CONTENTS

1. DEFINITIONS.....4

2. LEASED PREMISES5

3. TERM.....5

4. PURPOSE.....6

5. UNLAWFUL USES.....6

6. RENTAL AND OTHER PAYMENTS.....6

7. PLANS AND DESIGNS.....10

8. IMPROVEMENTS.....10

9. CONSTRUCTION, MAINTENANCE, REPAIR, ALTERATION.....11

10. COMMUNITY SERVICES.....12

11. ENVIRONMENTAL COMPLIANCE.....12

12. BONDS.....15

13. SUBLEASE, ASSIGNMENT, TRANSFER.....15

15. ENCUMBRANCES.....17

16. NOTICE TO ENCUMBRANCER.....18

17. LIENS, TAXES, ASSESSMENTS, UTILITIES CHARGES.....18

18. LESSOR PAYING CLAIMS.....19

19. PUBLIC LIABILITY INSURANCE.....19

20. FIRE AND DAMAGE INSURANCE.....20

21. EMINENT DOMAIN.....21

22. BINDING ARBITRATION.....22

23. DEFAULT AND TERMINATION.....24

24. SURRENDER OF LEASED PREMISES.....27

25. NO PARTNERSHIP; OPERATION OF BUSINESS.....	28
26. TERMINATION OF FEDERAL TRUST.....	28
27. OBLIGATION OF LESSEE.....	28
28. ANTIQUITIES.....	28
29. MINERALS.....	28
30. NOTICES.....	29
31. RESERVATION LAWS AND ORDINANCES.....	30
32. EMPLOYMENT.....	30
33. INSPECTIONS.....	30
34. DELIVERY OF PREMISES.....	30
35. LEASE BINDING.....	30
36. INTEREST OF MEMBER OF CONGRESS.....	30
37. SOCIAL SECURITY, ETC.....	31
38. VALIDITY.....	31
39. ATTORNEYS' FEES.....	31
40. DEVELOPMENT GUIDELINES.....	31
41. CONDITION OF LEASED PREMISES.....	31

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
PIMA AGENCY

Lease No. _____

THIS SUBLEASE is entered into as of the Commencement Date (as defined in Article 3) between LONE BUTTE DEVELOPMENT CORPORATION, a corporation chartered by the Gila River Indian Community (“Lessor”), and _____, a _____ (“Lessee”).

WITNESSETH:

WHEREAS, Lessor is the owner of a leasehold estate under that certain Lease No. B-GR-61, dated November 28, 1966, and approved by the Superintendent, Pima Agency, on December 1, 1966, as amended (the “Master Lease”). The Master Lease is on record at Pima Agency, Sacaton, Arizona and is made a part hereof by this reference. The premises sublet hereunder are a part of Lessor’s leasehold estate under the Master Lease.

WHEREAS, Lessor desires to sublease to Lessee and Lessee desires to sublease from Lessor the premises hereinafter described on the following terms and conditions.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein, Lessor and Lessee agree as follows:

1. DEFINITIONS

Unless the context clearly requires otherwise, the following terms used herein shall have the following meanings.

A. “Approved Encumbrance” means an encumbrance approved in the manner provided herein.

B. “Community” means the Gila River Indian Community.

C. “Encumbrancer” means the owner and holder of an Approved Encumbrance.

D. “Environmental Laws” means all applicable environmental laws, statutes, ordinances, rules, regulations, permits, and orders, including, but not limited to the Solid Waste Disposal Act, as amended, the Federal Water Pollution Control Act, as amended, the Safe Drinking Water Act, as amended, the Clean Air Act, as amended, the Comprehensive

Environmental Response, Compensation and Liability Act, as amended, the Toxic Substances Control Act, as amended, the Occupational Safety and Health Act, as amended, the Hazardous Materials Transportation Act, as amended, the Emergency Planning and Community Right-to-Know Act, as amended, the Federal Resource Conservation and Recovery Act, as amended, and any similar laws, statutes, ordinances, rules, regulations, permits, and orders of the State of Arizona, if applicable, or of the Gila River Indian Community.

E. "Hazardous Material" shall mean any substance, chemical, compound, product, solid, gas, liquid, waste, byproduct, pollutant, contaminant or material which is hazardous or toxic, including without limitation, (a) regulated asbestos containing material, polychlorinated biphenyls and petroleum (including crude oil or any fraction thereof) and (b) any material classified or regulated as "hazardous," "toxic" or "special" pursuant to the Environmental Laws.

F. "Industrial Park" means Lone Butte Industrial Park, which consists of approximately 820 acres and is partially depicted on the plat recorded as Pima-Chandler Industrial Park in Book 124 of Maps, page 23, official records of Maricopa County, Arizona.

G. "Lease" means this sublease.

H. "Master Lease" means Business Lease No. B-GR-61, as amended, described above; "Master Lessor" means the lessor in the Master Lease; "Master Lessee" means the lessee in the Master Lease.

I. "Removable Personal Property" as used herein shall not include property which normally would be attached or affixed to the buildings, improvements, or land in such a manner that it would become a part of the realty, regardless of whether such property is in fact so placed in or on or affixed or attached to the buildings, improvements, or land.

J. "Secretary" means the Secretary of the Interior of the United States of America or his authorized representative, delegate or successor.

K. "Superintendent" means the Superintendent, Pima Agency, or his authorized representative, delegate or successor.

2. LEASED PREMISES

For and in consideration of the rents, covenants and agreements hereinafter set out, Lessor hereby leases to Lessee and Lessee hereby leases from Lessor that certain real property consisting of approximately ____ acres of Tract __, Lone Butte Industrial Park, as more particularly described on Schedule 2 hereto, together with any existing improvements thereon (the "Existing Improvements"), and subject to all existing easements, encroachments and rights-of-way (the "Leased Premises").

3. TERM

A. **Initial Term.** The initial term of this Lease (the “Initial Term”) shall be for a period of _____ years commencing on the date this Lease is approved by the Secretary (the “Commencement Date”) and ending _____ years thereafter (the “Expiration Date”), unless sooner terminated pursuant to this Lease.

B. **Additional Term.** If Lessee is not then and has never been in default of any term or condition of this Lease, this Lease may be extended at the option of Lessee for an additional term of _____ years (the “Additional Term”) commencing at the expiration of the Initial Term upon the terms and conditions of this Lease then in effect. Lessee shall provide written notice of its intent to exercise the option not more than nine months and not less than six months prior to the expiration of the Initial Term. Notwithstanding anything herein to the contrary, the Initial Term and the Additional Term shall not extend beyond the term as set forth in the Master Lease (November 30, 2065). The Initial Term and the Additional Term shall collectively be referred to as the “Term.”

4. PURPOSE

Lessee shall utilize the Leased Premises only for _____. No change in the proposed use of the Leased Premises shall be undertaken without the prior written approval of Lessor, Master Lessor and, if necessary, Secretary. Lessee shall comply with all laws, ordinances and regulations applicable to the Leased Premises or Lessee’s use thereof, including but not limited to the Environmental Laws and the Community’s zoning ordinance. No Hazardous Material, waste or combustible material shall be stored or used on the Leased Premises without the prior written consent of Lessor and Master Lessor, except as set forth on Schedule 4. Lessee shall not change the operations on the Leased Premises if such change would increase the maximum amounts of Hazardous Material, waste or combustible material set forth on Schedule 4 without prior approval from Lessor and Master Lessor.

5. UNLAWFUL USES

A. **Unlawful Uses.** Lessee agrees that it will not use or cause to be used any part of the Leased Premises for any unlawful conduct or purpose.

B. **Prohibited Persons and Transactions.** Lessee represents and warrants to Lessor that Lessee is currently in compliance with and shall at all times during the Term remain in compliance with the regulations of the Office of Foreign Assets Control, Department of the Treasury (including those named on OFAC’s Specially Designated Nationals List) and any statute, executive order (including the Executive Order on Terrorist Financing dated September 23, 2001), or other governmental action relating thereto.

6. RENTAL AND OTHER PAYMENTS

A. **Rent.** Lessee covenants and agrees to pay to Lessor, without deduction or offset, in lawful money of the United States of America, the following sums (the “Rent”):

(1) **Base Rent.** The base annual rent (the “Base Rent”) shall be \$_____ per year, payable in advance in equal monthly installments of \$_____, beginning on the Commencement Date, subject to adjustment as set forth in this Lease.

(2) **Adjusted Rent.** The then-current Rent shall be reviewed and adjusted annually on each anniversary of the Commencement Date (the “Review Date”) during the Term of this Lease based on the change in the Consumer Price Index for All Urban Consumers (CPI-U) for the United States City Average for All Items, 1982-84=100 (the “Index”) as published by the U.S. Department of Labor’s Bureau of Labor Statistics or the most closely equivalent successor thereto in the event the Index is terminated or changed. The “Base Index” for the adjustment shall be the Index for the month that is two months preceding the Commencement Date. On each Review Date, the Base Rent shall be increased by the percentage of change that the Index published for the month that is two months prior to the then current Review Date has increased when compared to the Base Index. The formula for adjustment shall be:

$$\text{Adjusted Rent} = \frac{\$ \text{Base Rent} \times \text{Index two months prior to Review Date}}{\text{Base Index}}$$

Should the Index be replaced by a new base period, the Base Index shall be adjusted to the new base period and the adjustment formula will remain the same. In no event shall the Rent for any one-year period be less than the rental for the preceding one-year period.

[IF LEASE TERM (INCLUDING ADDITIONAL TERM) IS FROM 16 TO 30 YEARS, THIS PROVISION ADJUSTS RENT BASED ON REAPPRAISAL AFTER 15 YEARS]

(3) **Adjustment to Rent After 15 Years.** The following process shall be used to determine the Base Rent for the period following the initial 15 years of this Lease (the “Reappraised Rent Period”). During the Reappraised Rent Period, Lessee agrees to pay to Lessor as Base Rent during the Reappraised Rent Period such sum per month as may be mutually agreed upon by the parties, based upon the fair rental value of the Leased Premises, without consideration of any improvements built by Lessee. The parties shall meet at least four months prior to the expiration of the initial 15-year period, for the purpose of seeking agreement upon the applicable Base Rent for the Reappraised Rent Period. If the parties are unable to mutually agree upon the fair rental value, each party, within 15 days after request by any party, shall appoint one MAI-qualified appraiser to represent it. If the two appraisers so appointed are unable to agree between themselves upon the fair rental value within 15 days after being appointed, they in turn shall appoint a third MAI-qualified appraiser. The mutual agreement of two of the three appraisers shall determine the amount of the Base Rent for the Reappraised Rent Period. If two of the three appraisers cannot agree on the amount of the Base Rent, the Base Rent shall be the average of the Base Rent as determined by each of the three appraisers. If either Lessor or Lessee fails to appoint a MAI-qualified appraiser within 15 days after being requested in writing to do so by the other party, the sole appraiser shall propose a list of three MAI appraisers with substantial experience in appraising commercial properties, none of whom shall have any affiliation or regular business relationship with either party, and send such list to the party who did not appoint him. If a third appraiser is required but the original two appraisers fail to agree upon a third appraiser, the two appraisers shall each propose a list of three MAI

appraisers with substantial experience in appraising commercial properties and send such list to the other party. In either case, the party receiving such proposed list of appraisers shall have five business days from the receipt of the list to strike two names from the list proposed by the other party's appraiser and to notify the other party of the names stricken. If a party fails to timely strike its allowable number of names, then that party will be deemed to have only stricken the number of names it has timely stricken. If more than two names are stricken or if a party fails to timely strike any names, then that party will be deemed to have not stricken any names. If, after striking such names, only one unstricken name appears on the list(s), such unstricken appraiser shall be the additional appraiser. If more than one unstricken name appears on the list(s), the previously appointed appraiser(s) shall randomly select the additional appraiser from such unstricken appraisers. Except for the sum of Base Rent, all other terms and provisions of this Lease shall apply during the Reappraised Rent Period. Notwithstanding anything in this Lease to the contrary, the Base Rent for the Reappraised Rent Period shall not be less than the Rent for the immediately preceding year. During the Reappraised Rent Period, the then current Rent shall be reviewed and adjusted every year using the procedures set forth in Article 6.A.(2), except that the Base Rent shall be the sum arrived at in accordance with this Article 6.A.(3) and the Base Index shall be the index for the month that is two months prior to the commencement of the Reappraised Rent Period.

[IF LEASE TERM (INCLUDING ADDITIONAL TERM) EXCEEDS 30 YEARS, THIS PROVISION ADJUSTS RENT BASED ON REAPPRAISAL EVERY 15 YEARS]

(3) **Adjustments to Rent Every 15 Years.** The following process shall be used to determine the Base Rent for each succeeding 15-year period following the initial 15 years of this Lease. During the second 15-year period and each succeeding 15-year period of the Term, Lessee agrees to pay to Lessor as Base Rent during such 15-year periods such sum per month as may be mutually agreed upon by the parties, based upon the fair rental value of the Leased Premises, without consideration of any improvements built by Lessee. The parties shall meet at least four months prior to the expiration of the initial 15-year period, and each 15 years thereafter during the Term, for the purpose of seeking agreement upon the applicable Base Rent for the upcoming 15-year period. If the parties are unable to mutually agree upon a sum, each party, within 15 days after request by any party, shall appoint one MAI-qualified appraiser to represent it. If the two appraisers so appointed are unable to agree between themselves upon a sum within 15 days after being appointed, they in turn shall appoint a third MAI-qualified appraiser. The mutual agreement of two of the three appraisers shall determine the amount of the Base Rent for the 15-year period. If two of the three appraisers cannot agree on the amount of the Base Rent, the Base Rent shall be the average of the Base Rent as determined by each of the three appraisers. If either Lessor or Lessee fails to appoint a MAI-qualified appraiser within 15 days after being requested in writing to do so by the other party, the sole appraiser shall propose a list of three MAI appraisers with substantial experience in appraising commercial properties and send such list to the other party. If a third appraiser is required but the original two appraisers fail to agree upon a third appraiser, the two appraisers shall each propose a list of three MAI appraisers with substantial experience in appraising commercial properties and send such list to the other party. In either case, the party receiving such proposed list of appraisers shall have five business days from the receipt of the list to strike two names from the list proposed by the other party's appraiser and to notify the other party of the names stricken. If a party fails to

timely strike its allowable number of names, then that party will be deemed to have only stricken the number of names it has timely stricken. If more than two names are stricken or if a party fails to timely strike any names, then that party will be deemed to have not stricken any names. If, after striking such names, only one unstricken name appears on the list(s), such unstricken appraiser shall be the additional appraiser. If more than one unstricken name appears on the list(s), the previously appointed appraiser(s) shall randomly select the additional appraiser from such unstricken appraisers. Except for the sum of Base Rent, all other terms and provisions of this Lease shall apply during each succeeding 15-year period of this Lease. Notwithstanding anything in this Lease to the contrary, the Base Rent for any 15-year period shall not be less than the Rent for the immediately preceding year. During each succeeding 15-year period, the then current Rent shall be reviewed and adjusted every year using the procedures set forth in Article 6.A.(2), except that the Base Rent shall be the sum arrived at in accordance with this Article 6.A.(3) and the Base Index shall be the index for the month that is two months prior to the commencement of that 15-year period.

B. Security Deposit. Within five days after the Commencement Date, Lessee shall pay to Lessor the sum of \$_____ as a security deposit (the "Security Deposit"). If the Security Deposit is not timely paid, this Lease may be terminated at Lessor's option. Upon the expiration of the Term, the Security Deposit, without interest, shall be refunded to Lessee if Lessee is not in default of any term or condition of this Lease, has paid all Rent and other sums due under this Lease and has conducted a clean up of the Leased Premises satisfactory to Lessor.

C. Road Maintenance Fee. During the Term, Lessee shall pay to Lessor the sum of \$_____ per month as a road maintenance fee (the "Road Maintenance Fee"), which shall be paid monthly in advance beginning as of the Commencement Date. The Road Maintenance Fee shall be adjusted throughout the Term in accordance with Article 6.A.(2), and may be otherwise adjusted as agreed to by Lessor and Lessee.

D. Security Service. Lessor shall provide security patrol services on the Leased Premises 24 hours a day to periodically inspect the exterior of the improvements on the Leased Premises. Beginning as of the Commencement Date, Lessee shall pay Lessor \$_____ per month in advance on the first day of each month for such security services (the "Security Payment"). The Security Payment shall be adjusted throughout the Term in accordance with Article 6.A.(2), and may be otherwise adjusted as agreed to by Lessor and Lessee. Neither Master Lessor nor Lessor shall be responsible for, and Lessee hereby waives, any claims arising out of the alleged failure to provide adequate security services, except for claims against Lessor arising out of its willful misconduct. Lessor may, upon 30 days written notice to Lessee, discontinue the security patrol services contemplated by this Article 6.D., whereupon Lessee shall be relieved of further payments pursuant to this Article 6.D.

E. Payment. The Rent, the Road Maintenance Fee and the Security Payment shall be paid in advance and are due on the first business day of each month. Lessee shall pay the Rent, the Road Maintenance Fee, the Security Payment and all other charges under this Lease, if any, to Lessor at the address set forth in Article 30. Notwithstanding anything in this Lease to the contrary, all payments due to Lessor under this Lease shall be considered "rent" for purposes of a landlord's lien.

F. **Delinquencies.** If the Rent, the Road Maintenance Fee, the Security Payment or other charges under this Lease are not paid when due, all such amounts shall bear interest at 18% per annum from the due date until the date paid; provided that this provision shall not be construed to relieve Lessee from any default in making any Rent or other payment at the times and in the manner herein specified. The Rent and other payments under this Lease shall be paid without prior notice or demand.

7. PLANS AND DESIGNS

Before any construction is commenced on the Leased Premises, Lessee shall submit to Lessor and Master Lessor general or preliminary drawings or plans and general specifications (the "Plans and Specifications") for the improvements proposed. The Plans and Specifications shall provide that the finished floor elevations of buildings or other improvements which may be constructed on Tracts No. 1 through 21, inclusive, shall be at a minimum of 1,151 feet above sea level, and that the finished floor elevations of buildings or other improvements which may be constructed on Tracts No. 22 through 25, inclusive, and upon all other parcels within the Industrial Park shall be at a minimum of 1,150 feet above sea level. Lessor and Master Lessor shall approve the Plans and Specifications if they are compatible to the general plans for the Industrial Park, but neither Lessor nor Master Lessor assume any responsibility whatsoever for the detailed design or structures or for violation of any law or ordinance. Lessor and Master Lessor shall either approve or state their reasons for disapproval within 30 days after the submission by Lessee. Lessee shall make no material changes to the approved Plans and Specifications without first obtaining the written consent of Lessor and Master Lessor. Lessee shall furnish Lessor and Master Lessor two copies of "as built" plans upon completion of improvements constructed on the Leased Premises.

8. IMPROVEMENTS

A. **Lessee Improvements.** As a material part of the consideration of this Lease, Lessee covenants and agrees to construct and complete, or cause to be constructed and completed, in substantial accordance with the Plans and Specifications, the improvements listed on Schedule 8 or as subsequently modified with the written consent of Lessor and Master Lessor pursuant to Article 7 (the "Lessee Improvements"). If Lessee has not completed the Lessee Improvements within _____ days of the Commencement Date, then this Lease may be terminated at the option of Lessor.

B. **Maintenance.** Lessor shall not be responsible for or required to maintain any buildings or improvements on the Leased Premises, including any Existing Improvements, the Lessee Improvements (if any), or any other improvements on the Leased Premises (collectively the "Improvements"). Lessee shall, at all times during the Term, and at Lessee's sole cost and expense, be responsible for making all repairs and replacements (including but not limited to structural repairs and roof repairs) necessary to maintain the Leased Premises and all Improvements thereon in good order, repair, and condition, which is defined as the same condition as at the Commencement Date except (i) as built, repaired, rebuilt, restored, or altered pursuant to this Lease, (ii) for ordinary wear and tear, and (iii) for damage by casualty that

Lessee is not required to repair. Lessee shall maintain the landscaping on the Leased Premises in a neat and orderly condition and shall replace all dead or diseased plant materials. All waste shall be removed from the Leased Premises in accordance with applicable law.

C. Improvements Part of Leased Premises. All Improvements, excluding Removable Personal Property placed on the Leased Premises, shall be part of the Leased Premises subject to the terms and conditions of this Lease, shall be the property of Lessor and shall be surrendered to Lessor with the Leased Premises upon the expiration or other termination of this Lease, whether such termination is pursuant to Article 23 of this Lease or otherwise; provided that Lessor may, at its option, require Lessee to remove all or any part of the Lessee Improvements. If Lessor elects to require Lessee to remove any of the Lessee Improvements, Lessor shall notify Lessee in writing not less than 90 days prior to the end of the Term, or within 10 days after earlier termination of this Lease for any cause whatsoever, and Lessee shall cause such Lessee Improvements to be removed not later than the expiration of this Lease, or within 30 days after early termination of this Lease. Whenever this Lease ends, Lessee shall, at its own expense, leave the Leased Premises in good order, repair, and condition (as defined in Article 8.B). The obligations of this subsection shall survive the expiration or other termination of this Lease.

9. CONSTRUCTION, MAINTENANCE, REPAIR, ALTERATION

The Lessee Improvements and all other improvements placed on the Leased Premises by Lessee shall be constructed in a good and workmanlike manner and in compliance with applicable laws and building codes. All parts of industrial and commercial buildings exposed to perimeter properties shall present a pleasant appearance and all service areas shall be screened from public view. Subject to the terms of this Article 9, Lessee shall have the right at any time during the Term to make limited alterations or additions, or repairs to any Improvements on or placed upon the Leased Premises. Any property that is subject to a lease or security agreement and is attached or affixed to the buildings, improvements, or land in such a manner that it becomes part of the realty shall conclusively be deemed to be part of the Improvements unless Lessee obtains written consent from Lessor allowing such leased or secured property to nevertheless be considered Removable Personal Property prior to bringing such property onto the Leased Premises; Lessee shall make any lessor or secured party for such property aware of this provision. No alteration, addition or remodeling of the Improvements involving an expenditure in excess of \$50,000.00, or removal or demolition of any of the Improvements, shall take place without the prior written approval of Lessor, which approval or disapproval shall be given within 30 days after receipt of written notice from Lessee. Notwithstanding the preceding sentence, Lessee shall be required to comply with Article 31 of this Lease and to obtain all building permits and other governmental-type approvals from the Community required by Community law for any alteration, addition, remodeling, removal or demolition. Within two days after applying for a building permit or other similar approval, Lessee shall provide a copy of the application to Lessor. Lessee shall indemnify and hold harmless Master Lessor, Lessor and the United States Government, their employees, officers or agents, against liability from all claims arising from Lessee's use and occupancy of the Leased Premises, including expense for attorneys' fees.

10. COMMUNITY SERVICES

Neither Master Lessor nor Lessor shall be responsible for providing any utility or other services to the Leased Premises, including but not limited to police protection, fire protection and utilities, except that Lessor shall make available to Lessee the following services:

- (1) Water and sewer lines in the right-of-way adjacent to the Leased Premises. Lessee shall pay for the hook up to the water and sewer lines.
- (2) Maintenance of common streets in the Industrial Park.

11. ENVIRONMENTAL COMPLIANCE

A. **Lessee's Obligation.** Lessee represents and warrants that it will at all times during and after the Term comply with the Environmental Laws on and with respect to its use of all or any portion of the Leased Premises or the Industrial Park. Without limiting the generality of the foregoing, Lessee shall not undertake any activity nor permit any activity to be undertaken by its employees, agents, contractors or subcontractors (collectively, its "Agents") on all or any portion of the Leased Premises or the Industrial Park which would cause:

- (1) Any portion of the Leased Premises or the Industrial Park to become a hazardous waste treatment, storage or disposal facility within the meaning of, or in violation of, the Environmental Laws.
- (2) A release or threatened release of Hazardous Material from or onto any portion of the Leased Premises or the Industrial Park within the meaning of the Environmental Laws.
- (3) The discharge of Hazardous Material into the environment which would require a permit or approval under the Environmental Laws, without having first obtained any required permit or approval.
- (4) The emission from any pollution source to exceed 20% opacity based on testing conducted in accordance with EPA Method 9.
- (5) The violation of any Environmental Laws.

Lessee shall reimburse the Community for all costs incurred by the Community response agencies and response support agencies resulting from a release or a threat of a release of Hazardous Material from the Leased Premises. The Community will utilize standard accounting practices in documenting costs.

B. **Notice to Lessor and Cure.** Lessee shall provide Lessor with written notification (a) within three business days after receipt by Lessee of notice from any governmental authority of any known or suspected violation of any of the Environmental Laws in connection with use of

the Leased Premises by Lessee or its Agents and (b) within ten days after Lessee first learns of or has reasonable cause to believe that there is a breach of any provisions of this Article 11. Notwithstanding any provision of this Lease to the contrary, in the event of any breach of any provision of this Article 11, Lessee shall have the shorter of 30 days or the period set forth in any applicable governmental order in which to cure the breach, provided that should such cure reasonably take more than 30 days and if there is no applicable governmental order specifying a particular time frame, Lessee shall not be in default hereunder if Lessee has taken such steps as are reasonably practical to commence such cure within such 30-day period and then proceeds diligently to complete a cure; further provided that if any such breach results in an imminent and substantial endangerment to human health or the environment, then the breach shall be immediately cured. The failure of Lessee to cure any such breach within the time periods provided for in this subsection shall be an event of default under this Lease, entitling Lessor to exercise any of its rights and remedies under this Lease.

C. **Notice to Lessee.** Lessor has no actual knowledge, except as provided in the environmental documents disclosed by Lessor in Schedule 11 hereto, that: (i) there is any Hazardous Material that violates the Environmental Laws in, on, under or about any portion of the Leased Premises other than such Hazardous Material as may naturally be present in the environmental media; (ii) any Hazardous Material that violates the Environmental Laws has been discharged into dumps, ponds, or waste piles on the Leased Premises; (iii) any Hazardous Material that violates the Environmental Laws is being stored at, on, under or above any portion of the Leased Premises; and (iv) there are any septic tanks, above or below ground fuel oil tanks, gasoline or chemical storage tanks, and other underground tanks or piping or other underground deposits of Hazardous Material that violate the Environmental Laws located in, under or about any portion of the Leased Premises.

D. **Certain Actions.** If the Leased Premises are rendered untenable or unfit for their intended purposes due to the presence of a Hazardous Material in, on, under or about the Leased Premises (which was not placed there by Lessee or its Agents), then Lessee shall have the right to terminate this Lease. This right to terminate in the preceding sentence shall be in lieu of all other rights and remedies against Lessor, Master Lessor and Secretary, including but not limited to damages and specific performance, which rights and remedies are hereby waived by Lessee. If the Leased Premises or the Industrial Park is contaminated by Hazardous Material as a result of the acts or omissions of Lessee or its Agents, Lessee warrants and represents that it will abate or otherwise remove such Hazardous Material, whichever may be called for under Environmental Laws, at Lessee's sole cost and expense. Lessee's obligation as set forth in the preceding sentence shall survive the expiration or other termination of this Lease.

E. **Indemnity.** Lessee shall indemnify, defend and hold Lessor, Master Lessor and Secretary harmless for, from and against all claims, costs and liabilities, including but not limited to reasonable attorneys' fees, reasonable consultants' fees and reasonable investigation expenses, incurred by Lessor, Master Lessor and Secretary arising directly or indirectly from (i) the disposal, release or threatened release of a Hazardous Material on, under or about any portion of the Leased Premises, (ii) the disposal, release or threatened release of a Hazardous Material on, under or about any portion of the Industrial Park other than the Leased Premises by Lessee or its Agents, or (iii) a violation of any Environmental Laws by Lessee or its Agents or a breach of

Lessee's covenants under this Article 11. This indemnity shall survive the expiration or other termination of this Lease.

F. **Emergency Plan.** Within 15 days of the Commencement Date, Lessee shall file with the Gila River Fire Department (the "GRFD") and submit to Lessor a written emergency plan which shall include evacuation procedures, emergency contact personnel, policies and procedures for handling emergencies such as fires, gas leaks, bomb threats or other accidents. Such plan shall be reviewed and approved by the GRFD. Any revisions to the emergency plan shall have the prior approval of the GRFD.

G. **Duty to Defend.** Upon written request by an indemnified party, Lessee shall, at Lessee's cost, defend the indemnified party by attorneys and other professionals approved by the indemnified party. Notwithstanding the foregoing, any indemnified party may, in its sole and absolute discretion, engage its own attorneys and other professionals to defend or assist them, and at the option of the indemnified party, its attorneys shall control the resolution of any claim or proceeding, provided that no compromise or settlement shall be entered without Lessee's consent, which consent shall not be unreasonably delayed, conditioned, or withheld. Upon demand, Lessee shall pay, or in the sole and absolute discretion of the indemnified party reimburse, the indemnified party for the payment of fees and disbursements of attorneys, engineers, environmental consultants, laboratories, and other professionals in connection therewith.

H. **Site Investigation.** Before commencing construction or operations on the Leased Premises, Lessee shall perform a site assessment (e.g., a Phase I environmental site assessment) of the Leased Premises to determine whether there is any environmental contamination of the Leased Premises. Within six months prior to the expiration of this Lease or within 30 days after early termination of this Lease, Lessee shall perform another site evaluation (e.g., a Phase I environmental site assessment, a Phase II or other environmental assessment, as necessary) (the "Lease Termination Site Assessment") to determine if Lessee's use of the Leased Premises has resulted in any environmental contamination of the Leased Premises. Both site assessments shall be performed by firms reasonably acceptable to Lessor, shall be of such scope as reasonably approved by Lessor and shall be submitted to Lessor within 15 days after they are conducted. If the Lease Termination Site Assessment discloses any environmental contamination to the Leased Premises or surrounding property as a result of Lessee's use of the Leased Premises, Lessee shall promptly remediate or clean up any such contamination in accordance with applicable law, including the Environmental Laws (the "Site Clean-Up"). If any of Lessee's obligations under this Article 11.H. are performed after the expiration or termination of this Lease, Lessee shall be considered a holdover tenant pursuant to Article 24.A. until the Lease Termination Site Assessment and the Site Clean-Up are completed. Lessee's obligations as set forth in this Article shall survive the expiration or other termination of this Lease.

I. **Inspection of Leased Premises.** If Lessor has reasonable grounds to believe that a violation of the Environmental Laws has occurred on the Leased Premises, it may require that an environmental audit be conducted, at Lessee's expense, of the Leased Premises and Lessee's operations. Such environmental audit shall be performed by a firm reasonably acceptable to

Lessor, shall be of such scope as is reasonably approved by Lessor, and shall be conducted under the supervision of Lessor.

12. BONDS

A. **Construction Bond.** Before commencement of construction of any Improvements in excess of \$50,000.00, Lessee agrees to provide a corporate surety bond or other security satisfactory to Master Lessor and Lessor which will guarantee completion of the Improvements and payment in full of claims of all persons for work performed or materials furnished for construction.

B. **Rental Bond.** Lessee agrees to provide a corporate surety bond or other security satisfactory to Master Lessor and Lessor to guarantee payment of one year's Rent. The amount of the security shall be adjusted annually to reflect the Rent for the upcoming year and shall be renewed, if applicable, not later than 30 days prior to the expiration date of the then current security. Lessor may waive the requirement of this bond, but may thereafter require Lessee to comply with this provision.

C. **Environmental Bond.** Lessee agrees to provide a corporate surety bond or other security, in an amount and in a form satisfactory to Master Lessor and Lessor, in order to guarantee that Lessee will comply with its obligations under this Lease to comply with the Environmental Laws. Such security shall remain in full force and effect for a period after the termination of this Lease until a letter has been received from Lone Butte or the Community Department of Environmental Quality (the "CDEQ") stating that Lessee has complied with the provision of this Lease relating to compliance with the Environmental Laws.

D. **Performance Bond.** No later than three years prior to the Expiration Date, Lessee shall provide a payment and performance bond or other security satisfactory to Lessor to guarantee Lessee's obligations in accordance with Article 8.C to surrender the Leased Premises in good order, repair, and condition and to remove all Lessee Improvements, if applicable.

E. **Bonding and Insuring Companies.** All corporate surety bonds provided by Lessee in compliance with this Lease shall be furnished by companies holding certificates of authority from the United States Secretary of the Treasury as acceptable sureties on Federal bonds, and authorized to do business in the State of Arizona. Insurance policies shall be furnished by responsible companies rated A plus -AAA or better in the current edition of Best's Insurance Guide.

13. SUBLEASE, ASSIGNMENT, TRANSFER

Lessee shall not sublease, assign or transfer this Lease or the Leased Premises, or any right to or interest in this Lease or the Leased Premises without the prior written approval of Lessor, Master Lessor, Secretary, and sureties, if any, and no such sublease, assignment or transfer shall be valid without such prior written approval and then only upon the condition that the sublessee, assignee, or other successor in interest, excepting an Encumbrancer, shall agree in writing to be bound by each and all of the covenants and conditions of this Lease. For purposes of this Article, a "transfer" shall include, but shall not be limited to, the following:

- (1) If Lessee is a partnership, (i) a withdrawal or change, voluntary, involuntary, or by operation of law, of any partner owning 25% or more of the partnership, (ii) the dissolution of the partnership, (iii) the sale or other transfer of 25% or more of the partnership interests, or (iv) the sale or other transfer of 25% or more of the value of the assets of the partnership.
- (2) If Lessee is a corporation, (i) any dissolution, merger, consolidation, or other reorganization of the corporation, (ii) the sale or other transfer of 25% or more of the capital stock of the corporation, or (iii) the sale of 25% or more of the value of the assets of the corporation.
- (3) If Lessee is a limited liability company, (i) a withdrawal or change, voluntary, involuntary, or by operation of law, of any member owning 25% or more of the limited liability company, (ii) the dissolution of the limited liability company, (iii) the sale or other transfer of 25% or more of the membership interests, or (iv) the sale or other transfer of 25% or more of the value of assets of the limited liability company.
- (4) The entering into of any operating agreement, consulting agreement or other arrangement, the effect of which is to shift from Lessee to a third party (i) substantial operating control of the Leased Premises or Lessee's operations thereon or (ii) substantial economic benefit arising from the Leased Premises or Lessee's operations thereon.

If a sublease, assignment or transfer of this Lease is approved, Lessee shall not be relieved of its duties and obligations under this Lease unless the approval of the sublease, assignment or transfer expressly states that Lessee is relieved of its duties and obligations arising after the date of such sublease, assignment or transfer. Should Lessee attempt to make any such sublease, assignment, or transfer, except as provided in this Article, such action shall be deemed a breach of this Lease, excepting that an Encumbrancer may enforce its rights in the manner hereinafter provided. Approval of one sublease, assignment or transfer shall not validate a subsequent sublease, assignment or transfer, and the restrictions of this Article shall apply to each successive sublease, assignment or transfer and shall be severally binding upon each and every sublessee, assignee, transferee and other successor in interest of Lessee, excepting an Encumbrancer. Consent to a sublease, assignment or transfer shall not be unreasonably withheld. If the per acre rent or other consideration to be paid by a sublessee, assignee or transferee to Lessee (the "Third Party Per Acre Rent") exceeds the per acre Rent due from Lessee for the Leased Premises (the "Per Acre Rent"), Lessee shall pay to Lessor, as additional Rent ("Additional Rent"), the difference between the Third Party Per Acre Rent and the Per Acre Rent multiplied by the number of acres subject to the sublease, assignment, or transfer (the "Third Party Acreage"). Lessee shall pay Additional Rent to Lessor at the same time or times the same is paid by such sublessee, assignee or transferee. For purposes of this Article 13, the Additional Rent to be paid by Lessee shall be calculated as follows:

rent or consideration due under the sublease, assignment, or transfer

$$\begin{array}{rcl}
\text{Third Party Acreage} & & = \text{Third Party Per Acre Rent} \\
\hline
\frac{\text{Rent due under this Lease}}{\text{total number of acres comprising the Leased Premises}} & = & \text{Per Acre Rent} \\
(\text{Third Party Per Acre Rent} - \text{Per Acre Rent}) \times \text{Third Party Acreage} & = & \text{Additional Rent}
\end{array}$$

14. STATUS OF LEASE AND SUBLEASE

A. **Termination of the Master Lease.** Termination of the Master Lease, by cancellation or otherwise, shall not automatically serve to cancel this Lease, but shall operate as an assignment to Master Lessor. Such assignment to Master Lessor shall be free and clear of any claims, debts, demands, dues, actions or causes of action which Lessee may have against Lessor.

B. **Conflicts with the Master Lease.** If any provision in this Lease is inconsistent with any provision in the Master Lease, and if this Lease is approved by the Master Lessor and the Secretary, the provision in this Lease prevails.

15. ENCUMBRANCES

A. **Prior Approval of Encumbrances.** This Lease, or any right to or interest in this Lease or any of the Improvements on the Leased Premises may not be encumbered without the prior written approval of Master Lessor, Lessor and Secretary and sureties, if any, and no encumbrance shall be valid without such approval.

B. **Notice to Lessor.** An encumbrance, if approved as aforesaid, may be made for the purpose of borrowing capital for the development of Improvements to the Leased Premises and/or the acquisition of personal property and fixtures to be located and used on the Leased Premises, provided that the encumbrance is confined to the leasehold interest of Lessee or the subleasehold interest of any approved sublessee and does not jeopardize in any way Master Lessor’s or Lessor’s title or interest in the land. Lessee agrees to furnish as requested any financial statements or analyses pertinent to the encumbrance that Lessor, Master Lessor or Secretary may deem necessary to justify the amount, purpose or terms of such encumbrance. In the event of default by Lessee of the terms of any Approved Encumbrance, an Encumbrancer may exercise the rights provided in such Approved Encumbrance, provided that before any sale or foreclosure, Encumbrancer shall give notice to Master Lessor, Lessor and Secretary of the same character and duration as is required to be given to Lessee by such Approved Encumbrance or by law, but not less than the time required by Arizona law.

C. **Rights Upon Default.** If notice of such sale be given and the defaults, or any of them upon which such notice of sale is based shall then continue, Master Lessor and Lessor shall have the following rights which may be exercised by either of them at any time prior to the completion of sale proceedings:

- (1) To pay to Encumbrancer the full unpaid principal amount of the Approved Encumbrance, plus unpaid interest accrued to the date of such payment plus foreclosure or sale costs incurred to the date of such payment; or
- (2) Within 15 days after receipt of such notice to pay to Encumbrancer the amount of any such uncured defaults, together with costs and expenses chargeable under such Approved Encumbrance and to assume and make all payments thereafter under such Approved Encumbrance on the leasehold interest described therein.

If Master Lessor or Lessor exercises either of the above rights, all the right, title and interest of Lessee in this Lease shall automatically terminate on the date the right is exercised and Master Lessor or Lessor, as the case may be, shall at the same time automatically acquire this Lease; however, such acquisition of this Lease shall not serve to extinguish this Lease by merger or otherwise. In the event neither Master Lessor nor Lessor avails itself of the above rights and any sale under the Approved Encumbrance occurs, whether by power of sale or foreclosure, the purchaser at such sale shall succeed to all the rights, title and interest of Lessee in the leasehold estate covered by the Approved Encumbrance. It is further agreed that if the purchaser at such sale is the Encumbrancer, the Encumbrancer may sell and assign the leasehold without any further consent, provided that the assignee shall agree in writing to be bound by all the terms and conditions of this Lease. If the Encumbrancer is the purchaser, it shall be required to perform this Lease only so long as it retains title thereto. If a sale under the Approved Encumbrance occurs and the purchaser is a party other than the Encumbrancer, said purchaser, as successor in interest to Lessee shall be bound by all the terms and conditions of this Lease.

16. NOTICE TO ENCUMBRANCER

At least 45 days prior to any termination of this Lease, Lessor shall give to the holder of any Approved Encumbrance written notice of Lessor's intention to so terminate. If such proposed termination be for any default of Lessee under this Lease, Encumbrancer shall be entitled to remedy such default at any time before such termination occurs, and thereby prevent termination for such default, or if such default cannot be remedied within 45 days, to commence the remedy thereof within 30 days and diligently prosecute the same thereafter, during which time this Lease shall not be terminated for such default. Any such notice shall be mailed to Encumbrancer at the address on file with Lessor and Master Lessor, and the Secretary. In the event Lessor terminates this Lease without giving the aforementioned 45-day notice to an Encumbrancer, then, at any time within 60 days after Lessor notifies Encumbrancer of such termination, Encumbrancer shall have the right to redeem Lessee's interest by curing Lessee's delinquency or default and assuming all responsibilities of Lessee under this Lease.

17. LIENS, TAXES, ASSESSMENTS, UTILITIES CHARGES

Lessee shall not permit to be enforced against the Leased Premises or any part thereof, any liens arising from any work performed, materials furnished, or obligations incurred by Lessee, but Lessee shall discharge all such liens before any action is brought to enforce same. Lessee shall pay before delinquent all taxes, assessments, licenses, fees and other like charges

levied during the Term upon or against the Leased Premises and all interests therein and property thereon for which Lessee, Lessor or Master Lessor may become liable. If Lessee subleases the Leased Premises, Lessee shall pay before delinquent all taxes imposed by the Community on the subleasing activity. Upon written application, Lessee shall furnish Lessor, Master Lessor and Secretary written evidence duly certified that any and all taxes, assessments, licenses, fees and other like charges levied during the Term upon the Leased Premises or required to be paid by Lessee have been paid, satisfied or otherwise discharged. Lessee shall have the right to contest any claim, asserted tax or assessment against the Leased Premises by posting bond to prevent enforcement of any lien resulting therefrom, and Lessee agrees to protect and hold harmless Lessor, Master Lessor, Secretary and the Leased Premises and all interest therein and Improvements thereon from any and all claims, taxes, assessments and like charges and from any lien thereof or sale or other proceedings to enforce payment thereof, and all costs in connection therewith. Lessor and Master Lessor shall execute and file any appropriate documents with reference to any real estate tax exemption of the Leased Premises upon written request by Lessee. In addition to the Rent, taxes and other charges herein described, Lessee shall pay all charges for water, sewage, gas, electricity, telephone and other utility services supplied to the Leased Premises.

18. LESSOR PAYING CLAIMS

Lessor shall have the option to pay any lien or charge payable by Lessee under this Lease or to settle any action therefor, if Lessee, after written notice from Master Lessor, Lessor or Secretary, fails to pay or fails to post bond against enforcement. In addition, immediately upon the giving of written notice to Lessee, Lessor shall have the option to fulfill any other obligations of Lessee under this Lease, including, but not limited to, obtaining and paying the premiums for insurance coverages required to be secured and maintained by Lessee under this Lease, if Lessee has failed to do so. All costs and other expenses, including attorneys' fees, incurred by Lessor in so doing shall be repaid by Lessee upon demand, together with interest at 18% per annum from the date of demand until repaid. Failure to make such repayment on demand shall constitute a breach of this Lease.

19. PUBLIC LIABILITY INSURANCE

At all times during the Term, Lessee shall carry, or cause to be carried, at least the following policies of insurance:

A. A commercial general liability insurance policy with a combined single limit of \$2,000,000.00 for each occurrence for property damage (including coverage for premises, operations, products, and completed operations), bodily injury or death, personal injury (including coverage for contractual and employee acts) and blanket contractual liability.

B. A business automobile liability insurance policy with a combined single limit for of \$1,000,000.00 for each accident for property damage and bodily injury covering all vehicles operated by or for Lessee, including owned, non-owned, and hired vehicles.

C. Workers' compensation insurance to cover all employees of Lessee as required by the laws of the State of Arizona with minimum employer's liability and occupational disease

limits of \$500,000.00.

D. Excess or umbrella insurance policy of \$4,000,000.00 per occurrence to extend over the commercial general liability, automobile liability, and employer's and occupational disease liability.

Each policy of insurance carried by Lessee shall: (i) name Lessor, Master Lessor, and Secretary as additional insureds, (ii) provide that such insurance shall be primary insurance and that any insurance carried by Master Lessor or Lessor shall be excess and not contributory insurance, (iii) provide that Master Lessor and Lessor shall be indemnified and held harmless for, from and against all claims for injury, death or destruction of property to the extent such claims are caused by the negligent acts or omissions of Lessee and its Agents, and (iv) provide for not less than 30 days advance notice to Master Lessor and Lessor of cancellation, termination or alteration. Certificates of insurance for said policies shall be furnished to Lessor, Master Lessor, and Secretary and copies of said policies shall be furnished to Lessor, Master Lessor, and Secretary if requested. From time to time during the Term, upon written request of Lessor, the amount of insurance shall be adjusted in accordance with Article 6.A.(2) and Lessee shall provide evidence of such increased insurance as otherwise required by this Article. Neither Lessor, Master Lessor nor the United States Government nor their officers, agents or employees shall be liable for any loss, damage, death or injury of any kind whatsoever to the person or property of Lessee or of any person whatsoever, caused by any use of the Leased Premises, or by any defect in any structure erected thereon, or arising from any accident, fire or other casualty on the Leased Premises or from any other cause whatsoever unless such loss was caused by Lessor, Master Lessor or the United States Government, its officers, agents or employees. Lessee, as a material part of the consideration of this Lease, hereby waives on Lessee's behalf, all claims against Master Lessor, Lessor and the United States Government and shall hold Master Lessor, Lessor and the United States Government free and harmless from liability for all claims for any loss, damage, injury or death arising from the use of the Leased Premises by Lessee, together with all costs and expenses in connection therewith, but Lessee does not, by this paragraph, waive any claim it may have against the United States, Master Lessor, Lessor or any person based on their negligence or unlawful conduct.

20. FIRE AND DAMAGE INSURANCE

A. **Coverage.** Lessee shall, from the Commencement Date on, carry fire and vandalism insurance with extended coverage endorsements covering the full insurable value (generally the replacement cost) of the Improvements on the Leased Premises. The policy or policies shall be written to protect Master Lessor, Lessor and any Encumbrancer as additional insureds and Lessee shall pay or cause to be paid all premiums and other charges payable in respect to such insurance, and may be required to deposit with Master Lessor and Lessor the receipt for each premium or other charges as paid, or give satisfactory evidence thereof. Certificates of insurance for said policies shall be provided to Lessor, Master Lessor, Secretary, and any Encumbrancer and copies of said policies shall be provided to Lessor, Master Lessor, Secretary, and any Encumbrancer if requested.

B. **Escrow Account.** In the event of damage to any of the Improvements on the Leased Premises, all insurance proceeds received as indemnification therefor shall be deposited in escrow with an institution approved by Lessor and Master Lessor.

C. **Reconstruction by Lessee.** Lessee, within 60 days after such damage has occurred, may elect to reconstruct the Improvements in compliance with applicable laws and building regulations and in accordance with plans to be approved pursuant to Articles 7, 8 and 9 hereof. Such reconstruction shall commence within 90 days after the damage occurs and shall be completed as rapidly as possible. Escrow instructions shall include provisions that all funds so deposited shall be used to reconstruct the damaged improvement, and funds shall be disbursed during the progress of reconstruction upon receipt of proper architect's, engineer's or contractor's certificates. If insurance proceeds are insufficient, Lessee shall deposit in escrow prior to starting reconstruction sufficient funds to complete reconstruction. Any funds remaining in escrow after reconstruction has been completed shall be paid to Lessee.

D. **Reconstruction by Lessor.** If Lessee elects not to reconstruct as set forth above, Lessor shall have 180 days after the 60-day period set forth in Article 20.C. above to elect to reconstruct as set forth in Article 20.C. above, provided that Lessee, and not Lessor, shall be required to provide sufficient funds to complete construction if insurance proceeds are insufficient. If neither Lessee nor Lessor reconstructs as set forth above, all funds in escrow shall belong and be paid to Lessor, subject to any Approved Encumbrance, and Rent shall thereafter totally abate and this Lease shall terminate.

21. EMINENT DOMAIN

A. **Definitions.** The term "total taking" as used in this Article means the taking of the entire Leased Premises in fee under the power of eminent domain. The term "partial taking" means any other taking in fee under the power of eminent domain, except that if 75% or more by area but not all of the Leased Premises is so taken, Lessee shall have the option within 60 days of the date of such taking by notice in writing to Lessor and Secretary and, with the consent of all holders of Approved Encumbrances, to have such taking deemed a "total taking."

B. **Total Taking.** In case of a total taking, the leasehold estate of Lessee and its liability for future installments of rental (except accrued percentage rental, if any) shall cease and terminate as of the date the actual physical possession of the premises or portions thereof shall be so taken.

C. **Partial Taking.** In the case of a partial taking, this Lease shall terminate as to the portion taken upon the date on which actual possession of said portion is taken, but this Lease shall continue in full force and effect as to the remainder of the Leased Premises; and each ensuing installment of Rent only shall be abated in the ratio that the ground area of the Leased Premises taken bears to the total area of the Leased Premises prior to the taking.

D. **Refunds.** There shall be no refunds of Rent paid in advance because of a total or partial taking of the Leased Premises.

E. **Allocating Award.** All compensation and damages awarded for the taking of the Leased Premises or Improvements thereon or any portion thereof shall be awarded as the respective interests of Master Lessor, Lessor, Lessee, any approved sublessee and any Encumbrancer appear at the time of the taking; provided, however that Master Lessor in no event shall receive a portion of the award less than the sum it would receive if the Leased Premises were not subject to this Lease or the Master Lease and Improvements had not been placed thereon by Lessor or Lessee.

F. **Taking for a Term.** In case the Leased Premises or any portion of them are condemned for a term of years, then Lessee shall remain bound by all rental provisions of this Lease and shall be entitled to the entire award except such part, if any, as is allowable to a period beyond the Term and such part, if any, as represents or is equal to a decrease in percentage rentals which would be paid by Lessee except for such taking during the term of years condemned.

G. **Voluntary Conveyance.** A voluntary conveyance by Master Lessor or Lessor under threat of a taking under the power of eminent domain in lieu of formal proceedings shall be deemed a taking within the meaning of this Article.

H. **Other Compensation.** Nothing herein shall prohibit Lessee from making claim, in its own name, to the condemnation authorities for the value of any furnishing, trade equipment, merchandise or personal property of any kind belonging to Lessee and not a part of the Leased Premises or for the cost of moving the same, and for damages for interruption of Lessee's businesses.

22. BINDING ARBITRATION

A. **Binding Arbitration.** Any claim or dispute arising out of this Lease ("dispute" or "disputes"), including, without limitation, whether such dispute is subject to arbitration, not resolved by negotiation between the parties, shall be resolved through binding arbitration conducted in Maricopa County, Arizona as provided in this Article 22, except in those instances specified in Article 22.E. Either party may initiate the arbitration by giving written demand for arbitration to the other party in accordance with the notice provisions of this Lease, setting forth the nature of the claim or dispute, the amount involved, if any, and the remedy sought. Lessor and by its approval of this Lease, Master Lessor, agrees not to assert any doctrine requiring exhaustion of Community Court remedies prior to proceeding with arbitration. The arbitration may take place without the presence of any party refusing to submit to arbitration under this Article 22.

B. **Conduct of Arbitration.** The arbitration shall be subject to 25 U.S.C. § 415(f) and shall be conducted in accordance with the then-current Commercial Arbitration Rules of the American Arbitration Association except (i) as such rules may contemplate state court jurisdiction and (ii) as otherwise provided in this Article 22. The arbitrator(s) shall be selected in accordance with the rules of the American Arbitration Association from panels maintained by the Association. No arbitrator shall have or previously have had any significant relationship with any of the parties hereto. If the only relief sought is for a monetary award of \$50,000.00 or less,

then a single arbitrator shall resolve the dispute. The single arbitrator shall be knowledgeable in the subject matter of the dispute. In all other instances, the arbitration decision shall be made by a majority vote of three arbitrators, all of whom shall be knowledgeable in the subject matter of the dispute and at least one of whom shall be an experienced commercial law attorney who has practiced commercial law in the State of Arizona for at least ten years on a regular and continuing basis. The arbitration decision shall be rendered within 45 days after the arbitration hearing or the time period, if any, required by such Commercial Arbitration Rules, whichever is sooner. The award of the arbitrator(s) shall be supported by written findings of fact, conclusions of law and a calculation of how damages, if any, were determined. The arbitrator(s) also may grant provisional or ancillary remedies (e.g., the appointment of a receiver, injunctive relief, etc.) either during the pendency of the arbitration proceeding or as part of an arbitration award. Upon written request and after notice to the other party, the arbitrator(s) may modify the applicable arbitration rules in the interests of justice. The award of the arbitrators shall be final and binding upon the parties, including any party refusing to submit to arbitration under this Article 22, and the judgment thereon may be entered in the United States District Court, District of Arizona as provided by 25 U.S.C. § 415(f). Any refusal to submit to arbitration hereunder, any exercise of a right under the Federal Arbitration Act (9 USC § 1, et seq.), which shall apply to the construction and interpretation of this Article 22, or the enforcement of any award rendered in the arbitration shall be solely within the jurisdiction of the United States District Court, District of Arizona. In deciding any matter submitted to arbitration pursuant to this Article 22, the laws of the Community shall apply except to the extent superseded by or inconsistent with federal law. If there is no applicable Community or federal law, the arbitrators shall be guided by the laws of the State of Arizona. The statute of limitations, estoppel, waiver, laches and similar doctrines which would otherwise be applicable in an action brought by a party shall be applicable in any arbitration proceeding.

C. **Discovery.** The parties may conduct discovery in advance of the arbitration hearing in accordance with the Federal Rules of Civil Procedure. Based on the nature and amount of the dispute, the arbitrator(s) may establish a discovery schedule or discovery cut-off date or may limit discovery.

D. **Costs of Arbitration and Attorneys' Fees.** The fees of the arbitrators and all other expenses of the arbitrators and the reasonable legal fees, witness fees and other reasonable fees and costs incurred by the prevailing party shall be assessed against the non-prevailing party by the arbitrators and included in any award or decision.

E. **Emergency Remedies.** The parties acknowledge that binding arbitration is the dispute resolution mechanism chosen by the parties. At the same time, the parties understand that situations will arise where the need for immediate relief precludes the use of arbitration. Thus, in an emergency situation, a party may pursue an emergency remedy in the Community Court. For purposes of this Article 22, an "emergency situation" includes (i) a situation where there is reasonable probability of environmental harm to the Leased Premises or surrounding areas if a party were to wait for arbitrators to act, (ii) a situation where personal property might be removed from the Leased Premises prior to the time a party could request relief from the arbitrators, (iii) a situation where there is a reasonable chance of harm to the public health or safety if a party were to wait for arbitrators to act, or (iv) any other situation in which a party

reasonably believes that an emergency remedy is necessary to protect that party's material rights. For purposes of this Article 22, "emergency relief" includes a temporary restraining order, preliminary injunction or any other provisional remedy in which time is of the essence and speedy action is necessary to protect a party's material rights. The institution and maintenance of an emergency remedy shall not constitute a waiver of the right or elimination of the requirement to submit disputes to arbitration. Even if a party invokes an emergency remedy, the parties intend that the involvement of the Community Court will be limited to those actions necessary to address the emergency situation and that, to the extent possible, the dispute will be resolved by arbitration. By way of illustration of the preceding sentence, assume that Lessee was improperly disposing of hazardous waste on the Leased Premises; Lessor could obtain temporary injunctive relief to stop the improper disposal, but any action to determine damages would be resolved by arbitration.

F. **Disputes Between Lessee and Sublessee or Encumbrancer.** Notwithstanding anything in this Lease to the contrary, Lessor and by its approval of this Lease, Master Lessor, acknowledge and agree that in the event of any dispute between or among Lessee and a sublessee or between Lessee or a sublessee and an Encumbrancer, which dispute does not involve Lessor or Master Lessor, (i) the dispute is not subject to arbitration pursuant to this Article 22, and may be resolved in the state or federal courts of the State of Arizona or in any other court having jurisdiction, which courts may apply Arizona law to such dispute, and (ii) neither Lessor nor Master Lessor will prevent nor delay the enforcement of state or federal court orders, judgments or awards which may be obtained by Lessee, a sublessee or an Encumbrancer, including, but not limited to, orders, judgments or awards obtained by Lessee for forcible entry and detainer and obtaining possession of the premises leased to a sublessee and by an Encumbrancer for judicial or non-judicial foreclosure of an Approved Encumbrance or for provisional or ancillary remedies thereunder, including injunctive relief or the appointment of a receiver or forcible entry and detainer to obtain possession of the Leased Premises. With regard to (ii) above, such state court orders, judgments or awards shall be domesticated in the Community Court before Lessor or Master Lessor can be required to take the actions specified in (ii) above.

23. DEFAULT AND TERMINATION

A. **Lessee Default.** Time is declared to be of the essence in this Lease. Any one or more of the following events shall be a default under this Lease:

- (1) If Lessee fails to make payment of Rent, the Road Maintenance Fee, and the Security Payment when due and payable, and if such failure continues uncured for the period of five business days after written notice thereof to Lessee by Lessor or Master Lessor.
- (2) If Lessee fails to make any payments of monies (other than Rent, the Road Maintenance Fee, or the Security Payment) when due and payable or fails to post bond as required by the terms of this Lease, and if such failure continues uncured for the period of 15 days after written notice thereof to Lessee by Lessor or Master Lessor.

- (3) If Lessee breaches any other provision of this Lease and if such breach of any other provision continues uncured for a period of 30 days after written notice thereof to Lessee by Lessor or Master Lessor.
- (4) If Lessee twice violates a specific provision of this Lease within any consecutive 365-day period and cures such violations within the applicable cure period, upon the third violation of the same specific provision within such 365-day period, Lessor may declare an immediate default and the notice and cure provisions set forth in (1), (2), and (3) above shall not be applicable.

Upon a default by Lessee, Lessor may, in its sole and absolute discretion, exercise any one or more of the following remedies concurrently or in succession:

- (1) Collect by suit or otherwise damages and all monies as they become due hereunder, or enforce, by suit or otherwise, Lessee's compliance with any provisions of this Lease.
- (2) Terminate this Lease, or terminate Lessee's right to possession of the Leased Premises by legal process or otherwise with or without terminating this Lease, and retake exclusive possession of the Leased Premises, enter the Leased Premises, and remove all persons and property therefrom without being deemed guilty of trespass or becoming liable for any loss or damage that may be occasioned thereby.
- (3) Re-let the Leased Premises without terminating this Lease, as the agent and for the account of Lessee, but without prejudice to the right to terminate this Lease thereafter, and without invalidating any right of Master Lessor or Lessor or any obligations of Lessee hereunder. Terms and conditions of such re-letting shall be at the discretion of Lessor who shall have the right to alter and repair the Leased Premises as it deems advisable, and to re-let with or without any equipment or fixtures situated thereon. Rents from any such re-letting shall be applied first to the expenses of re-letting, collecting, altering and repairing, including attorneys' fees and any real estate commission actually paid, insurance, taxes and assessments and thereafter toward the payment to liquidate the total due under this Lease. Lessee shall pay to Lessor monthly, when due, any deficiency, and Lessor may sue thereafter as each monthly deficiency shall arise.
- (4) Enforce the statutory landlord's lien on Lessee's property.
- (5) Accelerate all Rent and other payments due under this Lease, and to collect such sums by suit or otherwise.

- (6) Collect any rent or other consideration to be paid by a sublessee, assignee, or transferee of Lessee pursuant to a sublease, assignment, or transfer of this Lease, including amounts past due and unpaid, and apply the same against unpaid Rent or other amounts due under this Lease, or against any other costs to Lessor associated with Lessee's default.
- (7) Take any other action deemed necessary to protect any interest of Lessor or Master Lessor or pursue all other remedies available at law or in equity.
- (8) Invoke the provisions of 25 CFR Part 162 relating to cancellation of leases.

B. **Lessor Default.** If Lessor fails to perform any of the covenants, provisions or conditions in this Lease to be performed by Lessor, and if such failure continues for 30 days after Lessor receives written notice of default (or if more than 30 days is required because of the nature of the default, if Lessor fails to commence the curing of such default within the 30 day period and fails to proceed diligently to completion), then Lessor shall be responsible to Lessee for any actual damages sustained by Lessee as a result of Lessor's breach, but not special or consequential damages. Lessee shall have no right to terminate this Lease, except as expressly provided elsewhere in this Lease.

C. **Waiver.** No waiver of a breach of any of the covenants of this Lease shall be construed to be a waiver of any succeeding breach of the same or any other covenant.

D. **Bankruptcy.** It shall be considered a default under this Lease if any goods, chattels or equipment of Lessee is taken in execution or in attachment or if a writ of execution is issued against Lessee, or Lessee or any guarantor becomes insolvent or files a voluntary petition under any Chapter of Title 11, United States Bankruptcy Code, or takes the benefit of any statute that may be in force for bankrupt or insolvent debtors or becomes involved in voluntary or involuntary winding-up proceedings or if a receiver shall be appointed for the business, property, affairs or revenues of Lessee or any guarantor, or Lessee makes a bulk sale of its goods or moves or commences, attempts or threatens to move its goods, chattels and equipment out of the Leased Premises other than in the normal course of its business.

If a voluntary or involuntary petition is filed by or against Lessee under any Chapter of Title 11, United States Bankruptcy Code, Lessor shall immediately become entitled, in addition to all other relief to which Lessor may be entitled, to obtain immediate relief from the automatic stay provided in 11 U.S.C. § 362 so that Lessor may pursue its rights and remedies under this Lease and applicable law. Lessee shall not object to a motion for relief from the automatic stay filed by Lessor or otherwise contend or allege that Lessor does not have sufficient grounds for relief from the automatic stay.

E. **Mutual Termination.** This Lease may be terminated at any time by mutual written agreement of Master Lessor, Lessor, Lessee and, if applicable, the Secretary and any Encumbrancer.

24. SURRENDER OF LEASED PREMISES

A. **Holding Over.** Holding over by Lessee after the expiration or termination of this Lease shall not constitute a renewal or extension thereof or give Lessee any rights hereunder or in or to the Leased Premises. If Lessee does hold over, Lessee shall become a lessee from month-to-month upon each and every term hereof applicable to a month-to-month tenancy and subject to such Rent as Lessor determines in its sole discretion, which shall not be less than 200% of the then current Rent prior to the expiration or termination. The provisions and obligations of this Article 24.A shall survive the expiration or other termination of this Lease.

B. **Abandoned Property.** Upon the expiration or other termination of this Lease or upon termination of Lessee's right of possession, Lessee shall immediately surrender possession of the Leased Premises to Lessor and remove all Removable Personal Property as permitted or required by this Lease, together with any Lessee Improvements that Lessor designates in writing are to be removed by Lessee. If such possession is not immediately surrendered, Lessor may, at any time thereafter, re-enter the Leased Premises and remove all persons and Removable Personal Property from the Leased Premises. Lessee shall be deemed a holdover tenant until all persons and Removable Personal Property are removed from the Leased Premises. All damage to the Leased Premises arising from Lessee's removal of Removable Personal Property, including damage to the floors due to overloading, shall be fully repaired at Lessee's sole expense.

If Lessee fails or refuses to remove any Removable Personal Property from the Leased Premises, Lessor may elect, at the sole option of Lessor, to accept title to any or all of such Removable Personal Property and send a written notice to Lessee listing any remaining Removable Personal Property on the Leased Premises for which Lessor did not elect to accept title (the "Remaining Removable Personal Property"). Lessee shall have ten days from the date of the notice to remove all the Remaining Removable Personal Property from the Leased Premises. If, after ten days, Lessee continues to fail or refuse to remove any Remaining Removable Personal Property from the Leased Premises, Lessee may, at the sole option of Lessor, be conclusively presumed to have abandoned the same. Thereafter, Lessor may elect to accept title to such Remaining Removable Personal Property, or, at Lessee's expense, remove the same or any part in any manner that Lessor shall choose, and either store or retain it as its property, or dispose of it in such a manner as Lessor may see fit, without incurring liability to Lessee or any other person. If any or all of the Remaining Removable Personal Property is sold, Lessor may receive and retain the proceeds of such sale and apply the same, at its sole option, against the expenses of the sale, the cost of moving and storage, any arrears of payments constituting rent for purposes of a landlord's lien under Article 6.E., any damage to the Leased Premises arising from the removal of the Removable Personal Property, and any damages to which Lessor may be entitled under this Lease or pursuant to law. If there are any expenses or costs incurred by Lessor, or monies owed by Lessee to Lessor, that are not covered by the proceeds of the sale, Lessee agrees to reimburse Lessor for all such costs.

Lessee hereby appoints Lessor as its attorney in fact for the purpose of executing any documents necessary to transfer title, under this Article 24, to Removable Personal Property. Lessee shall indemnify, defend, and hold harmless Lessor for, from, and against liability from

any claims, costs, and liabilities arising from Lessor's elections regarding Removable Personal Property, including but not limited to attorneys' fees. The provisions and obligations of this Article 24.B shall survive the expiration or other termination of this Lease.

25. NO PARTNERSHIP; OPERATION OF BUSINESS

A. **No Partnership.** Regardless of the fact that the amount of Rent may be based in part on a percentage of Lessee's revenues, Lessee and Lessor shall not be deemed partners or joint venturers; the relationship between Lessor and Lessee is only that of landlord and tenant.

B. **Operation of Business.** All business on the Leased Premises shall be conducted during the regular and customary hours of such businesses and on all business days in good faith, so that Lessor will at all times receive the maximum income under the percentage rental provisions of this Lease, if any.

26. 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; however, such termination shall not serve to abrogate this Lease. The owners of the land, Master Lessor, Lessor and Lessee and their surety or sureties, if any, shall be notified of any such change in the status of the land.

27. OBLIGATION OF LESSEE

While the Leased Premises are in trust or restricted status, all of Lessee's obligations under this Lease, and the obligations of its sureties, if any, are to the United States as well as to Lessor and Master Lessor.

28. ANTIQUITIES

In accordance with the Laws of Antiquity Act of 1906, it is understood and agreed by the parties hereto that any areas within the exterior boundaries of the Leased Premises containing graves, ruins, or other antiquities, shall be undisturbed and plainly marked by Lessee and reported immediately to Lessor, Master Lessor and the Secretary for appropriate disposition and action. This shall likewise apply to any discoveries made in excavations during the development of the Leased Premises. Said areas designated as antiquities shall be automatically withdrawn from the Leased Premises and Rent shall be prorated accordingly.

29. MINERALS

This Lease confers no vested interest, right or title to any minerals including sand, gravel, or building stone material within the Leased Premises. However, moving dirt, sand, gravel, rock or building stone for the purposes of developing and improving the Leased Premises in accordance with the Plans and Specifications shall not be construed as mining.

30. NOTICES

Any notice, demand or other communication required or permitted to be given under this Lease shall be in writing and shall be deemed to have been duly given if (i) delivered to the party at the address set forth below, (ii) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below or (iii) given to a recognized and reputable overnight delivery service, to the address set forth below:

If to Lessor: Lone Butte Development Corporation
1235 S. Akimel Lane, Box 5000
Chandler, AZ 85226
Attn: General Manager

If to Lessee: _____

If to Master Lessor: Gila River Indian Community
P.O. Box 97
Sacaton, AZ 85147
Attn: General Counsel

with a required copy to: Gila River Indian Community
P.O. Box 97
Sacaton, AZ 85147
Attn: Governor

If to Secretary/
Superintendent: Bureau of Indian Affairs, Pima Agency
Box 8
Sacaton, AZ 85147
Attn: Superintendent

or at such other address, and to the attention of such other person or officer, as any party may designate in writing by notice duly given pursuant to this Article. Notices shall be deemed received (i) when delivered to the party, (ii) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage or (iii) the following business day after being given to a recognized and reputable overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day. Copies of all notices and demands shall be sent to the Secretary c/o the Superintendent.

31. RESERVATION LAWS AND ORDINANCES

Lessee and its Agents agree to abide by all applicable laws, regulations and ordinances of the Community now in force and effect or that may be hereafter in force and effect, and voluntarily submit to the regulatory and adjudicatory authority of the Community.

32. EMPLOYMENT

Lessee shall comply with Title 12 of the Community's Law and Order Code regarding Labor and Employment and the rules, regulations, and procedures approved by the Community Council.

33. INSPECTIONS

Master Lessor, Lessor or Secretary, or their designated representatives, shall have the right at any reasonable time during the Term to enter upon the Leased Premises, or any part thereof, to inspect the same and all buildings and other Improvements erected and placed thereon.

34. DELIVERY OF PREMISES

At the termination of this Lease, Lessee will peaceably and without legal process deliver up the possession of Leased Premises in good order, repair, and condition (as defined in Article 8.B).

35. LEASE BINDING

Subject to the other provisions hereof relating to assignment or subletting, this Lease and the covenants, conditions and restrictions hereof shall extend to and be binding upon the successors, heirs, assigns, executors and administrators for the parties hereto.

36. INTEREST OF MEMBER OF CONGRESS

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

37. SOCIAL SECURITY, ETC.

Lessee agrees to comply with all applicable laws or regulations now in force or as may be amended pertaining to social security, unemployment compensation, wages, hours and conditions of labor; and agrees to indemnify and hold Master Lessor, Lessor and the United States harmless from payment of any damages occasioned by Lessee's failure to comply therewith.

38. VALIDITY

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

39. ATTORNEYS' FEES

In the event suit is brought, or arbitration instituted, or an attorney is retained by either party to this Lease to enforce the terms of this Lease or to collect any money due hereunder, or to collect money damages for breach hereof, the prevailing party shall be entitled to recover, in addition to any other remedy, reimbursement for reasonable attorneys' fees, court costs, costs of investigation and other related expenses incurred in connection therewith. Lessor shall also be entitled to recover, in addition to any other remedy, reimbursement for reasonable attorneys' fees incurred due to Lessee's violation of laws, regulations, or ordinances or the Development Guidelines of the Industrial Park. If Lessee requests Lessor's approval in connection with this Lease (including but not limited to the approval of a sublease, assignment, transfer, encumbrance, landlord's consent, estoppel certificate, or amendment to this Lease), Lessee shall reimburse Lessor for (i) its out-of-pocket costs and attorneys' fees incurred by Lessor regarding any such request and (ii) any administrative fees imposed by the Secretary. Lessor may request a deposit before commencing the review of any such request and may make any final approval contingent on the receipt of the balance.

40. DEVELOPMENT GUIDELINES

Lessee has received from Lessor a copy of the Development Guidelines of the Industrial Park. Lessee agrees to adhere to the Development Guidelines now in force and effect or that may be hereafter in force and effect. Any requested waiver from the Development Guidelines must be approved in writing by Lessor.

41. CONDITION OF LEASED PREMISES

Lessee acknowledges and agrees that (i) it has had an opportunity to inspect the Leased Premises and investigate all matters relevant to Lessee's proposed use of the Leased Premises, (ii) except as expressly set forth herein, neither Lessor nor Master Lessor has made any representations regarding the condition of the Leased Premises or Lessee's proposed use of the Leased Premises, and Lessee is entering into this Lease in reliance solely and exclusively upon its own independent investigations, and (iii) Lessee accepts the Leased Premises, including any Existing Improvements, "as is."

IN WITNESS WHEREOF, the parties hereto have executed this Lease to be effective as of the day and year first above written.

“LESSOR”

LONE BUTTE DEVELOPMENT CORPORATION, a corporation chartered by the Gila River Indian Community

By: _____
Chairman

Attest:

Vice-Chairman

Date: _____

“LESSEE”

_____,
an _____ corporation

By: _____

Name: _____

Title: _____

Date: _____

APPROVED:

“MASTER LESSOR”

GILA RIVER INDIAN COMMUNITY

By: _____

Name: _____

Governor

By: _____

Name: _____

Community Council Secretary

Date: _____

APPROVED: Pursuant to Authority Delegated to the Superintendent, Pima Agency by 209 DM 8, 230 DM 1, 3 IAM 4 (Release No. 00-03), 10 BIAM 11, as amended, and further delegations as needed to effectuate the Reorganization embodied in DM Releases dated April 21, 2003.

Dated: _____

By: _____
Name: _____
Superintendent

/Users/Sonoran/Library/Containers/com.apple.mail/Data/Library/Mail Downloads/Lease sample 20120807.doc

**SCHEDULE 2
TO LEASE BETWEEN
LONE BUTTE AND _____**

[legal description]

**SCHEDULE 4
TO LEASE BETWEEN
LONE BUTTE AND _____**

[hazardous material, etc]

WASTE STREAMS GENERATED BY OPERATIONS

<u>Type</u>	Typical Quantity <u>Generated Per Month</u>	Maximum on Site <u>At One Time</u>
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HAZARDOUS MATERIAL

<u>Type</u>	Typical Quantity <u>Used/Generated Per Month</u>	Maximum on Site <u>At One Time</u>
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COMBUSTIBLE MATERIAL

<u>Type</u>	Typical Quantity <u>Used Per Month</u>	Maximum on Site <u>At One Time</u>
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No change in the operations on the Leased Premises shall occur if such change would increase the maximum amount of Hazardous Material, waste or combustible material as set forth above.

**SCHEDULE 8
TO LEASE BETWEEN
LONE BUTTE AND _____**

[lessee improvements]

**SCHEDULE 11
TO LEASE BETWEEN
LONE BUTTE AND _____**

[environmental documents]

The document listed below is available for review upon request by Lessee. New environmental documents may be generated from time to time. These new documents, if any, will be available for review. However, it is Lessee's responsibility to ask Lessor if there are any new documents.

1. North Central Project Update (Aquifer Cleanup Project)