

**NOTE: THIS DOCUMENT IS A SAMPLE OF THE LEASE FORM USED ON THE LONE BUTTE DEVELOPMENT PARK. DEPENDING ON THE FACTS OF A PARTICULAR SITUATION, THE DOCUMENT MAY CHANGE. ALSO, THIS SAMPLE LEASE WAS LAST UPDATED ON *JANUARY 13, 2023*; THERE MAY HAVE BEEN CHANGES TO THE FORM SINCE THEN.**

**LEASE NO. \_\_\_\_\_**

**LONG-TERM SUBLEASE**

**between**

**LONE BUTTE DEVELOPMENT, L.L.C.,**

**a tribal limited liability company organized under the laws of  
the Gila River Indian Community**

**(“Lessor”)**

**and**

\_\_\_\_\_,

**a** \_\_\_\_\_

**(“Lessee”)**

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**SCHEDULE OF EXHIBITS**

- Schedule 1.28 – Legal Description
- Schedule 4 – Hazardous Material, Etc.
- Schedule 6.2 – Lessee Improvements

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

**THIS LONG-TERM SUBLEASE** (this “**Lease**”) is entered into as of the Effective Date (defined below), between **LONE BUTTE DEVELOPMENT, L.L.C.**, a tribal limited liability company organized under the laws of the Gila River Indian Community (“**Lessor**”), and \_\_\_\_\_, a \_\_\_\_\_ (“**Lessee**”). This Lease is executed under the provisions of the Act of August 9, 1955 (25 U.S.C. § 415), as supplemented by Part 162.401, et seq., Leases and Permits, of the Code of Federal Regulations, Title 25 - Indians, and any amendments thereto relative to business leases on Indian trust lands.

**RECITALS**

A. Lessor is the owner of a leasehold estate under that certain Business Lease No. 4200168349 approved by the Secretary on March 18, 2019 (the “**Master Lease**”). The Master Lease is on record at Pima Agency, Sacaton, Arizona and is made a part of this Lease by this reference. The premises sublet under this Lease are a part of Lessor’s leasehold estate under the Master Lease.

B. Lessor desires to sublease to Lessee and Lessee desires to sublease from Lessor the premises described below on the following terms and conditions.

**1. Definitions.** For the purpose of this Lease, the following terms shall have the meanings set forth below:

**1.1 AAA.** The American Arbitration Association.

**1.2 Affiliate.** Any Person directly or indirectly, through one or more intermediaries, Controlling, Controlled by, or under common Control with another Person, which, in the case of a partnership, shall include each of the general partners and, in the case of a limited liability company, shall include each of the managers and members.

**1.3 Agents.** Lessee’s employees, agents, sublessees, contractors, and subcontractors.

**1.4 Approved Encumbrance.** A mortgage, deed of trust, lien, or other security interest in or against Lessee’s interest in all or any part of the Leased Premises or Improvements meeting the requirements of and approved in accordance with **Section 12**.

**1.5 Approved Encumbrancer.** The holder of an Approved Encumbrance.

**1.6 Assignment.** As provided in **Section 10.2**.

**1.7 Base Rent.** As provided in **Section 5.1.1.**

**1.8 Building Codes.** Consist of the building codes that have been adopted and codified by the Gila River Indian Community and codified in Title 19 and Title 21 of the Community Code as such codes may be amended and updated. Such codes include, but are not limited to: the International Building Code, the International Mechanical Code, the International Plumbing Code, the National Electrical Code, the International Residential Code, the Fuel Gas Code, the International Property Maintenance Code, and the International Fire Code.

**1.9 Community.** The Gila River Indian Community, a federally recognized Indian tribe, and its entities, enterprises, Affiliates, and subdivisions, but not including Lessor.

**1.10 Community Code.** The laws of the Gila River Indian Community, as adopted by the Community Council and amended and updated from time to time.

**1.11 Community Court.** The trial and appellate courts of the Gila River Indian Community, including a Supreme Court if the Gila River Indian Community establishes such a court.

**1.12 Control, Controlled, or Controlling.** The possession or possessing, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person.

**1.13 Day.** A calendar day commencing at 12:00 midnight local Phoenix, Arizona time.

**1.14 Default Rate.** An interest rate that is 18% per annum.

**1.15 DEQ.** The Community's Department of Environmental Quality responsible for environmental protection or, if DEQ no longer exists, its successor or a similar department or agency in existence.

**1.16 Development Park.** The Lone Butte Development Park, which consists of approximately 812 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, and is depicted on the Map of Dedication recorded as Book 1027, Page 19, records of Maricopa County, Arizona, and on the Record of Survey recorded as Book 1485, Page 8, records of Maricopa County Arizona.

**1.17 Dispute.** Any controversy, claim, dispute, or other matter arising out of or related to this Lease or any amendment, modification, extension, or renewal of this Lease, or an event of default described in **Section 18.1.**

**1.18 Effective Date.** The date that this Lease is signed by the Community.

**1.19 Environmental Laws.** Any Community or applicable federal environmental statute, common law duty, rule, regulation, policy, procedure, standard, decree, order, or ordinance now in effect or that may be promulgated in the future, as such statutes, regulations, standards, and ordinances may be amended from time to time, that relate to Hazardous Materials or deal with the regulation, protection, or pollution of the environment, including the ambient air, groundwater, surface water, and land use, including sub-strata land. The Environmental Laws currently include

but are not limited to the following: Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601, et seq. (“**CERCLA**”); the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et seq. (“**RCRA**”); the Toxic Substances Control Act, 15 U.S.C. § 2601, et seq.; the Clean Air Act, 42 U.S.C. § 7401 et seq.; the Clean Water Act, 33 U.S.C. § 1251, et seq.; the Safe Drinking Water Act, 42 U.S.C. § 300f, et seq.; the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11001, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 5101, et seq. (formerly 49 U.S.C. § 1801, et seq.), and laws, rules, and regulations promulgated by the DEQ.

**1.20 Existing Improvements.** All buildings and improvements on the Leased Premises existing as of the Effective Date.

**1.21 Expiration Date.** As provided in **Section 3.**

**1.22 Governmental Authority.** Any governmental or quasi-governmental entity, regardless of how constituted, having jurisdiction over the Leased Premises or any portion of the Leased Premises, or over the design, planning, construction, use, operation, maintenance, or occupancy of all or any portion of the Leased Premises, at any time during the Lease Term.

**1.23 Hazardous Materials Law and Hazardous Materials.**

“**Hazardous Materials Law**” means all laws, ordinances, rules, decrees, orders, standards, procedures, policies or regulations of any federal or Community Governmental Authority relating to hazardous substances, hazardous materials, hazardous waste, toxic substances, including but not limited to, CERCLA, RCRA, the Hazardous Materials Transportation Act, 49 U.S.C. § 5101, et seq. (formerly 49 U.S.C. § 1801, et seq.), and any amendments to the foregoing.

“**Hazardous Materials**” means (1) hazardous materials, hazardous wastes, and hazardous substances as those or similar terms are defined under any Environmental Laws; (2) petroleum and petroleum products, including crude oil and any fractions thereof; (3) natural gas, synthetic gas, and any mixture thereof; (4) asbestos and/or any material which contains any hydrated mineral silicate, including but not limited to chrysolite, amosite, crocidolite, tremolite, anthophyllite and/or actinolite, whether friable or non-friable; (5) poly-chlorinated biphenyls (“**PCBs**”) or PCB-containing materials or fluids; (6) radon (7) explosives; (8) radioactive materials; (9) toxic substances; (10) PCBs and similar materials; and (11) any other substance or material with respect to which any federal, state, local or Community Environmental Laws or Governmental Authority requires environmental investigation, monitoring, regulation, or remediation.

**1.24 Improvements.** All buildings and improvements on the Leased Premises, whether Existing Improvements, Lessee Improvements, or any other improvements, but excluding Removable Personal Property.

**1.25 Lease.** This long-term sublease.

**1.26 Lease Term.** As provided in **Section 3.** Notwithstanding anything in this Lease to the contrary, the Lease Term shall not extend beyond the term set forth in the Master Lease (March 18, 2118).

**1.27 Lease Termination ESA.** As provided in **Section 15.10.**

**1.28 Leased Premises.** That certain real property consisting of approximately \_\_\_ acre(s) of Lot \_\_\_ within Lone Butte Development Park and legally described on **Schedule 1.28,** together with any Existing Improvements and subject to all existing pipelines and utility lines, easements, encroachments, and rights-of-way, including but not limited to those shown on the Map of Dedication recorded as Book 1027, Page 19, records of Maricopa County, Arizona, and on the Record of Survey recorded as Book 1485, Page 8, records of Maricopa County, Arizona.

**1.29 Legal Requirements.** All statutes, laws, rules, codes, orders, regulations, ordinances, judgments, decrees, and injunctions of federal and Community Governmental Authorities and any other Governmental Authorities having jurisdiction affecting either the Leased Premises or the construction, use, occupancy, repair, renovation, replacement, or alteration of or to the Leased Premises, including, without limitation, the laws of the U.S. Federal government and the Community pertaining to the protection and preservation of historic and archeological resources on Indian lands, which laws include, without limitation, the Historic Preservation Act of 1966, the Archeological Resources Protection Act of 1979, the Native American Graves Protection and Repatriation Act of 1991, and the Community’s Antiquities Ordinance of 1986, Code § 19-1 et seq., including any of the same which may (i) require repairs, modifications, or alterations in or to any portion of the Leased Premises; or (ii) in any way limit, restrict, or impose conditions upon the use and authorizations and regulations relating to the Leased Premises. **“Legal Requirements”** also includes all covenants, agreements, restrictions, and encumbrances contained in any instruments, either of record or known to Lessee (other than encumbrances created by Lessor without the consent of Lessee), at any time in force or effect pertaining to the Leased Premises or any portion of or interest in the Leased Premises.

**1.30 Lessee.** As specified in the first paragraph of this Lease.

**1.31 Lessee Improvements.** All buildings and improvements, excluding Removable Personal Property, placed on the Leased Premises by Lessee and approved pursuant to this Lease.

**1.32 Lessor.** Lone Butte Development, L.L.C., a tribal limited liability company organized under the laws of the Gila River Indian Community.

**1.33 Master Lease or [ML].** Business Lease No. 4200168349 approved by the Secretary on March 18, 2019. **“Master Lessor”** means the lessor in the Master Lease; **“Master Lessee”** means the lessee in the Master Lease. This Lease is subject to the provisions of the Master Lease and if there is any conflict between this Lease and the Master Lease, the Master Lease governs. Provisions required to be included in this Lease by the Master Lease are designated by **“[ML]”** at the end of each sentence of the provision.

**1.34 Material Renovations Amount or MRA.** Five Hundred Thousand and No/100 Dollars (\$500,000.00), subject to adjustment on January 1<sup>st</sup> of each year in accordance with changes in the Price Index as set forth in **Section 6.5.**

**1.35 OFAC Regulations.** The regulations of the Office of Foreign Assets Control, Department of the Treasury (including those named on OFAC’s Specially Designated and Blocked

Persons List) and any statute, executive order (including the Executive Order on Terrorist Financing dated September 24, 2001), or other governmental action relating thereto.

**1.36 Person.** An individual, corporation, limited liability company, partnership, joint venture, association, firm, joint stock company, trust, unincorporated association, or other legal entity.

**1.37 Phase I ESA.** A Phase I Environmental Site Assessment.

**1.38 Phase II ESA.** A Phase II Environmental Site Assessment.

**1.39 Pipelines/Utilities, Pipelines/Utilities Area, Pipelines/Utilities Easement.** As specified in **Section 42**.

**1.40 Plans and Specifications.** General or preliminary drawings or plans and general specifications for the proposed improvements.

**1.41 Price Index.** The Consumer Price Index compiled and published by the United States Department of Labor, Bureau of Labor Statistics, for all Urban Consumers, U.S. City Average, 1982-1984 = 100. If at any time the Price Index no longer exists, Lessor and Lessee shall substitute any official index published by the Bureau of Labor Statistics or by a successor or similar government agency that may be in existence and which in Lessor's reasonable business judgment is most nearly equivalent.

**1.42 Reconstruction Deposit.** An amount that, when added to the insurance proceeds, will be sufficient to reconstruct the damaged Improvements on the Leased Premises.

**1.43 Remedial Work.** Any monitoring, investigation, clean-up, removal, and other remedial work required as a result of any release or discharge by Lessee of Hazardous Materials on the Leased Premises or any violation of Environmental Laws by Lessee.

**1.44 Removable Personal Property.** All personal property, of every kind and nature, belonging to Lessee or any sublessee, excluding, however, property which normally would be attached or affixed to the land, buildings, improvements or other portions of the Leased Premises in such a manner that such property would become a part of the realty, regardless of whether such property is in fact so placed in or on or affixed to the land, buildings, improvements, or other portions of the Leased Premises.

**1.45 Rent.** As specified in **Section 5.1**.

**1.46 Review Date.** Each anniversary of the Effective Date.

**1.47 Road Maintenance Fee.** As specified in **Section 5.3**.

**1.48 Secretary.** The Secretary of the Interior, United States Department of the Interior or his or her authorized representative.

**1.49 Security Deposit.** As specified in **Section 5.2**.



**1.50 Security Payment.** As specified in **Section 5.4.**

**1.51 Sublease.** A sublease, license, or other occupancy agreement in all or any part of the Leased Premises or any Improvements, approved in accordance with **Section 10.1;** no Sublease shall extend beyond the Lease Term.

**1.52 Taxes.** All taxes, assessments, licenses, fees, and other like charges now or hereafter enacted or imposed (i) upon or against the Leased Premises, any Improvements located on the Leased Premises, any interests in the Leased Premises, or any property located on the Leased Premises for which either Lessee or Lessor may become liable or (ii) on the conduct of Lessee's business activities on or at the Leased Premises, and/or on the use or occupancy of the Leased Premises, including, without limitation, use taxes, occupancy taxes, sales taxes, tariffs, deposits, transaction privilege taxes, excise taxes, business taxes, utilities taxes, services taxes, income taxes, transfer taxes, stamp taxes, documentary taxes, prime contracting taxes, speculative builder taxes, and other similar taxes.

**2. Leased Premises.** For and in consideration of the Rent and agreements set forth in this Lease, Lessor leases the Leased Premises to Lessee, and Lessee leases and accepts the Leased Premises from Lessor.

**3. Lease Term.**

**3.1 Initial Lease Term.** The initial term of this Lease (the "**Initial Lease Term**") shall be for a period of \_\_\_ years commencing on the Effective Date and ending \_\_\_ years thereafter (the "**Expiration Date**"), unless sooner terminated pursuant to this Lease. In no event shall the grant of this Lease be construed or treated as a grant of a fee interest.

**3.2 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 Lease Term**") commencing at the Expiration Date upon the terms and conditions of this Lease then in effect. Lessee shall deliver 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 Lease Term. The Initial Lease Term and the Additional Lease Term shall collectively be referred to as the "**Lease Term.**"

**4. Permitted Uses of Leased Premises.** Lessee shall utilize the Leased Premises only for \_\_\_\_\_ in accordance with all Legal Requirements and Building Codes [ML]. No change in the proposed use of the Leased Premises shall be undertaken without the prior written approval of Lessor and Master Lessor, given in their sole and absolute discretion. Lessee agrees that it will not use or cause to be used any part of the Leased Premises for any unlawful conduct or purpose, creation of a nuisance, illegal activity, or negligent use or waste. Without limiting Lessee's other duties and obligations under this Lease, Lessee will comply with all applicable laws, ordinances, rules, regulations, and other legal requirements under 25 C.F.R. § 162.014. No Hazardous Material, waste or combustible material shall be stored or used on the Leased Premises without the prior written consent of 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 written approval from Lessor, given in its sole and absolute discretion.

## **5. Rent and Other Payments.**

**5.1 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 as the “**Rent**”:

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

**5.1.2 Adjusted Rent.** The then-current Rent shall be reviewed and adjusted annually on each Review Date during the Lease Term as follows. On each Review Date, the Base Rent shall be increased by the greater of (i) three percent or (ii) the percentage of change that the Price 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 “**Base Index**” for the adjustment shall be the Price Index for the month that is two months preceding the Effective Date. The formula for (ii) shall be:

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

Should the base period for the Price Index be changed, 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 LEASE TERM) IS FROM 16 TO 30 YEARS, USE THE FIRST SHADED OPTION FOR REAPPRAISAL AFTER 15 YEARS; IF LEASE TERM (INCLUDING ADDITIONAL LEASE TERM) EXCEEDS 30 YEARS, USE THE SECOND SHADED OPTION FOR REAPPRAISAL EVERY 15 YEARS]***

**5.1.3 Adjustment to Rent Every 15 Years.** The following process shall be used to determine the Base Rent for [the / each succeeding 15-year] period following the initial 15 years of this Lease ([the / each, a] “**Reappraised Rent Period**”), which will be based upon the fair rental value of the Leased Premises, without consideration of any improvements built by Lessee.

**5.1.3.1** The applicable Base Rent paid by Lessee to Lessor during the Reappraised Rent Period shall be the amount mutually agreed upon between the parties not less than three months prior to the expiration of the [initial / then-current] 15-year period.

**5.1.3.2** If the parties are unable to mutually agree upon the fair rental value by the date that is three months prior to the expiration of the [initial / then-current] 15-year period, then the following appraisal process shall be used to determine the Base Rent during the Reappraised Rent Period. The parties may continue to negotiate during the appraisal process and, if an agreement is reached, the appraisal process shall be terminated and the

applicable Base Rent paid by Lessee to Lessor during the Reappraised Rent Period shall be the amount negotiated by the parties.

**5.1.3.3** The parties shall mutually agree upon a single BIA-approved appraiser to determine the fair rental value. If the parties are unable to agree upon a BIA-approved appraiser within 15 Days after one party receives a proposal naming a BIA-approved appraiser from the other party, then Lessee shall appoint one BIA-approved appraiser to determine the fair rental value. If Lessee fails to appoint a BIA-approved appraiser within 15 Days after receiving a request in writing to do so from Lessor, then Lessee shall pay to Lessor the Base Rent set forth in Lessor's written notice pursuant to **Section 5.1.3.4** below. If the BIA-approved appraiser appointed by Lessee fails to determine the fair rental value within 45 Days after being appointed, then Lessor shall appoint one BIA-approved appraiser to determine the fair rental value in place of Lessee's appraiser. The parties shall split the costs of any appraisers. If this appraisal process continues until the BIA-approved appraiser has reached a determination (instead of being terminated as contemplated by the last sentence of **Section 5.1.3.2** above), then the applicable Base Rent paid by Lessee to Lessor during the Reappraised Rent Period shall be the amount determined by the BIA-approved appraiser.

**5.1.3.4** If Lessor determines in its sole discretion that Lessee has failed to participate or has discontinued participation in the process set forth in this **Section 5.1.3**, then Lessor may deliver written notice to Lessee. If Lessee fails to participate or to resume participation within two weeks after Lessee receives the foregoing notice from Lessor, then Lessor may deliver Lessee written notice of the amount of the fair rental value of the Leased Premises and the applicable Base Rent paid by Lessee to Lessor during the Reappraised Rent Period shall be such amount determined by Lessor.

**5.1.3.5** Notwithstanding anything in this Lease to the contrary, the Base Rent for [the/any] Reappraised Rent Period shall not be less than the Rent for the immediately preceding year. During [the/any] Reappraised Rent Period, the then-current Rent shall be reviewed and adjusted using the procedures set forth in **Section 5.1.2**, except that the Base Rent shall be the amount arrived at in accordance with this **Section 5.1.3** and the Base Index shall be the index for the month that is two months prior to the commencement of the Reappraised Rent Period; the adjustment using the procedures set forth in **Section 5.1.2** shall not occur on the Review Date that begins the Reappraised Rent Period.

**5.2 Security Deposit.** Within five Days after the Effective 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 Lease 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, has fulfilled all maintenance obligations under this Lease, and has conducted a clean-up of the Leased Premises satisfactory to Lessor.

**5.3 Road Maintenance Fee.** During the Lease 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 on the Effective Date. The Road Maintenance Fee shall be adjusted throughout the Lease Term in accordance with **Section 5.1.2** and may be otherwise adjusted as agreed to by Lessor and Lessee.

**5.4 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. During the Lease Term, Lessee shall pay to Lessor the sum of \$\_\_\_\_\_ per month for such security services (the “**Security Payment**”), which shall be paid monthly in advance beginning on the Effective Date. The Security Payment shall be adjusted throughout the Lease Term in accordance with **Section 5.1.2** 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 **Section 5.4**, whereupon Lessee shall be relieved of further payments pursuant to this **Section 5.4**.

**5.5 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 **Section 35**. 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.

**5.6 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 the Default Rate 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 specified. The Rent and other sums due under this Lease shall be paid without prior notice or demand.

**5.7 Approval Fees.** If Lessee requests Lessor’s approval in connection with this Lease (including but not limited to the approval of a sublease, assignment, encumbrance, landlord’s consent, estoppel certificate, bond, certificate of insurance, 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) fees imposed by the Secretary, if any. 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.

**5.8 Attorneys’ Fees.** If either party to this Lease breaches any provision of this Lease, the breaching party shall pay to the non-breaching party reasonable attorneys’ fees and other costs and expenses incurred by the non-breaching party in enforcing this Lease, collecting any money due under this Lease, or preparing for arbitration or other proceedings, regardless of whether arbitration or other proceedings are instituted. If arbitration or other proceedings are instituted to enforce the terms of this Lease, to collect any money due hereunder, or to collect money damages for the 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 by Lessor due to Lessee's violation of any Legal Requirements, including without limitation Community Code, Building Codes, Environmental Laws, Hazardous Materials Law, and Development Guidelines pertaining to the Development Park.

## **6. Improvements.**

**6.1 Plans and Designs.** Before any construction begins on the Leased Premises, Lessee shall submit to Lessor and through the Gila River Indian Community permitting process the Plans and Specifications. Lessor and the Gila River Indian Community shall approve the Plans and Specifications if they are compatible to the general plans for the Development Park, but Lessor does not assume any responsibility whatsoever for the detailed design or structures or for violation of any Legal Requirements or Building Codes. Lessor shall either approve or state its 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. Lessee shall furnish Lessor two copies of as-built plans upon completion of improvements constructed on the Leased Premises.

**6.2 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 Lessee Improvements listed on **Schedule 6.2** or as subsequently modified with the written consent of Lessor pursuant to **Section 6.1**. If Lessee has not completed the Lessee Improvements within \_\_\_\_\_ Days after the Effective Date, then this Lease may be terminated at the option of Lessor.

**6.3 Construction Obligations.** All Improvements shall be part of the Leased Premises subject to the terms and conditions of this Lease. Any Lessee Improvements constructed by Lessee shall be constructed in a good and workmanlike manner and in compliance with all Legal Requirements and the Building Codes [ML]. All Improvements shall be the property of Lessor, but while this Lease remains in effect, Lessee shall be entitled to claim depreciation on the Lessee Improvements and all repairs and replacements of the Lessee Improvements for all taxation purposes. 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. Upon the expiration or earlier termination of this Lease, the Leased Premises shall be delivered to Lessor in accordance with the provisions set forth in **Section 26** of this Lease.

**6.4 Lessee Maintenance.** Lessor shall not be responsible for or required to maintain any buildings or other Improvements on the Leased Premises. Lessee shall, at all times during the Lease Term and at Lessee's sole cost and expense, maintain the Leased Premises and Improvements in good order, repair, and condition (including but not limited to structural repairs and roof repairs), and in compliance with all Legal Requirements and Building Codes [ML]. Good

order, repair, and condition is defined as the same condition as at the Effective 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. If Lessee fails to correct a failure to maintain landscaping on the Leased Premises within one week after Lessor delivers notice to Lessee specifically listing the items that need to be corrected, Lessor may send Lessee a second notice. If Lessee fails to correct such specific items within one week after Lessor delivers the second notice with respect to the same specific items, then Lessor shall have the option to correct such specific items and all costs and expenses incurred by Lessor in so doing shall be repaid by Lessee upon demand, together with interest at the Default Rate from the date of demand until repaid. Failure to make such repayment on demand shall constitute a breach of this Lease. All waste shall be removed from the Leased Premises in accordance with Legal Requirements. 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.

**6.5 Repair, Alteration.** Lessee shall have the right at any time during the Lease Term to make limited alterations, additions, or repairs to any Improvements on the Leased Premises in an amount not to exceed the Material Renovations Amount (MRA) during any calendar year [ML]. Notwithstanding the prior sentence, Lessee shall submit as-built plans to the Community's Department of Building Safety regarding alterations, additions, or repairs to Improvements that do not exceed that MRA [ML]. The sum of the MRA shall be subject to adjustment on January 1 of each year in accordance with changes in the Price Index published for November; the "**Base Index**" for the MRA adjustment shall be the Price Index for November 2014 [ML]. The formula for adjustment shall be [ML]:

$$\text{Adjusted MRA} = \frac{\text{Initial MRA} \times \text{Price Index for preceding November}}{\text{Base Index}}$$

Should the base period for the Price Index be changed, the Base Index shall be adjusted to the new base period and the adjustment formula will remain the same [ML]. In no event shall the MRA in any year be less than the MRA for the preceding year [ML]. Alterations, additions, or repairs to any Improvements in excess of the MRA and the removal or demolition of any Improvements performed by Lessee shall not be made without the prior written consent of Lessor [ML]. Lessee shall prepare and submit its plans for alterations, additions, or repairs to any Improvements in excess of the MRA or the removal or demolition of any Improvements to Lessor in writing. Lessor shall approve or reject such plans in writing within 30 Days following submission to Lessor. Notwithstanding the foregoing, Lessee shall obtain Lessor's prior written approval before performing any alteration, addition, remodeling, or other work within the Leased Premises that involves: (i) any work below the surface of the ground, (ii) any change to utility connections, or (iii) any increase in discharges to the sewer system. In addition, Lessee shall obtain all building permits and other governmental-type approvals from the Community required by Community Code or Building Codes for any alteration, addition, remodeling, removal, or demolition; Lessee acknowledges that some improvements may require a certificate of compliance from the Community's Land Use Planning and Zoning Department. Within two Days after applying for a building permit or other similar approval, Lessee shall provide a copy of the application to Lessor.

**6.6 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:

**6.6.1** 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.

**6.6.2** Maintenance of common streets in the Development Park.

**7. Indemnification.** Lessee agrees to protect, indemnify, defend (with legal counsel reasonably acceptable to Lessor), and hold harmless Lessor, Master Lessor, and the United States, their employees, officers or agents, for, from, and against any and all losses, liabilities, obligations, claims, actions, suits, judgments, demands, damages, costs and expenses, including attorneys' fees and court costs, resulting from or relating to (i) the use, occupation, or subleasing of the Leased Premises, (ii) the control, management, operation, possession, or condition of the Leased Premises, (iii) any injury, death, loss, damage, or destruction of property occurring on the Leased Premises, (iv) the use of any portion of the Development Park (other than the Leased Premises) by Lessee and its Agents, or (v) any injury, death, loss, damage, or destruction of property occurring on any portion of the Development Park (other than the Leased Premises) caused by Lessee or its Agents. The obligations set forth in this **Section 7** shall survive any expiration or termination of this Lease.

**8. Bonds.**

**8.1 Construction Bond.** Before Lessee begins construction of any Improvements on the Leased Premises or any repair or alteration in excess of \$100,000.00, Lessee agrees to provide a performance bond or other security in one of the forms set forth in 25 C.F.R. § 162.435 satisfactory to Lessor, which will guarantee completion of the Improvement and payment in full of claims of all Persons for work performed or materials furnished for construction [ML]. The \$100,000.00 amount shall be adjusted throughout the Lease Term in accordance with the formula set forth in **Section 6.5** applicable to the MRA [ML]. Each performance bond or other security shall require the surety to provide at least 60 Days advance notice to Lessor before such performance bond or other security may be canceled [ML]. With respect to a bond or security issued pursuant to this **Section 8.1**, Lessee shall comply with 25 C.F.R. § 162.413(a)(9) in obtaining the consent of any sureties for any legal instruments that directly affect the obligations and liabilities of any sureties [ML]. All bonds required from Lessee under this Lease shall be deposited with Lessor [ML].

**8.2 Rental Bond.** Lessee agrees to provide a corporate surety bond or other security satisfactory to 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 provide this bond.

**8.3 Environmental Bond.** Lessee agrees to provide a corporate surety bond or other security in an amount and in a form satisfactory to 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 Lessor or the DEQ stating that Lessee has complied with the provision of this Lease relating to compliance with the Environmental Laws. The amount of the bond/security may be increased to an amount deemed sufficient by Lessor to cover Remedial Work if Lessee fails to comply with any provisions under **Section 15**, in addition to other available remedies under this Lease.

**8.4 Performance Bond.** No later than three years prior to the expiration of the Lease Term, Lessee shall provide a payment and performance bond or other security satisfactory to Lessor to guarantee Lessee's obligations in accordance with **Section 26** to surrender the Leased Premises in good order, repair, and condition (as defined in **Section 6.4**) and to remove any Improvements that Lessor designates in writing are to be removed by Lessee pursuant to **Section 26.1.1**.

**9. Insurance.**

**9.1 Insurance Policies.** At all times during the Lease Term, Lessee shall procure and maintain at least the following policies of insurance:

**9.1.1** Commercial general liability insurance coverage with minimum limits of \$1,000,000.00 per occurrence and \$2,000,000.00 general aggregate coverage 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 [ML].

**9.1.2** 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.

**9.1.3** 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.

**9.1.4** Excess liability insurance coverage in the amount of \$3,000,000.00 in the aggregate. Such excess liability policy shall provide coverage as broad as the underlying policies [ML].

**9.1.5** Fire insurance with extended coverage endorsements to include vandalism covering the full replacement cost of all Improvements on the Leased Premises [ML].

**9.2 Evidence of Insurance.** All policies shall (i) identify Lessor, Master Lessor, and the United States as additional insured parties [ML], (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, and (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.



Lessee shall furnish to Lessor evidence of insurance in the form of an insurance certificate showing the required coverage or in another commercially available format reasonably acceptable to Lessor [ML]; Lessee shall provide copies of policies if requested. Each insurance policy shall not be cancelled or reduced below the required coverage unless at least 30 Days prior written notice has been delivered to Lessor (ten Days in case of non-payment of premium) [ML]. Lessee shall provide a certificate with respect to replacement or renewal policies prior to the expiration date of then-existing policies [ML]. Lessee shall pay all premiums and other charges for such insurance and shall, upon request, furnish satisfactory evidence of such payment to Lessor [ML]. If any of the insurance requirements in this **Section 9** are no longer commercially available or available only for a commercially unreasonable premium, the insurance that will be required from Lessee will be the most similar insurance that is reasonably acceptable to Lessor [ML]. From time to time during the Lease Term, upon written request of Lessor, the amount of insurance shall be adjusted throughout the Lease Term in accordance with **Section 5.1.2** and Lessee shall provide evidence of such increased insurance as otherwise required by this **Section 9.2**. Neither Lessor, Master Lessor nor the United States 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 on the Leased Premises, 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, 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 and shall hold Master Lessor, Lessor and the United States 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 related costs and expenses, but Lessee does not, by this **Section 9.2**, waive any claim it may have against the United States, Master Lessor, Lessor, or any Person based on their negligence or unlawful conduct.

**9.3 Waiver of Subrogation.** To the extent permitted by law, and without affecting the coverage provided by the insurance required to be procured and maintained hereunder, Lessee waives any right to recover against Lessor and Master Lessor on account of any and all claims Lessee may have against Lessor and Master Lessor with respect to any loss or damage insured against under the insurance required under this Lease [ML].

**9.4 Insurers.** Insurance policies shall be furnished and maintained by such responsible companies as are rated A+VIII or better in the then current edition of the Best's Insurance Guide [ML]. Performance and payment bonds shall be furnished and maintained by companies holding certificates of authority from the United States Secretary of the Treasury as acceptable sureties on Federal bonds, authorized to do business in the State of Arizona, and rated A+VIII or better [ML].

### **9.5 Damage and Proceeds.**

**9.5.1 Escrow Account.** If there is damage to any Improvements on the Leased Premises, all insurance proceeds received by Lessee arising from such damage shall be deposited in an escrow account with an institution approved by Lessor. If insurance proceeds are insufficient to complete reconstruction, Lessee shall deposit the Reconstruction Deposit into escrow within 30 Days after the deposit of insurance proceeds. Escrow instructions shall include provisions that (i)

all funds so deposited shall be used to reconstruct the damaged Improvements and (ii) funds shall be disbursed during reconstruction upon receipt by the escrow holder and Lessor of proper architect's, engineer's, or contractor's certificates to either Lessee (if Lessee elected to reconstruct pursuant to **Section 9.5.2**) or Lessor (if Lessor elected to reconstruct pursuant to **Section 9.5.3**). Escrow instructions shall also include provisions for funds remaining in escrow after reconstruction or if neither Lessee nor Lessor reconstructs that are consistent with **Section 9.5.2** and **Section 9.5.3**. Failure by Lessee to timely make the Reconstruction Deposit shall constitute a breach of this Lease.

**9.5.2 Reconstruction by Lessee.** Lessee, within 90 Days after damage to any of the Improvements has occurred, may elect in writing whether to reconstruct the Improvements in compliance with applicable Legal Requirements and Building Codes and in accordance with Plans and Specifications to be approved pursuant to **Section 6.1**. The work shall commence within six months after the damage occurs and be pursued diligently to completion. If Lessee is not then in default under this Lease (any required notice having been delivered and any applicable cure period having expired), all money remaining in escrow after reconstruction has been completed shall be paid to Lessee. If a default by Lessee has taken place that remains uncured, said money shall remain in escrow and be subject to claims by Lessor, as security for performance by Lessee until said default is corrected, at which time such funds remaining in escrow shall be paid to Lessee. If Lessee does not correct the default within the time frames set forth in **Section 17.1**, such funds as are necessary to correct the default shall be paid to Lessor, and the balance shall be paid to Lessee. If Lessee does not make a written election to reconstruct within the 90-Day period set forth in this **Section 9.5.2**, Lessee shall be deemed to have elected not to reconstruct.

**9.5.3 Reconstruction by Lessor.** If Lessee elects not to reconstruct as set forth in **Section 9.5.2**, Lessor shall have 90 Days after the 90-Day period set forth in **Section 9.5.2** to elect in writing to reconstruct as set forth in **Section 9.5.2**. If Lessor does not make a written election to reconstruct as set forth in the preceding sentence, Lessor shall be deemed to have elected not to reconstruct. If neither Lessee nor Lessor elects to reconstruct as set forth above, all funds in escrow shall be payable as follows, unless otherwise expressly set forth in an Approved Encumbrance: (i) first, to the demolition, clearing, and grading work necessary to restore the Leased Premises to a cleared and safe condition (including removal of foundations if required by Lessor), (ii) second, to satisfy any Approved Encumbrance, but only up to the amount of the Approved Encumbrance that was used to construct the Improvements, (iii) third, to satisfy any remaining obligations of Lessee under the Lease, and (iv) fourth, to Lessor. If Lessee has made the Reconstruction Deposit and is not otherwise in default under this Lease, then effective upon Lessor's election not to reconstruct (a) Rent shall totally abate and (b) this Lease shall terminate.

## **10. Subleases and Assignments.**

**10.1 Subleases.** Lessee shall not enter into a Sublease for all or any part of the Leased Premises or the Improvements without the prior written approval of Lessor and Master Lessor. Subleases shall not conflict with any provision of this Lease or the Master Lease. Such Subleases shall not relieve Lessee of any liability under this Lease. All Subleases shall be subject to the provisions of this Lease and the Master Lease. A Sublease may be amended, subleased, or assigned only with the written approval of Lessor and Master Lessor. Lessor shall submit a copy

of the executed Sublease or related document to the Secretary within 30 Days after approval and execution by Lessee, Lessor, and Master Lessor.

**10.2 Assignments.** Lessee shall not assign or transfer this Lease or any right to or interest in this Lease or any of the Improvements or the Leased Premises (each, an “**Assignment**”) without the prior written approval of Lessor and Master Lessor. An Assignment shall only be valid and binding if the assignee agrees in writing to be bound by the terms of this Lease. If an Assignment of this Lease is approved, Lessee shall not be relieved of its duties and obligations under this Lease unless the approval of the Assignment expressly states that Lessee is relieved of its duties and obligations arising after the date of such Assignment. Lessor shall submit a copy of the executed Assignment to the Secretary within 30 Days after approval and execution by Lessee, Lessor, and Master Lessor. For purposes of this Lease, an Assignment shall include, but shall not be limited to, the following:

**10.2.1** 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.

**10.2.2** 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.

**10.2.3** 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.

**10.2.4** 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.

**10.3 Assignment and Sublease Approval.** No Assignment or Sublease shall be valid without the prior written approval required in this **Section 10**. Should Lessee attempt to make an Assignment or Sublease except as provided in this **Section 10**, such action shall be deemed a breach of this Lease, excepting that an Approved Encumbrancer may enforce its rights in the manner provided in this Lease. Approval of one Sublease or Assignment shall not validate a subsequent Sublease or Assignment that has not received the required approvals; the restrictions of this **Section 10** shall apply to each successive Sublease or Assignment and shall be severally binding upon each and every sublessee, assignee, and other successor in interest of Lessee, excepting an Approved Encumbrancer. Consent to a Sublease or Assignment shall not be unreasonably withheld, provided that the Sublease or Assignment is for the same use described in

**Section 4** and does not increase the maximum amounts of Hazardous Material, waste, or combustible material set forth on **Schedule 4**. If there would be a change in the use described in **Section 4** or the maximum amounts of Hazardous Material, waste, or combustible material set forth on **Schedule 4**, then consent to a Sublease or Assignment shall be given by Lessor and Master Lessor in their sole and absolute discretion. If the per acre rent or other consideration to be paid by a sublessee or assignee to Lessee (the “**3rd 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 or Assignment (the “**3rd Party Acreage**”). Lessee shall pay Additional Rent to Lessor at the same time or times the same is paid by such sublessee or assignee. For purposes of this **Section 10**, the Additional Rent to be paid by Lessee shall be calculated as follows:

$$\frac{\text{rent or consideration due under Sublease or Assignment}}{\text{3rd Party Acreage}} = \text{3rd Party Per Acre Rent}$$

$$\frac{\text{Rent due under this Lease}}{\text{total number of acres comprising the Leased Premises}} = \text{Per Acre Rent}$$

$$(\text{3rd Party Per Acre Rent} - \text{Per Acre Rent}) \times \text{3rd Party Acreage} = \text{Additional Rent}$$

**11. Status of Lease.** Termination of the Master Lease, by cancellation or otherwise, shall not serve to cancel this Lease, but shall operate as an assignment to Master Lessor. If Lessee is not in default under the terms of this Lease (any required notice having been delivered and any applicable cure period having expired), Master Lessor shall honor this Lease and shall not disturb the tenancy of Lessee until the earlier of (i) the expiration of the Lease Term, (ii) the expiration of the Master Lease, or (iii) the occurrence of a default under this Lease, provided that in no event shall Master Lessor be subject to any claims, debts, demands, dues, actions or causes of action which Lessee may have against Lessor and in no event shall Master Lessor be responsible or liable in any manner for any construction obligations of Lessor or for any action, omission, breach or default of Lessor under this Lease, and Master Lessor shall not be responsible for the return of any pre-paid rent or deposits paid by Lessee, unless such pre-paid rent or deposit is actually paid to Master Lessor.

**12. Approved Encumbrance.**

**12.1 Leasehold Encumbrance.** Lessee, from time to time during the Lease Term, may make one or more Approved Encumbrances, as follows:

**12.1.1 Use of Proceeds; Approval; Copies.** Each Approved Encumbrance shall be utilized for financing or refinancing the development or improvement of the Leased Premises and/or the acquisition of personal property or fixtures to be located and used on the Leased Premises, subject to the prior approval of Lessor and Master Lessor and no encumbrance shall be valid without such approval. Lessee agrees to furnish as requested any financial statements or analyses pertinent to the encumbrance that Lessor or Master Lessor may deem necessary to justify the amount, purpose or terms of such encumbrance. Lessor shall submit a copy of the Approved

Encumbrance to Master Lessor and the Secretary within 30 Days after approval and execution by Lessee, Lessor, and Master Lessor.

**12.1.2 Reversionary Interest.** No Approved Encumbrance shall extend to or affect the reversionary interest and estate of Lessor or Master Lessor in and to the Leased Premises or in any way attach to or affect the Leased Premises from and after any expiration or termination of this Lease.

**12.1.3 Lessor Right to Cure.** In the event of default by Lessee of the terms of any Approved Encumbrance, an Approved Encumbrancer may exercise the rights set forth in such Approved Encumbrance, provided that before any sale or foreclosure, Approved Encumbrancer shall deliver notice to Lessor 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. If notice of such sale is given and any of the defaults upon which such notice of sale is based continues, Lessor shall have the following rights which may be exercised at any time prior to the completion of sale proceedings:

- (1) To pay to Approved 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 Approved Encumbrancer the amount of any such uncured defaults, together with costs and expenses chargeable under such Approved Encumbrance and then to assume and make all payments under such Approved Encumbrance.

If 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 Lessor 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. If Lessor does not exercise either 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 Approved Encumbrancer, the Approved 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 Approved Encumbrancer is the purchaser, it shall be required to perform this Lease only so long as it retains title the leasehold estate. If a sale under the Approved Encumbrance occurs and the purchaser is a party other than the Approved Encumbrancer, said purchaser, as successor in interest to Lessee, shall be bound by all the terms and conditions of this Lease.

**12.1.4 Approved Encumbrancer's Right to Cure.** Before terminating this Lease for an event of default by Lessee, Lessor shall deliver written notice of intent to terminate to each Approved Encumbrancer who has provided Lessor with Approved Encumbrancer's mailing address. Approved Encumbrancer shall have the right to cure such default if Lessee fails to do so. Lessor shall accept such performance by the Approved Encumbrancer as though the same had

been done or performed by Lessee. Provided all Rent is paid current (including during the 30 Day period granted to Approved Encumbrancer), each Approved Encumbrancer shall have 30 Days more than the time given to Lessee within which to cure a default, which time period will commence upon the later of (i) the delivery of such notice to Approved Encumbrancer or (ii) the expiration of the time period available to Lessee. The Approved Encumbrancer shall have the right to enter upon the Leased Premises to give such performance, and Approved Encumbrancer shall be responsible for any actions or omissions (including any injuries and damage to the Leased Premises) of Approved Encumbrancer and its employees, contractors and designees who enter the Leased Premises. The Approved Encumbrancer may have such additional rights to cure a default by Lessee under this Lease as may be set forth in an Approved Encumbrance. Notwithstanding the period of time granted to Approved Encumbrancer to cure a default by Lessee under this Lease, in no event shall Lessor be prevented, prohibited, limited or impaired in any manner from exercising its rights and remedies as against Lessee under this Lease (except only for a termination of this Lease), and, furthermore, Lessor may take such commercially reasonable actions as Lessor may determine in order to protect and safeguard the Leased Premises, to correct a violation of Legal Requirements, to prevent waste, and to protect the public health and safety.

**12.1.5 Approved Encumbrancer's Right to Assign.** An Approved Encumbrancer may become the legal owner and holder of Lessee's interest in this Lease as a result of an assignment of this Lease through foreclosure or a deed in lieu of foreclosure pursuant to **Section 10.3**. An Approved Encumbrancer shall deliver a copy of such assignment, foreclosure deed or deed in lieu to Lessor, Master Lessor, and the Secretary within 30 Days after the date of such assignment. An Approved Encumbrancer may have such additional rights if Lessee defaults under an Approved Encumbrance as may be set forth in an Approved Encumbrance. In no event may any Person, other than an Approved Encumbrancer, become the legal owner and holder of Lessee's interest in this Lease (whether by assignment, foreclosure deed or deed in lieu or subsequent assignment by an Approved Encumbrancer) without the prior written consent of Lessor.

**13. Liens, Assessments, Utility Charges.** Lessee shall not permit any liens arising from any work performed, materials furnished, or obligations incurred by Lessee to be enforced against the Leased Premises or any part of the Leased Premises; Lessee shall discharge or post a bond against all such liens before an action is brought to enforce the same [ML]. Upon written request, Lessee shall furnish to Lessor written evidence that any and all liens required to be paid by Lessee have been paid, satisfied, or otherwise discharged [ML]. Lessee shall have the right to contest any claim or assessment against the Leased Premises, any interests in the Leased Premises, and any property located on the Leased Premises by posting bonds to prevent enforcement of any resulting lien [ML]. Lessee agrees to protect, indemnify, defend (with legal counsel reasonably acceptable to Lessor), and hold harmless the Leased Premises (and all interests in the Leased Premises and all Improvements), the United States, Master Lessor, and Lessor for, from and against any and all losses, liabilities, obligations, claims, actions, suits, judgments, demands, damages, costs and expenses, including reasonable attorneys' fees and court costs, relating to or arising from any lien, sale, or other proceedings to enforce payment, and all costs in connection with the same [ML]. In addition to the Rent, Lessee shall pay all charges for water, sewerage, gas, electricity, telephone, and other utility services supplied to the Leased Premises for Lessee's use directly to the utility providers as the same shall become due [ML]. Lessee shall pay prior to delinquency all Taxes, so long as such Taxes are uniformly applied to the commercial activities of other similarly situated

Persons, including without limitation, all taxes imposed by the Community on subleasing activity if Lessee subleases the Leased Premises [ML]. Lessee shall be bound directly to Master Lessor, by virtue of this Lease, to pay all such Taxes to Master Lessor [ML]. This **Section 13** shall survive the termination of this Lease [ML].

**14. Historic Preservation and Archeological Resources.** Lessee acknowledges the particular relevance and applicability of federal and Community laws pertaining to the protection and preservation of historic and archeological resources on Indian lands, which resources are widespread throughout the Gila River Indian Reservation [ML]. Such laws currently include, without limitation, the Historic Preservation Act of 1966, the Archeological Resources Protection Act of 1979, the Native American Graves Protection and Repatriation Act of 1991, and the Community's Antiquities Ordinance of 1986, Section 15.401, et seq., of the Community Code [ML]. Lessee agrees to strict compliance with such laws (as they may be amended from time to time) and other Legal Requirements for purposes of the development and use of the Leased Premises [ML]. If historic properties, archeological resources, human remains, or other cultural items not previously reported are encountered during the course of any activity associated with this Lease, all activity in the immediate vicinity of the properties, resources, remains, or other items will cease and Lessee will contact Lessor, Master Lessor, the Secretary, and the Community's Cultural Resources Management Program to determine how to proceed and the appropriate disposition [ML].

**15. Environmental Protection Requirements.** Lessee shall strictly comply with all Environmental Laws [ML]. Lessee is responsible for any costs incurred in effecting such compliance regarding this Lease and for securing all necessary permits for any activity approved under the terms of this Lease [ML]. Environmental mitigation measures required by any Governmental Authority having regulatory jurisdiction over the Leased Premises shall be strictly adhered to by Lessee [ML].

**15.1 Hazardous Materials.**

**15.1.1 Use.** Lessee shall not allow any Hazardous Material to be used, generated, released, stored, or disposed of on the Leased Premises or within the Development Park, unless (i) such Hazardous Materials are (A) used, generated, stored, or disposed of, as applicable, in the construction, repair, operation or maintenance of the Leased Premises (including the businesses and activities permitted pursuant to **Section 4** which are conducted on the Leased Premises), (B) used in normal commercial or retail applications, or (C) sold as retail consumer products; (ii) such use is in compliance with the provisions of this **Section 15**; and (iii) such use does not exceed the maximum amounts of Hazardous Material, waste, or combustible material set forth on **Schedule 4** [ML].

**15.1.2 Compliance with Laws.** Lessee's use of Hazardous Materials on the Leased Premises and in the Development Park shall be in compliance with all Hazardous Materials Laws and Environmental Laws [ML]. Lessee shall obtain and maintain in full force and effect all permits, licenses and other governmental approvals required for Lessee's use of Hazardous Materials on the Leased Premises under such laws and shall comply with all terms and conditions thereof [ML]. Upon request, Lessee shall deliver copies of, or allow Lessor to inspect, all such permits, licenses and approvals [ML]. Lessee shall perform any Remedial Work required

as a result of any release or discharge of Hazardous Materials by Lessee [ML]. All completed Material Safety Data Sheets (“MSDS”) forms must be kept at Lessee’s office and made available upon demand by Lessor or Master Lessor [ML]. Lessee will promptly supply such MSDS forms to the Community Fire Department, the DEQ, and the Community Environmental Health Program upon the receipt of the completed MSDS forms from the supplier [ML].

**15.1.3 Compliance with Insurance Requirements.** Lessee shall comply with the requirements of its insurers regarding the use of Hazardous Materials at the Leased Premises and with such insurers’ recommendations based upon prudent industry practices regarding management of Hazardous Materials [ML].

**15.1.4 Notice and Reporting.** Lessee shall notify, in accordance with the Community’s Emergency Planning and Community Right to Know Ordinance, No. GR-01-02, Section 7303, Emergency Notification, the DEQ immediately by fax (520-562-2245) or telephone (520-562-2234), which shall be confirmed by written notice to the DEQ, 35 Pima Street, P.O. Box 97, Sacaton, Arizona 85147 and to Lessor and Master Lessor within two Days after the occurrence of any of the following: (i) a known release or discharge by Lessee of any Hazardous Materials in violation of Hazardous Materials Laws or Environmental Laws and, in addition, Lessee shall notify the Community promptly upon learning of such incident by calling the Community on its 911 telephone number (or its successor); (ii) Lessee’s receipt of any order of a Governmental Authority requiring any Remedial Work pursuant to any violation by Lessee of Hazardous Materials Laws or Environmental Laws; (iii) Lessee’s receipt of any notice of violation by Lessee of any Hazardous Materials Law or Environmental Law; (iv) Lessee’s receipt of notice of any claims made by any third party against Lessee relating to any loss or injury resulting from the generation, release, storage, or disposal at the Leased Premises by Lessee of Hazardous Materials; or (v) the known delivery to the Leased Premises of Hazardous Materials from any source as required by 40 C.F.R. § 261 [ML].

**15.1.5 Termination or Expiration.** Upon the termination or expiration of this Lease, Lessee shall remove from the Leased Premises any equipment, improvements, or storage facilities installed by Lessee and utilized by Lessee in connection with any Hazardous Materials and shall clean up, detoxify, repair, remediate, and otherwise restore the Leased Premises to a condition such that Hazardous Materials generated, released, stored, or disposed of by Lessee on the Leased Premises, if any, are not present in concentrations requiring Remedial Work under Hazardous Materials Laws and Environmental Laws [ML]. Lessee shall not be deemed a tenant in possession, whether by holdover or otherwise, during any required clean-up [ML].

## **15.2. Water Pollution Prevention and Water Quality.**

**15.2.1 Discharge and Spillage.** Lessee agrees to design and operate its activities so as to preclude or prevent the unauthorized discharge or accidental spillage of pollutants, as that is defined by the Clean Water Act (33 U.S.C. § 1362(6)), into flowing or dry watercourses, lakes, ponds, wetlands, any other waters of the United States, or any underground water sources within the Leased Premises [ML]. Lessee shall not deposit or stockpile excavated, constructed, or industrial materials or debris within 50 feet of any watercourses within the Leased Premises [ML].



**15.2.2 Storm Water Runoff.** Lessee agrees to design and operate its activities in such a way that storm water runoff is contained and controlled as required by Legal Requirements [ML]. Lessee shall comply with all applicable Environmental Laws pertaining to runoff, including but not limited to, all applicable provisions pertaining to industrial storm water runoff in 33 U.S.C. § 1342(p) [ML]. Lessee shall file for review with the DEQ a copy of its storm water runoff plan [ML].

**15.2.3 Water Quality.** Lessor shall be solely responsible for (1) all maintenance and related costs of any and all wells, pumps, related assembly, and systems located in the Development Park as required to supply the Development Park with sufficient potable water; and (2) the compliance with all applicable laws and related standards to the pumping, delivery, quality, and use of water from such wells, including but not limited to, the Safe Drinking Water Act, 42 U.S.C. §§ 300f to 300j-9 (Supp. IV 1974), as amended, if applicable [ML].

### **15.3 Solid Waste Disposal Storage or Industrial Liquids.**

**15.3.1 Solid Waste.** It shall be Lessee's responsibility to arrange for disposal of all solid waste as defined by 42 U.S.C. § 6903(27) generated by Lessee within the Leased Premises in a manner consistent with Environmental Laws, including but not limited to, 42 U.S.C. § 6901 et seq. and 25 C.F.R. Part 258 [ML]. Open dumping, burial, or stockpiling of solid waste within the Leased Premises is strictly prohibited [ML]. Lessee shall contain organic solid waste subject to decomposition so as to prevent access by birds, animals, or other disease vectors, and shall arrange for haulage of all solid waste no less than once per week to a solid waste facility operating in compliance with Legal Requirements [ML].

**15.3.2 Storage of Industrial Liquids.** Lessee shall comply strictly with the provisions of Community Environmental Laws and 42 U.S.C. § 6991 et seq. and all implementing regulations related thereto [ML]. Any proposed construction of storage tanks for holding regulated substances as defined in 42 U.S.C. § 6991(7) by Lessee within the Leased Premises shall be disclosed to Lessor, Master Lessor, the Community Fire Department, the DEQ, and the Community Environmental Health Program prior to the construction of such tanks [ML]. In addition to the foregoing, no storage tank shall be located within fifty (50) feet of any waterway, dry or flowing, and all such storage tanks shall be placed within separate secondary protective, impermeable containment whose performance equals or exceeds such liner as required by 40 C.F.R. § 258.40 [ML]. Lessee shall submit to DEQ all underground storage tanks spill mitigation plans and pollution prevention measures, as well as compliance reviews, with respect to Lessee's underground storage tanks [ML].

### **15.4 Indemnification.**

**15.4.1 Obligation.** Except to the extent of any conditions which (i) predate the earlier of the Effective Date or Lessee's use of the Leased Premises or (ii) migrate onto the Leased Premises from other lands of Lessor, Lessee shall protect, indemnify, defend and hold harmless Lessor, Master Lessor, and the Secretary for, from, and against any and all losses, claims, costs, fees, expenses, suits, damages, attorneys' fees, judgments, actions, investigation costs, remediation costs, consulting fees, proceedings, and liabilities to the extent arising out of or from or in connection with:

- (1) Any breach by Lessee of any provisions of this **Section 15** [ML].
- (2) The use, generation, storage, release, disposal or transportation of Hazardous Materials by Lessee, or its agents, contractors, employees, or licensees [ML].
- (3) Any release, threatened release, or disposal of any Hazardous Material at or from the Leased Premises [ML].
- (4) Any release, threatened release, or disposal of any Hazardous Material at or from the Development Park (other than the Leased Premises) by Lessee or its Agents [ML].
- (5) The violation of any Environmental Law or Hazardous Materials Law at the Leased Premises [ML].

**15.4.2 Persons Bound.** The indemnification shall be binding upon the successors and assigns of Lessee with respect to their periods of ownership and Control and to the benefit of Lessor, Master Lessor, and the Secretary, and their directors, officers, employees, and agents, and their successors and assigns [ML].

**15.4.3 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 with the claim or proceeding.

**15.5 Default under Environmental Provisions.** Lessee's failure to comply with any provisions under this **Section 15** (not cured in accordance with the provisions of **Section 17.1** of this Lease) shall be a material default of this Lease, which shall entitle Lessor, Master Lessor, or the Secretary to all available remedies under this Lease and otherwise [ML].

**15.6 Pre-existing Conditions.** Lessee shall not be held responsible or liable for conditions that migrate onto the Leased Premises from Lessor's other lands at any time or for any pre-existing conditions on the Leased Premises [ML]. Pre-existing conditions shall mean a condition in existence on the Leased Premises prior to the earlier of the Effective Date or Lessee's use of the Leased Premises [ML].

**15.7 Notice to Lessee.** Except as set forth in the North Central Project Update (Aquifer Cleanup Project) relating to two former tenants (Romic and Plymouth Tube), Lessor has no actual knowledge 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. The North Central Project Update (Aquifer Cleanup Project) is available for review upon request by Lessee. New environmental documents may be generated from time to time and will be available for review by Lessee, but it is Lessee's responsibility to ask Lessor if there are any new documents.

**15.8 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 the 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 Development 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.

**15.9 Emergency Plan.** Within 15 Days after the Effective Date, Lessee shall file with the Community Fire Department 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 Community Fire Department. Any revisions to the emergency plan shall have the prior approval of the Community Fire Department.

**15.10 Site Investigation.** Within 30 Days after the Effective Date, Lessee shall perform a Phase I ESA of the Leased Premises to determine whether there is any environmental contamination of the Leased Premises. Within 90 Days prior to the expiration of the Lease Term or within 30 Days after the early termination of this Lease, Lessee shall perform another Phase I ESA (and a Phase II ESA or other environmental assessment, if recommended by the Phase I ESA) (the "**Lease Termination ESA**") to determine if there was any environmental contamination of the Leased Premises during the Lease Term. All site assessments shall be performed by firms reasonably acceptable to Lessor, shall be of such scope as reasonably approved by Lessor, shall be certified to Lessor, and shall be submitted to Lessor within 15 Days after they are received by Lessee. If the Lease Termination ESA discloses any environmental contamination to (i) the Leased Premises or (ii) the surrounding property by Lessee or its Agents, Lessee shall promptly perform Remedial Work to clean up any such contamination in accordance with all Legal Requirements, including the Environmental Laws. If any of Lessee's obligations under this **Section 15** are performed after the expiration or termination of this Lease, Lessee shall be considered a holdover tenant pursuant to **Section 21** until the Lease Termination ESA and the Remedial Work are completed.

**15.11 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.

**15.12 Survival of this Section.** Lessee specifically agrees that the obligations of Lessee under this **Section 15** shall survive the expiration or termination of this Lease [ML].

**16. Eminent Domain.**

**16.1 Allocation of Compensation for Taking.** All compensation and damages awarded for the taking of all or any portion of the Leased Premises or Improvements shall be awarded as the respective interest of the Community, Lessor, Lessee, any sublessee, and any Approved Encumbrancer appear at the time of the taking; provided, however, that the Community in no event shall be entitled to 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 on the Leased Premises by Lessor or Lessee.

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

**16.3 Voluntary Conveyance a Taking.** A voluntary conveyance by 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 **Section 16**.

**16.4 Total Taking Terminates Lease.** If all of the Leased Premises are taken, this Lease shall terminate as of the date of taking. If 75% or more by area but not all of the Leased Premises is taken, Lessee shall have the option within 60 Days of the date of taking by written notice to Lessor and the consent of all Approved Encumbrancers, if any, to have such taking deemed a "total taking."

**16.5 Partial Taking.** If a portion, but not all, of the Leased Premises is taken, 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.

**16.6 Other Compensation.** Nothing in this **Section 16** shall prohibit Lessee from making a claim, in its own name, to the condemnation authorities for the value of any furnishing, trade fixtures, equipment, merchandise, or personal property of any kind belonging to Lessee and not forming part of the real property, or for the cost of moving same, and for damages for interruption of Lessee's business.

**17. Default.**

**17.1 Lessee's Default.** The occurrence of any one or more of the following events will constitute a default or an event of default on the part of Lessee:

**17.1.1** If Lessee fails to make any payment of Rent, the Road Maintenance Fee, and the Security Payment when due and payable, and if such failure continues uncured for a period of five business Days after written notice of such default is delivered to Lessee.

**17.1.2** If Lessee fails to make any payment of monies (other than Rent, the Road Maintenance Fee, or the Security Payment) when due and payable or fails to post any bond as required by the terms of this Lease and if such failure continues uncured for a period of 15 Days after written notice of such default is delivered to Lessee.

**17.1.3** If Lessee fails to comply with any other covenant of this Lease and if such failure continues uncured for a period of 30 Days after written notice of such default is delivered to Lessee. Notwithstanding the notice and cure periods given to Lessee, if Lessee's failure to comply impairs or jeopardizes the Leased Premises or that relates to a violation of Legal Requirements or that threatens the public health or safety, then the breach shall be immediately cured and Lessor shall have the right at any time to take commercially reasonable steps to correct or cure any such breach, in which event Lessee shall promptly reimburse Lessor for the costs and expenses incurred by Lessor.

**17.1.4** 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 **Sections 17.1.1, 17.1.2, and 17.1.3** shall not be applicable.

**17.2 Rights and Remedies.** Upon a default or event of 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 any 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 or assignee of Lessee pursuant to a Sublease or Assignment 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 pursue all other remedies available at law or in equity.
- (8) Invoke the provisions of 25 C.F.R. Part 162 relating to cancellation of leases.
- (9) Exercise any other rights and remedies as may be available to Lessor.
- (10) Perform, or attempt to perform, the unperformed obligations of Lessee under this Lease and recover from Lessee the costs and expenses incurred by Lessor in doing so.

**17.3 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 from Lessee (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.

**17.4 Bankruptcy.** It shall be considered a default under this Lease (i) 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, (ii) if Lessee or any guarantor becomes insolvent or files a voluntary petition under any Chapter of Title 11, United States Bankruptcy Code, 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, (iii) if a receiver is appointed for the business, property, affairs, or revenues of Lessee or any guarantor, or (iv) if 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.

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

**18. Dispute Resolution.**

**18.1 Binding Arbitration.** Any Dispute arising out of this Lease, including, without limitation, whether such Dispute is subject to arbitration, not resolved by negotiation between Lessor and Lessee, shall be resolved through binding arbitration conducted in Maricopa County, Arizona as provided in this **Section 18**, except in those instances specified in **Section 18.5**. Either Lessor or Lessee 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 Dispute, the amount involved, if any, and the remedy sought. Lessor agrees not to assert any doctrine requiring exhaustion of Community Court remedies prior to proceeding with arbitration. For the sole purposes of this Lease, Lessor hereby provides a limited waiver of any sovereign immunity it may enjoy with respect to controversies, claims, and/or causes of action arising out of or relating to this Lease for the limited purpose of arbitration and related federal court jurisdiction as set forth in **Section 18.1 through 18.4** and an emergency remedy in Community Court as set forth in **Section 18.5**. Lessor further acknowledges and agrees, pursuant to the foregoing express limited waiver of sovereign immunity, to submit to the jurisdiction of the arbitration panels described in **Section 18.1 through 18.4** (or the Community Court in an emergency situation as described in **Section 18.5**). By signing below, the Community, in its capacity as Lessor's sole member, approves the foregoing limited waiver of sovereign immunity. The arbitration may take place without the presence of any party refusing to submit to arbitration under this **Section 18**.

**18.2 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 AAA except (i) as such rules may contemplate state court jurisdiction and (ii) as otherwise provided in this **Section 18**. The arbitrator(s) shall be selected in accordance with the rules of the AAA from panels maintained by the AAA. No arbitrator shall have or previously have had any significant relationship with any of the parties. If the only relief sought is for a monetary award of \$500,000.00 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 Lessor and Lessee, including any party refusing to submit to arbitration under this **Section 18**, 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 U.S.C. § 1, et seq.), which shall apply to the construction and interpretation of this **Section 18**, 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 **Section 18**, 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 Lessor or Lessee shall be applicable in any arbitration proceeding. Any recovery against Lessor shall be limited to the assets of Lessor.

**18.3 Discovery.** Lessor and Lessee 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.

**18.4 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.

**18.5 Emergency Remedies.** Lessor and Lessee acknowledge that binding arbitration is the dispute resolution mechanism chosen by Lessor and Lessee. At the same time, Lessor and Lessee understand that situations will arise where the need for immediate relief precludes the use of arbitration. Thus, in an emergency situation, Lessor or Lessee may pursue an emergency remedy in the Community Court. For purposes of this **Section 18**, 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, (iv) a situation where Lessee fails to surrender the Leased Premises after the expiration or earlier termination of this Lease, or (v) 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 **Section 18**, "emergency relief" includes a forcible detainer action or similar action to evict or remove the Lessee after the expiration or earlier termination of this Lease, a temporary restraining order, a 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 binding arbitration. Even if a party invokes an emergency remedy, Lessor and Lessee 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 binding arbitration. By way of illustration of the preceding sentence, assume that Lessee was improperly disposing of hazardous waste on the Leased Premises or surrounding areas; Lessor could obtain temporary injunctive relief to stop the improper disposal, but any action to determine damages would be resolved by binding arbitration.

**18.6 Disputes Between Lessee and Sublessee or Encumbrancer.** Notwithstanding anything in this Lease to the contrary, Lessor acknowledges and agrees that in the event of any Dispute between or among Lessee and a sublessee or between Lessee or a sublessee and an Approved Encumbrancer, which Dispute does not involve Lessor, (i) the Dispute is not subject to arbitration pursuant to this **Section 18** 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) Lessor will not prevent or delay the enforcement of state or federal court orders, judgments or awards which may be obtained by Lessee, a sublessee or an Approved 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 Approved 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 can be required to take the actions specified in (ii) above.

## **19. General Limitations.**

**19.1 No Interest in Real Property.** Lessee shall not under any circumstances hold or be entitled to any interest in any real property of Lessor, other than Lessee's ground leasehold interest and any easements granted under this Lease.

**19.2 No Waiver of Sovereign Immunity.** Except as set forth in **Section 18**, nothing in this Lease, or in any related agreement, exhibit, document, or undertaking, or in any amendments, modifications, extensions, or renewals of this Lease, shall be construed as modifying, diminishing, qualifying, waiving, or otherwise impairing the sovereign immunity of the Community or the jurisdiction exercised by the Community Courts.

**19.3 No Consent to Jurisdiction.** Except as set forth in **Section 18**, nothing in this Lease, or in any related agreement, exhibit, document, or undertaking, or in any amendments, modifications, extensions, or renewals of this Lease, shall be construed as a waiver of the sovereign immunity of Lessor, Master Lessor, or the Community, or as consent to the jurisdiction of any state or municipal court.

**20. Employment Preference.** Lessee shall comply with the applicable provisions of Title 12 of the Community Code, as it may be amended or replaced from time to time. As currently required by Title 12 of the Community Code, Lessee shall give a hiring preference to Community members, individual Indians, and spouses of Community members for all positions of employment with Lessee for which they qualify and Lessee shall give a preference to qualified Community members and individual Indians in promotions, training, and all other aspects of employment,

contracting, and subcontracting. As also currently required by Title 12 of the Community Code, Lessee shall submit a compliance plan to the Community's Tribal Employment Rights Office and obtain a Community business license.

**21. Holding Over.** Holding over by Lessee after the termination or expiration of this Lease shall not constitute a renewal or extension of this Lease or give Lessee any rights 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 of this Lease 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 **Section 21** shall survive the expiration or other termination of this Lease.

**22. No Partnership.** Lessee and Lessor are not in partnership.

**23. 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 Leased Premises by the issuance of a fee patent or otherwise during the Lease Term; provided, however, that such termination shall not serve to abrogate this Lease. Lessor, Lessee and any surety or sureties of Lessee, and Approved Encumbrancers shall be notified of any such change in the status of the Leased Premises.

**24. Lessee's Obligations to the United States.** The obligations of Lessee and its sureties to Lessor are also enforceable by the United States, so long as the Leased Premises remains in trust or restricted status. Except as authorized in this Lease, Lessee agrees to refrain from entering into any transactions or engaging in any other actions that involve encumbrance of, liens on, deeds of trust on, or other legal attachment of Indian real property held in trust. Nothing in this **Section 24** or this Lease, or in any related document or undertaking, shall be construed as waiving, diminishing, impairing, qualifying, or otherwise limiting the operation and application of federal law, policy, and regulations with respect to Indian trust lands, including legal limitations on the encumbrance of, liens on, deeds of trust on, or other legal attachment of Indian real property held in trust.

**25. Inspection.** The Secretary, Master Lessor, and Lessor and their authorized representatives shall have the right, at any reasonable time during the Lease Term and upon not less than 48 hours advance notice (except in emergencies), to enter the Leased Premises for inspection and to ensure compliance. Any such inspection shall be performed in a manner so as to minimize any interference with the use and occupancy of the Leased Premises by Lessee. The foregoing notwithstanding, Lessor, Master Lessor, the Secretary and their agents, employees and contractors shall have the right to inspect the areas of the Leased Premises that are open to the public at any time without prior notice. Lessor, Master Lessor, and the Secretary shall have the right to enter and inspect the Leased Premises without notice due to exigent circumstances and in such case the entering entity shall use reasonable efforts to notify a representative of Lessee of any such entry or planned entry as soon as reasonably possible.

**26. Delivery of Leased Premises.**

**26.1 Delivery of Leased Premises.** At the termination or expiration of this Lease and at no charge to Lessor, Lessee will peaceably and without legal process immediately deliver up the possession of the Leased Premises, in good order, repair and condition (as defined in **Section 6.4**). 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 pursuant to **Section 21** until all persons and Removable Personal Property are removed from the Leased Premises.

**26.1.1 Improvements.** Lessor shall have the right to require Lessee to remove any or all of the Improvements at the termination of the Lease. If Lessor elects to require Lessee to remove any of the Improvements, Lessor shall notify Lessee in writing not less than 90 days prior to the end of the Lease Term, or within ten days after earlier termination of this Lease for any cause whatsoever, and Lessee, at Lessee's sole cost and expense, shall cause such Improvements to be removed not later than the expiration of the Lease Term or within 30 days after early termination of this Lease. If Lessee fails to remove said Improvements as required, Lessor may use the Performance Bond in **Section 8.4** or the Security Deposit in **Section 5.3** to pay the costs of any demolition or renovation of the Leased Premises. Notwithstanding anything in this Lease to the contrary, Lessor may exercise all rights and remedies available to Lessor in law and/or in equity to secure performance by and compliance of Lessee. If requested in writing by Lessor, Lessee shall execute and deliver quitclaim conveyance documents conveying Lessee's right, title and interest in and to any Lessee Improvements and any Removable Personal Property left at the Leased Premises as of the expiration or earlier termination of this Lease.

**26.1.2 Abandoned Property.** At the termination or expiration of this Lease, Lessee shall remove all Removable Personal Property as permitted or required by this Lease. 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 deliver written notice to Lessee listing any remaining Removable Personal Property on the Leased Premises for which Lessor did not elect to accept title. Lessee shall have ten days from the receipt of such 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 **Section 5.5**, 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 **Section 26.1.2** 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 **Section 26** shall survive the expiration or other termination of this Lease.

**27. Lease Binding; Incorporation of Recitals and Exhibits.** This Lease and its covenants, conditions, and restrictions shall extend to and be binding upon the successors and assigns of Lessee and Lessor. The recitals and all exhibits or schedules referenced in this Lease are, by this reference, deemed to be incorporated into this Lease for all purposes.

**28. Tax Immunity.** Nothing contained in this Lease shall be deemed to constitute a waiver of applicable laws providing tax immunity to trust or restricted Indian property or any interest in or income from trust or restricted Indian property (e.g., 25 C.F.R. § 162.017).

**29. 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 therefrom, but this provision shall not be construed to extend to this Lease if made with a corporation or company for its general benefit.

**30. Validity of Lease and Amendments.** This Lease and any modification of or amendment to this Lease shall not be valid or binding upon either party hereto until approved and signed by Master Lessor, if such approval is required.

**31. Severability.** If any term or provision of this Lease or the application of any term or provision of this Lease to any Person or circumstances shall, to any extent be invalid or unenforceable (except those which would substantially alter Lessee's monetary obligations hereunder or which would diminish Lessee's obligations to develop the Leased Premises in accordance with this Lease), the remainder of this Lease, or the application of such term or provision to Persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby. Each term and provision of this Lease shall be valid and enforced to the fullest extent permitted by law.

**32. Multiple Counterparts.** This Lease may be executed in any number of counterparts, and when so executed, all such counterparts shall constitute a single instrument binding upon all parties hereto notwithstanding the fact that all parties are not a signatory to the original or to the same counterpart. The parties hereto agree that the signature pages from one or more counterparts may be removed from such counterparts and such signature pages may be attached to a single instrument so that the signatures of all parties may be physically attached to a single counterpart of this Lease.

**33. Time of the Essence.** Time is of the essence under this Lease.

**34. Laws and Ordinances of the Community.** To the extent not in conflict with federal law, Lessee shall abide by, and shall cause its employees and agents to abide by, all Legal Requirements of the Community now in force and effect, or those that may be in force and effect in the future.

**35. Notices; Demands; Payments.** All notices and demands shall be in writing and sent to

the parties at the address set forth below. Pursuant to **Section 5.5**, payments to Lessor shall be sent to the address set forth below.

**35.1 For Lessor:** Lone Butte Development, L.L.C.  
Attn: General Manager  
1235 S. Akimel Lane, Box 5000  
Chandler, AZ 85226

**35.2 For Lessee:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**35.3 For Master Lessor:** Governor  
Gila River Indian Community  
525 West Gu u Ki  
Post Office Box 97  
Sacaton, Arizona 85147

with a copy to: Gila River Indian Community Office of General Counsel  
Attention: General Counsel  
525 West Gu u Ki  
Post Office Box 97  
Sacaton, Arizona 85147

**35.4 For Secretary:** Superintendent, Pima Agency  
Bureau of Indian Affairs  
Box 8  
Sacaton, Arizona 85147

**35.5 For DEQ:** Department of Environmental Quality  
35 Pima Street  
Post Office Box 97  
Sacaton, Arizona 85147  
Fax: (520) 562-2245  
Telephone: (520) 562-2234

**35.6 Delivery and Service.** Notices and demands shall be deemed delivered (i) when delivered to the party, (ii) three business Days after being deposited in the U.S. Mail, certified or registered mail, return receipt requested, 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. Contact identities and addresses may be changed from time to time by providing notice as indicated in this **Section 35**. Copies of all notices and demands shall be sent to the Secretary c/o the Superintendent.

36. **Waiver.** No waiver of by a party of any of its rights or of any default of the other party's obligations under this Lease, or of any provision of this Lease, shall be effective unless made in writing signed by the waiving party. Neither any such waiver by a party nor any failure of a party to insist on strict performance under this Lease by the other party will affect the right of such party thereafter to enforce such provision or to exercise any right or remedy if there is a default by the other party, whether or not the event is similar.

37. **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 Lessor, Master Lessor or the Secretary, fails to pay or fails to post bond against enforcement. In addition, immediately upon the delivery 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 the Default Rate from the date of demand until repaid. Failure to make such repayment on demand shall constitute a breach of this Lease.

38. **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.

39. **Development Guidelines.** Lessee has received from Lessor a copy of the Development Guidelines of the Development 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.

40. **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 in this Lease, 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."

41. **Prohibited Persons and Transactions.** Lessee represents and warrants to Lessor that Lessee is, to Lessee's actual knowledge, currently in compliance with the OFAC Regulations [ML]. Lessee shall at all times during the Lease Term remain in compliance with the OFAC Regulations [ML].

42. **Pipelines/Utilities.** Lessor and Lessee acknowledge that the Pima Maricopa Irrigation Project, the Salt River Project, San Carlos Irrigation Project, El Paso Natural Gas Co., Kinder Morgan Inc., Gila River Indian Community Utility Authority, Gila River Telecommunications Inc., Southwest Gas Corp., other utility providers, and Lessor may have constructed pipelines and utility lines (the "**Pipelines/Utilities**") on portions of the Leased Premises, including but not limited to those depicted on the Map of Dedication recorded as Book 1027, Page 19, records of

Maricopa County, Arizona (the “**Pipelines/Utilities Area**”). Lessee consents to an easement over any Pipelines/Utilities Area (the “**Pipelines/Utilities Easement**”) and the ongoing repair and maintenance of any Pipelines/Utilities. Lessee agrees that this Lease is subordinate to the Pipelines/Utilities Easement and agrees to execute and deliver any document necessary to confirm such subordination. Lessee shall not place any Improvements in and on the Pipelines/Utilities Easement without the prior written approval of Lessor. Lessor hereby reserves an ingress/egress easement across the Leased Premises for the benefit of each of the owners of the Pipelines/Utilities (as applicable), Lessor, and their successors in interest, such easement to provide access from the roadway adjacent to the Leased Premises across the Leased Premises to the Pipelines/Utilities Easement.

[SIGNATURES ON FOLLOWING PAGE]

**IN WITNESS WHEREOF**, Lessor and Lessee have executed this Lease as of the date first above written.

**“LESSOR”**

**LONE BUTTE DEVELOPMENT, L.L.C.**,  
a tribal limited liability company organized  
under the laws of the Gila River Indian Community

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

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

**“LESSEE”**

\_\_\_\_\_,  
a \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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

**APPROVED:**

**“MASTER LESSOR”**

**GILA RIVER INDIAN COMMUNITY**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Governor

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



**SCHEDULE 1.28  
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> | <u>Typical Quantity<br/>Generated Per Month</u> | <u>Maximum on Site<br/>At One Time</u> |
|-------------|---|--|
|-------------|---|--|

**HAZARDOUS MATERIAL**

| <u>Type</u> | <u>Typical Quantity<br/>Used/Generated Per Month</u> | <u>Maximum on Site<br/>At One Time</u> |
|-------------|--|--|
|-------------|--|--|

**COMBUSTIBLE MATERIAL**

| <u>Type</u> | <u>Typical Quantity<br/>Used Per Month</u> | <u>Maximum on Site<br/>At One Time</u> |
|-------------|--|--|
|-------------|--|--|

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, unless such change has the prior written approval of Lessor.

**SCHEDULE 6.2  
TO LEASE BETWEEN  
LONE BUTTE AND \_\_\_\_\_**

[lessee improvements]