

Skagit County Recording # 725143

Lessee: Indian Bay Company
Lessor: The Swinomish Indian Tribal Community,
Alvin Bobb, Cary Bobb, Margaret Cagey,
Emily Joe, et al

Lease No. 5020
Contract No. 14-20-0500-2949
Swinomish Reservation

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**MASTER LEASE
BETWEEN THE
UNITED STATES DEPARTMENT OF INTERIOR
BUREAU OF INDIAN AFFAIRS
SWINOMISH INDIAN TRIBAL COMMUNITY
AND
INDIAN BAY COMPANY
LEASE NO. 5020
CONTRACT NO. 14-20-0500-2949**

BUSINESS LEASE

THIS LEASE, in triplicate, is made and entered into this 16th day of August 1968, by and between the Indian Owners of trust or restricted lands herein demised, said owners and their respective interests being identified in Exhibit "A" attached hereto and made a part hereof, hereinafter referred to as Lessor, and INDIAN BAY COMPANY of 1132 North 128th Street, Seattle, Washington, 98133, hereinafter referred to as the Lessee.

Said lease is granted pursuant to the provisions of the Act of August 9, 1955, 69 Stat. 539, as amended by the Act of November 4, 1963, 77 Stat. 301, 25 USCA Sec 415; as implemented by Part 131, leasing and permitting of the Code of Federal Regulations, Title 25, and amendments thereto which are by this reference made a part hereof.

1. DEFINITIONS.

The term "Secretary" shall mean the Secretary of the Interior of the United States Government, or his authorized representative, delegate, or successor.

"Gross receipts" shall mean all income computed on the "cash basis", including money and any other thing of value, received by or paid to Lessee or its affiliates, whether individuals, corporations, partnerships, or other legal entity, or received by or paid to others for Lessee's or its affiliate's use and benefit and which is derived from business done, sales made or services rendered directly or indirectly from or on the leased premises by Lessee, sublessees, or assigns in the conduct of any commercial operation, including but not limited to restaurant, bar, motel, store and moorage fees. All income accruing from credit transactions shall be treated as "gross receipts" as of the date credit is extended.

"Gross receipts" shall include any ad valorem taxes paid by other than the Lessee for the account of the Lessee.

"Gross receipts" shall not include income or money derived from the purchase or sale of subleases or assignments of subleases, or interests in the leased premises herein described by way of purchase money agreement, contract or other instrument.

"Gross receipts" shall not include amounts collected and paid out for a sales or excise tax imposed by a duly constituted governmental authority where such tax is billed to the purchaser as a separate item. It shall not include credits for the exchange of goods or merchandise between the stores, if any, of Lessee or its affiliates where such exchange is made solely for the convenient operation of business and not for the purpose of consummating a sale previously made directly or indirectly from or on the leased premises. It shall not include the amount of any refund where the merchandise sold, or some part thereof is returned by the purchaser and accepted by Lessee or its affiliates. It shall not include receipts from the sale of businesses, including both tangible and intangible assets thereof when sold in bulk, receipts from the sale of

fixtures, or the sale of improvements, including but not limited to condominium units, cooperative apartments, apartment houses and single or multiple family residences; nor receipts from charges or assessments for police and fire protection, for the construction and maintenance of roads and improvements, for utilities and community services, and for moorages and other facilities where the use is restricted to the lessee and sublessees and the fees charged for the use thereof are for construction and maintenance only.

2. LAND DESCRIPTION.

For and in consideration of the rents, covenants and agreements hereinafter set out, the Lessor hereby leases to the Lessee those certain tribal and allotted lands located in Sections 35 and 36, Township 34 North, Range 2 East, and Section 1 and 2, Township 33 North, Range 2 East, Willamette Meridian, Skagit County, Washington, within the Swinomish Indian Reservation, as more particularly described in Exhibit "B" attached hereto and made a part hereof.

3. TERM.

The term of the lease shall be for seventy-five years beginning July 1, 1969.

Changes per Supplement and Amendment of Business Lease dated 2/11/69; Recorded under Auditor's Filing 726476, Volume 31, Pgs 1 -30.

~~A. The initial term of this lease shall be for twenty five years beginning on the first day of the eleventh month following the month in which the lease is approved by the Secretary, and it shall be extendable for an additional twenty five year term at any time prior to the end of the initial term at the option of the Lessee. The Lessee's act of entering into this lease by subscribing its name hereto shall be deemed as the exercise of its option to extend this lease for the additional twenty five year term and the initial approval of this lease by the Secretary shall be deemed to be an acceptance by the Secretary of such extension for which execution of a new lease is not required.~~

~~The Lessor and Lessee hereby acknowledge that a total term in excess of fifty (50) years is desirable but not possible under existing laws and regulations. It is mutually agreed that in the event it shall become possible within the term of this lease to legally contract for an additional term or terms, whether by a change in the laws regulating the Secretary or by termination of the trust or restricted status of the land, then Lessor and Lessee intend to immediately enter into an agreement increasing the lease term to an aggregate of seventy five (75) years (initial term plus extensions). It is agreed by both parties that this provision merely expresses the willingness of the parties, entirely in their own discretion, to voluntarily contract to increase the lease term to an aggregate of seventy five (75) years (original term plus extensions), if permitted by law and regulations; conversely, this provision is not a lease covenant or contractual commitment upon the parties.~~

4. RENTAL.

A. The Lessee, in consideration of the foregoing covenants and agreements, agrees to pay the rentals hereinafter set forth, in lawful money of the United States of America to the Secretary, for the use and benefit of the Lessor; provided, that the Lessee shall not be responsible for the distribution of such rentals after payment of the same to the Secretary.

The rentals to be paid shall be as follows:

- (1) For the first 24 years, a guaranteed minimum annual rental of Twenty Thousand two hundred fifty Dollars (\$20,250.00); and for the next ~~26 years, a guaranteed minimum annual rental of Twenty eight Thousand Eight Hundred Eighty Dollars (\$28,880.00)~~ 51 years, a guaranteed minimum annual rental of Thirty-two Thousand Two Hundred Thirty Dollars (\$32,230.00).

Changes per Supplement and Amendment of Business Lease dated 2/11/69; Recorded under Auditor's Filing 726476, Volume 31, Pgs 1 -30.

Said guaranteed minimum annual rentals shall be paid in advance, the first payment or guaranty therefore to be deposited with the Secretary within 30 days after lease approval by the Secretary and subsequent payments to be made to Lessor and remitted to the Secretary on or before the successive anniversaries of the beginning date of the term of this lease. The aforesaid guaranty for the first rental payment may be in the form of an assignment by lessee of bank savings account or other satisfactory guaranty to assure cash rental on or before the beginning date of the term of this lease.

- (2) In addition to the above guaranteed minimum annual rentals, the Lessee agrees to pay a sum equal to three and one-half percent (3½%) of the gross receipts as above described from any commercial operation on the leased property, including but not limited to restaurant, bar, motel, store, and moorage fees.

Said percentage rental shall be paid on a quarterly basis and remitted to the Secretary within 30 days after the close of each quarter; distribution thereof by the Secretary to the landowners shall be in the same ratio as their respective shares of the fixed guaranteed minimum rentals bear to the aggregate minimum annual rental.

- B. Rental unpaid thirty (30) days after the due date shall bear interest at eight percent (8%) per annum from the date it becomes due until paid, but this provision shall not be construed to relieve the Lessee from any default in making any rental payment at the time and in the manner herein specified. The rents called for herein shall be paid without prior notice or demand.

5. ANNUAL ACCOUNTING.

The Lessee shall, not later than ninety (90) days after each successive anniversary of the beginning date of the term of this lease, which shall be the end of the fiscal year of this lease, submit to Lessor and the Secretary, certified statements of gross receipts. Said statements shall be prepared by a Certified Public Accountant, licensed in the State of Washington, in conformity with standard accounting procedures. Any duly authorized representative of the United States Government, or any qualified accountant, agent, or agents appointed by the Lessor, shall have access to and the right to examine and audit any pertinent books, documents, papers, and records of the Lessee and Lessee's tenants relating to this lease during the normal business hours of any working day, provided that written notice has been received by the Lessee twenty-four hours in advance of said examination specifying the hour and day when said examination is to be made. Lessee shall insert a similar provision in all subleases pertaining to this right and shall make available to said representative, agent, or agents all books and records of Lessee's tenants which may be requested or may be necessary for completion of a full audit of all business conducted on the leased premises.

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

6. RENTAL ADJUSTMENT.

The guaranteed minimum annual rentals during this lease term, ~~as extended~~, shall be subject to review and adjustment by the Secretary at the end of the 24th lease year, and thereafter, at ten-year intervals. Such reviews shall give consideration to the economic conditions at the time and to land values, based on the then existing utilization authorized by Articles 7 and 9, but specifically will not consider any improvements made, placed, erected or constructed upon or to the land by the Lessee or sub-lessees, or the contributive value thereof to the real estate, whether such improvements are required by this lease contract or not. The market rental thus determined shall be the product of seven percent (7%) of the appraised fair market value of fee title to the premises herein demised, based on unimproved land values as above stated.

Changes per Supplement and Amendment of Business Lease dated 2/11/69; Recorded under Auditor's Filing 726476, Volume 31, Pgs 1 -30.

Ninety days prior to the time specified for aforesaid review a professional contract real estate appraiser-evaluator whose qualifications are acceptable to both parties hereto will be selected to make the appraisal within forty-five days from his selection. If the parties are unable or fail to agree on an appraiser-evaluator at the time indicated above, or, if agreeing, disagree on the findings of the appraiser-evaluator so selected, then this matter shall proceed to arbitration as provided in Article 25. The findings of the selected appraiser-evaluator when approved by the Lessee, Lessor and the Secretary, or findings of arbitration pursuant to Article 25, shall establish the annual rental to be paid by Lessee for the ensuing period, provided, however, that such rental shall be not less than ~~\$28,880.00~~ \$30,230.00. The cost of the appraiser-evaluator shall be shared equally by the Lessor and the Lessee.

7. USE OF PREMISES.

- A. The leased premises may be used by the Lessee and its sublessees pursuant to existing applicable law in accordance with the approved general development plan prescribed by Article 9. Without limiting the foregoing, such use shall include for use on the leased premises the appropriation and use of all surface and percolating water in and upon said leased premises and water rights appurtenant thereto. Further, the Lessee shall have the right and privilege to remove sand and gravel and other earthen materials such as humus or peat; provided, that such materials are used elsewhere on the leased premises.
- B. It is recognized by the parties hereto that there is timber on the leased premises and the parties agrees as follows:
- (1) that development of the leased premises as herein contemplated will require removal of trees and stumps to the extent necessary in the construction of roads, streets and walks, the installation of utilities, the erection of buildings and structures, parking areas and clearing for view;
 - (2) that the timber remaining standing and growing on the leased premises will contribute materially to the purposes for which the land is leased; and
 - (3) that the Lessee may remove, at his sole discretion, all deciduous trees, but shall not remove conifers from the premises except in accordance with the plan of development as submitted by the Lessee and approved by the Secretary of the Interior or his authorized representative.

8. IMPROVEMENTS.

The Lessee covenants and agrees that within three (3) years after the beginning date of the term of this lease, the Lessee and its sublessees will have completed construction of improvements, not including single family residences, on the leased premises at a cost of and having a total reasonable value of Five Hundred Thousand Dollars (\$500,000.00).

Change per Supplement and Amendment of Business Lease dated 2/11/69; Recorded under Auditor's Filing 726476, Volume 31, Pgs 1 -30.

All improvements placed on the land described herein shall, upon construction by or for the Lessee and its sublessees, be and remain the property of the Lessee and its sublessees. Sublessees may have the right to remove their improvements within sixty (60) days after the termination of their sublease, subject to the requirements of Articles 33 and 34 hereof. The Lessee shall have the right to remove its improvements within sixty (60) days after the expiration of the term of this lease, subject to Articles 33 and 34 hereof. The Lessee may not remove any of its improvements in the event that this lease is terminated for any cause prior to the expiration of the lease term ~~or terms~~ provided for herein, unless expressly authorized by the Secretary.

9. PLANS AND DESIGNS.

A. General Plan and Design:

Within one year after the approval of this lease, the Lessee shall submit to the Secretary for approval, a general plan and design for the proposed development of the entire leased premises; and the general plan shall include protective covenants to control the use of the land and the type of improvements that may be erected thereon. The Secretary shall either approve or state his reasons for disapproval of the general plan and design within thirty (30) days after receipt thereof from the Lessee. Secretary shall not unreasonably withhold his approval. No change will be made in the general plan and design after approval without the consent of the Secretary.

B. Possession:

Upon approval of this lease by the Secretary, the Lessee and its sublessees shall have authority to go upon the premises at will, with such equipment and personnel as may be necessary to make surveys, soil tests, water tests and generally examine the property for development and preparation of general plan.

Upon approval of the general plan and actual payment of the first year's minimum rental, the Lessee and its sublessees may immediately take full possession of the premises and may raze any and all buildings and structures thereon, including fencing, owned by the Lessor and perform any work incident to the general plan.

C. Construction Plans and Specifications:

No construction whatsoever on the leased premises by the Lessee or its sublessees shall be commenced until comprehensive plans and specifications for the improvements then proposed are submitted to the Secretary for approval; provided, however, no plans for the construction of any residence need be submitted to the Secretary for approval if the construction plans conform to the approved general plan and protective covenants. The Secretary shall approve them if they conform to the general development plan, but shall not thereby assume any responsibility whatever for detailed design of structure or structures or violation of any applicable law. The Secretary shall either approve or state his reasons for disapproval of plans and specifications for improvements within thirty (30) days after receipt thereof from the Lessee or its sublessees. Secretary shall not unreasonably withhold his approval. No change will be made in plans or specifications after approval without the consent of the Secretary.

10. CONSTRUCTION, MAINTENANCE, REPAIR, ALTERATION.

All improvements placed on the leased premises by the Lessee and its sublessees shall be constructed in a good and workmanlike manner and in compliance with applicable law. All parts of buildings exposed to perimeter properties shall present a pleasant appearance and all service areas shall be screened from public view. The Lessee and its sublessees shall have the right at any time during the term of this lease to make limited alterations or additions and any repair to

any improvement on or placed upon the premises; no alteration, addition or remodeling of improvements involving an expenditure in excess of Three Thousand Dollars (\$3,000.00) shall take place without prior written consent of the Secretary; except that the Lessee and its sublessees may make any alterations, additions, repairs or improvements to any residences placed upon the property in accordance with Article 9C. The Lessee and its sublessees, at their sole cost and expense, shall at all times during the term of this lease maintain the premises and all improvements thereon in good order and repair and in a neat, sanitary and attractive condition; and the Lessee and its sublessees shall require similar covenants of their tenants. The Lessee and its sublessees shall construct, maintain and repair, as required by applicable law, all improvements on the leased premises and any alterations, additions or appurtenances thereto, and shall otherwise comply with all laws applicable to said premises. The Lessee and its sublessees shall indemnify and hold harmless the Lessor and the United States Government against liability for all claims arising from their failure to maintain said premises and the improvements thereon or from their failure to observe any law applicable thereto.

11. RENTAL BOND.

Six months prior to beginning of third lease year, the Lessee agrees to post a bond satisfactory to the Secretary in a penal sum of Twenty Thousand Dollars (\$20,000.00), or such lesser amount that the Secretary may direct, which bond shall be deposited with the Secretary and shall remain in force for the full term of the lease, at the discretion of the Secretary. Should reduction or waiver of rent bond be granted during the term of this lease, the Secretary reserves the right to request that the Lessee furnish bond at a later date and Lessee hereby agrees to comply with said request. Lessee may furnish a corporate surety bond or in lieu of corporate surety bond, rental guarantee may be in the form of an assignment by Lessee of bank savings account acceptable to the Secretary, or Lessee may deposit with the Secretary cash or negotiable United States Treasury Bonds or other negotiable Treasury obligations in the appropriate amount, together with power of attorney, appointing and empowering the Secretary, in the event of Lessee's default in any of the rent provisions of this lease, to pay over any such cash, or to dispose of any such bonds and pay over the proceeds derived therefrom, as liquidated damages to or for the benefit of the Lessor, subject to Lessee's privilege of curing said default as hereinafter provided. Any other type of security which may be offered by Lessee to satisfy the requirements of this article shall be given reasonable consideration by the Secretary, but it is understood and agreed by the parties hereto that acceptance of bond in lieu of those described above shall be at the sole discretion of the Secretary.

It is understood and agreed that bond required by this provision will guarantee payment of rent only and that corporate surety bond may be furnished annually or may be continued from year to year by a certificate of renewal, copy of which certificate shall be furnished the Secretary by Lessee. If United States Treasury Bonds are provided, Lessee agrees to make up any deficiency in the value deposited that might occur due to a decrease in the value of the bonds. Interest of said bonds shall be paid to Lessee.

12. PERFORMANCE BOND.

Before commencement of construction by the Lessee or its sublessees of any improvement proposed under the General Plan of Development (other than a residence placed upon the property in accordance with Article 9C) the Lessee or its sublessees shall provide security which will guarantee completion of the improvement, and payment in full of claims of all persons for work performed in or materials furnished for construction. The Lessee or its sublessees may provide said security by either:

- A. Posting a corporate surety bond in an amount equal to the cost of each improvement, said bond to be deposited with the Secretary and to remain in effect until the improvement is satisfactorily completed. Said bond shall be conditioned upon the faithful performance of the lessee or its sublessees and give all claimants the right of action to recover upon said bond in any suit brought to foreclose mechanic's or materialmen's liens against the property;
- B. Depositing in escrow with an institution acceptable to the Secretary, negotiable United States Treasury Bonds or cash, in an amount sufficient to pay the entire cost of construction of each building or other improvement then to be erected on the premises. The escrow instructions shall include provisions whereby the funds shall be disbursed in installments as construction progresses and on proper engineer's or contractor's certificates. The Lessor and Secretary shall be entitled to and have access to all information relative to the disbursement of funds through said escrow. The escrow instructions shall also provide that not less than fifteen percent (15%) of such funds shall be withheld by the escrow holder until the period fixed by law for the filing of all mechanic's and materialmen's liens on such improvement shall have expired; if mechanic's or materialmen's liens are filed, the funds so withheld shall then be used to discharge such liens; if no such liens are filed the withheld funds shall be then disbursed to the Lessee, its sublessees or assigns. If U.S. Treasury Bonds are provided, the Lessee or its sublessees shall make up any deficiency in the value deposited that might occur due to a decrease in the value of the bonds. Interest on said bonds shall be paid to the Lessee or its sublessees;
- C. Entering into a building loan agreement with a financial institution, which building loan agreement shall be subject to the approval of the Secretary. Prior to such approval, the Lessee or its sublessees shall perform all conditions precedent to the assumption of obligations under the agreement by the financial institution; and the Lessee or its sublessees shall deposit with the lending institution the difference between the amount of the loan and the total cost of the improvement.
- D. A general performance bond by an established financial institution, subject to the approval of the Secretary.

13. COMPANIES BONDING AND INSURING.

All corporate surety bonds provided hereunder shall be furnished by companies holding certificates of authority from the Secretary of the Treasury as acceptable sureties on Federal bonds. Insurance policies shall be furnished by such responsible companies as are rated A plus – AAA or better in the current edition of Best's Insurance Guide.

14. PROVISION FOR SUBLEASING AND ASSIGNING LESSEE'S INTEREST.

- A. The Lessee may sublease all, part or portions of the leased premises for lawful purposes without the consent of the Lessor or the approval of the Secretary; provided, that such subleases shall be drawn on sublease form designed by the Lessee and approved by the Secretary; and, provided further, that no part of the premises shall be subleased for a period extending beyond the ~~initial~~ term of this lease, and that all subleases shall be made expressly subject to the terms of this lease, and no such sublease shall affect any of the obligations or liabilities of the Lessee hereunder. The Secretary shall either approve or state his reasons for disapproval of the sublease form within thirty (30) days after receipt thereof from the Lessee. Secretary shall not unreasonably withhold his approval. The Lessee shall notify the Secretary or his authorized representative in writing of the name and address of each sublessee and the terms of each sublease. The rental of motel, hotel, and condominium units, and houses or other buildings where the tenancy will exist for less than one year, shall not be considered subleasing as that term is used in this lease.

Change per Supplement and Amendment of Business Lease dated 2/11/69; Recorded under Auditor's Filing 726476, Volume 31, Pgs 1 -30.

It is understood that the Lessee shall be selling subleases from time to time in an amount of money in addition to annual lease payments to be paid by sublessees of the subleased property upon which the sublessees or assignees thereof shall be developing, erecting or building private residential homesite developments. Since it is the intent to protect the rights of the Lessor and sublessees in the event of the default of Lessee, the Lessee shall submit for approval of the Secretary, schedules of minimum annual rents. Such schedules shall be subject to periodic review at the request of the Secretary. In conjunction with the schedules of rent, Lessee shall also submit for approval of the Secretary, a sublease form and an assignment of sublease form for use in subleasing and assigning said subleases. Approval of the within described forms and schedules of rents by the Secretary shall constitute approval of all subleases and assignments of subleases entered into by Lessee under this lease.

- B. The Lessee may assign its interest in this lease provided it first obtains the written consent of the Lessor and the approval of the Secretary.
- C. The Lessor agrees that his notification regarding subleasing and his consent to any assignment of this lease by Lessee shall not be required while his trust or restricted ownership interest herein leased remains under Federal supervision; and that for these purposes during such time the Secretary shall represent the Lessor.

15. AGREEMENTS FOR UTILITY SERVICES.

Lessee shall have the right to enter into agreements with public utility companies and the State of Washington or any of its political subdivisions to provide utility services, including gas, water, electricity, telephone, television and sewer lines necessary to the full enjoyment of the leased premises and the development thereof in accordance with the provisions of this lease; provided, that such an agreement shall not be for a period longer than the initial term of this lease or any extension thereof. Upon entering into such agreement or agreements the Lessee shall furnish to the Secretary executed copies thereof together with a plat or diagram showing the true location of the utility lines to be constructed in accordance therewith.

16. RIGHTS OF WAY FOR STREETS AND UTILITIES.

Lessor hereby consents to the granting of rights of way for streets and utilities necessary to the full enjoyment of the leased premises and development thereof. Such rights of way are to be granted by the Secretary in accordance with the approved general development plan and pursuant to the Act of February 5, 1948, 62 Stat. 17, and any amendments thereto, as supplemented by regulations of the Secretary applicable thereto.

17. ENCUMBRANCE.

The leasehold interest may not be encumbered without the prior written approval of the Secretary, which approval shall not be unreasonably withheld, and no such encumbrance shall be valid without said approval; provided, however, that a subleasehold interest may be encumbered without the approval of the Secretary unless the parties wish to avail themselves of the provisions contained in this Article 17.

“Approved encumbrance” shall mean an encumbrance given by the Lessee for the purpose of borrowing capital for the development and improvement of the leased property, or by a Sublessee for any purpose, and which has received the prior written approval of the Secretary.

“Leasehold interest” shall mean the interest of the Lessee, its successors and assigns in this lease, together with any improvements it has constructed or erected on the leased property.

“Subleasehold interest” shall mean the interest of a Sublessee, his heirs or successors, and assigns in any sublease, together with any interest he may have in any improvements he has constructed or erected on the premises sublet.

“Encumbrancer” shall mean the owner and holder of an approved encumbrance, his heirs or successors, and assigns.

“Obligor” shall mean the Lessee, Sublessee, his heirs or successors, and assigns.

“Balance of encumbrance” herein shall mean the entire amount of principal remaining unpaid on an approved encumbrance of an interest in this lease or a sublease created under this lease plus accrued interest and costs of foreclosure and/or sale of such approved encumbrance, together with all necessary expenditures made by the Encumbrancer to maintain said leasehold or subleasehold interest valid and in good standing during the process of foreclosure and additional expenditures paid by the Encumbrancer on additions, betterments and rehabilitation of improvements in marketable condition. In the event the “balance of encumbrance” is assumed as an obligation as hereinafter provided, it shall be amortized over the balance of the term of the approved encumbrance in accordance with the schedule set forth therein; and the interest rate on the unpaid balance thereof shall be as set forth in said approved encumbrance.

The Obligor making the approved encumbrance shall furnish any financial statements or analyses pertinent to the approved encumbrance that the Secretary may request as being necessary to justify the amount and terms of said approved encumbrance, and subject to terms and conditions hereinafter set forth.

I. ENCUMBRANCE BY LESSEE-OBLIGOR

Introduction

Any approved encumbrance with the Lessee as Obligor shall be subject to the following terms and conditions which shall provide for recoupment by the Encumbrancer in the event of default of the approved encumbrance.

A. DEFAULT BY LESSEE-OBLIGOR.

In the event of default by the Lessee under any of the terms of an approved encumbrance, the leasehold interest may be sold under power of sale or foreclosure and sale provided the following have taken place.

(1) NOTICE

(a) Notice by Lessor to Encumbrancer of Default by Lessee

An approved encumbrance executed by the Lessee encumbering the leasehold interest may provide that a default in payment of rental or other monies due to the Lessor or a breach of any other covenant of this lease by the Lessee shall constitute a default under said approved encumbrance. The Secretary agrees to give Encumbrancer notice when the Lessee has failed to cure the default in the payment of rental or other monies due within the period of 30 days after written notice thereof was given to the Lessee and when the Lessee has failed to cure the breach of any other covenant of this lease within 60 days after written notice thereof was given to the Lessee, as provided in Article 26 of the lease.

(b) Notice by Encumbrancer to Lessor of Default by Lessee

The Encumbrancer shall furnish the Secretary copies of any Notice of Default sent the Lessee upon the default by the Lessee, and Encumbrancer may exercise

any rights provided in such approved encumbrance, provided that before any sale of the leasehold interest is made, whether under power of sale or foreclosure, the Encumbrancer shall give to the Secretary notice of the same character and duration as is required to be given to Lessee-Obligor by either or both such approved encumbrance or the laws of the State of Washington.

(1) TERMINATION OF LEASE FOR DEFAULT BY LESSEE

At least forty-five (45) days prior to termination of this lease for default on the part of the Lessee, the Secretary shall give notice in writing to the Encumbrancer expressing Lessor's intention to terminate and describing said default or breach. When there is an approved encumbrance on the leasehold interest which provides that a default or breach of this lease by the Lessee constitutes a default of the approved encumbrance, this lease shall not be terminated by the Lessor for default on the part of the Lessee, if after receiving notice of Lessor's intent to terminate, the Encumbrancer shall hold the Lessee in default on the approved encumbrance and shall undertake and perform either of the following:

- (a) Cure the default or breach by payment of money within the forty-five (45) day period.
- (b) Initiate within the forty-five (45) day period and thereafter diligently pursue to completion proceedings for foreclosure and/or sale of the leasehold interest under and pursuant to the terms of the approved encumbrance.

(2) FORECLOSURE AND/OR SALE BY ENCUMBRANCER

The Encumbrancer shall not be obligated to pay any past due or current rent or other monies due or coming due to Lessor during the period of foreclosure and/or sale and the lease shall not be terminated by reason thereof. Payment of rents and other monies due to the Lessor by the Lessee under this lease shall be deemed by the Encumbrancer to be current during such period, except that all unpaid rentals shall continue to bear interest as provided in Article 4(B) of this lease, and the payment of the rent and such other monies due shall be tolled until one of the following has occurred:

- (a) Encumbrancer acquires the leasehold interest of the Lessee and within ten (10) days thereafter pays all past due rents, plus accrued interest thereon, and other monies due the Lessor; or
- (b) Purchaser on foreclosure and/or sale acquires the leasehold interest of the Lessee and within ten (10) days thereafter pays all past due rents, plus accrued interest thereon and other monies due the Lessor; or
- (c) The Lessor terminates the lease and makes payment to the Encumbrancer or assumes the obligation of the balance of encumbrance as hereinafter provided; in that event, all payments of the Encumbrancer on the Lease shall be discharged.

The Encumbrancer, on acquiring the leasehold interest as provided in subparagraph (a) above, shall be obligated to pay rent and all other monies becoming due thereafter and to carry out all applicable provisions of the lease while holding the leasehold interest and until such time as the Encumbrancer relinquishes the interest so acquired to the Lessor as hereinafter set forth in Paragraph B, or elects to act as Trustee as hereinafter set forth in Paragraph C. If upon foreclosure and/or sale under the approved encumbrance, the purchaser is a party other than the Encumbrancer or, if the Encumbrancer is the purchaser or acquires the property by assignment in lieu of foreclosure and in either case does not elect to operate the property as Trustee as provided herein, said purchaser, as successor in interest to the Lessee, will be bound by all of the terms of this lease and shall be required to assume in writing all the obligations of the Lessee hereunder.

B. RIGHT OF LESSOR TO CURE DEFAULT OF LESSEE AND TERMINATE LEASE

The Lessor shall have the right to correct the default of the Lessee on an approved encumbrance at any time prior to sale on foreclosure or sale under the terms of the approved encumbrance and terminate this lease, by paying to the Encumbrancer the amount of any delinquent payments plus accrued interest and costs; or at any time after such sale, the Lessor has the right to terminate the lease, and either pay to the Encumbrancer the balance of the approved encumbrance, or execute to the Encumbrancer a new promise to pay for the balance of the encumbrance, payable upon the same terms and conditions as originally provided by the approved encumbrance, such promise to pay shall be secured by a new encumbrance approved by the Secretary on the real property described in the lease upon which the approved encumbrance is a lien and deliver to the Encumbrancer a policy of title insurance, issued for the balance of encumbrance by a reputable title insurance company and insuring that the new encumbrance is a first encumbrance upon the fee title of such property, subject only to current taxes and to conditions, restrictions, and reservations of record at the time of recording the approved encumbrance, and subject further, to any agreements for utility lines entered into by the Lessee and rights of way lawfully granted by the Secretary, in connection with the development of such property pursuant to this lease and any protective covenants of record. The Lessor shall have the right to terminate the lease in such an event under Article 26.

C. ENCUMBRANCER AS TRUSTEE

Upon default by the Lessee of the approved encumbrance and sale of the leasehold interest under power of sale or foreclosure or by assignment in lieu of foreclosure of an approved encumbrance and the leasehold interest is thus acquired by the Encumbrancer, such Encumbrancer may elect to operate the leasehold interest as Trustee as hereafter provided by furnishing the Secretary notice in writing of such election within sixty (60) days after date of acquisition of such leasehold interest and as such Trustee shall collect all rents and all monies due from the sublessees and after deducting any reasonable costs of collecting the same, as approved by the Secretary, shall hold such rents and monies in trust to pay in the following order:

- First: Taxes upon said property and any improvements erected thereon;
- Second: Premium for insurance policies required by the Lease or by the approved encumbrance;
- Third: Utility charges and costs of maintenance of said property, including charges for maintenance of roads, water system, common areas and buildings;
- Fourth: To the Encumbrancer until the amount which would have been due on the approved encumbrance as of the date when payment was made by the Encumbrancer as provided in subparagraph IA(3)(a) above, had the default, foreclosure and/or sale not occurred, plus costs of foreclosure and/or sale, has been paid, so that the amounts due on this lease and the approved encumbrance will be current as of that date.
- Fifth: Rental and other monies due the Lessor under this lease, including any rent or other monies that become due since payment was made by the Encumbrancer as provided in subparagraph IA(3)(a) above. If there is insufficient funds to pay all the rent and other monies due, or that become due, in the current year, such unpaid portion shall be cumulative and paid, together with interest on the rents due as provided in Article 4(B), in successive years prior to any payments under Sixth below.
- Sixth: To the Encumbrancer until the approved encumbrance has been paid in full.

Upon receipt of the full amount due under the approved encumbrance, the trust herein created shall cease; and all the right, title and interest of the Encumbrancer in the property and the leasehold interest, including all improvements constructed or erected thereon by the Lessee and the Encumbrancer, shall automatically pass to the Lessor, and the Encumbrancer shall execute any documents that are necessary as evidence of the transfer of his interest.

If the Encumbrancer elects to operate the leasehold interest as Trustee, as provided above, such operation shall be subject further to the following conditions and limitations:

- (1) The Lessor shall have the right to terminate the lease and pay to the Encumbrancer balance of encumbrance or execute to the Encumbrancer a new promise to pay for the balance of the encumbrance, payable upon the same terms and conditions as originally provided by the approved encumbrance. Such new promise to pay shall be secured by a new encumbrance approved by the Secretary upon the fee title of the real property upon which the approved encumbrance is a lien, and Lessor shall deliver to such Encumbrancer a policy of title insurance issued for the balance of encumbrance by a reputable title insurance company insuring that the new encumbrance is a first encumbrance upon said property, subject only to current taxes and to conditions, restrictions and reservations of record at the time of recording the new approved encumbrance, and subject further, to any agreements for utility lines entered into by the Lessee and rights of way lawfully granted by the Secretary, in connection with the development of such property pursuant to this lease.
- (2) The Encumbrancer shall furnish the Secretary within twenty-one days after the end of each month of his operation of the leased premises a report of the receipts, purchases, expenses and financial results of such month's operation. Upon termination of the trust and leasehold estate [Editor's Note: "estate" is a possible typo – the word should probably be "interest" which is the word used in a similar paragraph in the next section] as herein provided, the Encumbrancer shall immediately account to the Secretary for all rents and monies collected while acting as trustee and pay over to the Secretary to the account of the Lessor all such rents and monies not already paid out as hereinabove provided.
- (3) The Encumbrancer may assign the leasehold interest without consent and thereby be relieved of further liability under the lease upon giving the Secretary and Lessor sixty (60) days notice in writing in advance of such assignment, subject, however, to the right of termination by Lessor provided for in (1) above, said right to be exercised prior to any such assignment by the Encumbrancer, and subject to the further condition that the assignee shall have agreed in writing to be bound by all of the terms and conditions of this lease.
- (4) As limited by the intent, purpose, and provisions of this article, the Encumbrancer shall succeed to all of the rights, privileges and obligations of the Lessee, as set forth elsewhere in this lease.

Exercise of any of the above mentioned rights of termination shall not invalidate or impair any sublease which may be executed by Lessee or by the Encumbrancer operating the property as Trustee as hereinabove authorized; provided, that, in the latter case, such subleasehold interest shall be for a term not extended beyond the date upon which the encumbrancer receives the balance of encumbrance, or the date upon which the encumbrance obligation would have been paid in full in accordance with its terms, whichever date is later, except that in no event shall such date be later than the expiration date of this lease; and, provided further, that any sublease or assignment thereof entered

into by such Encumbrancer shall contain a provision for the payment of a rent not inconsistent with rents earned by comparable properties in the vicinity.

D. BANKRUPTCY

Bankruptcy, receivership, or insolvency of Lessee shall not obligate any Encumbrancer to pay any monies to cure or terminate the bankruptcy, receivership, or insolvency, and the Encumbrancer shall be required to do no more than is required of said Encumbrancer by the terms of the lease.

E. STATUS OF LEASE

Whenever Encumbrancer shall so request, Lessor will provide Encumbrancer with current information as to the status of this lease.

F. JOINT PAYMENT TO LESSORS

Any rent payable under the terms of this lease by Encumbrancer shall be payable to the Bureau of Indian Affairs for deposit to the accounts of Lessor.

II. ENCUMBRANCES BY SUBLESSEES AS OBLIGOR

Introduction

A subleasehold interest may be encumbered at any time without the approval of the Secretary; but if the prior written approval of the Secretary is obtained, the encumbrance may be enforced as hereinafter set out.

A. DEFAULT BY LESSEE

Default of any provisions of this lease by the Lessee to the Lessor shall not serve to cancel the subleases as provided in Article 30 hereof.

Lessor and the Secretary authorize the Lessee and/or Sublessee to execute any approved encumbrance executed to an Encumbrancer on any sublease, and Lessor and Secretary agree that approval of any encumbrance will not be withheld because Lessee is required to execute loan documents along with a Sublessee. Failure of the Lessee to cure any default on any approved encumbrance upon a sublease in which the Lessee is not one of the Obligors prior to the completion of foreclosure proceedings shall extinguish forever the rights of the Lessee as to the real property which is the subject matter of the sublease, in which event the Lessor herein shall succeed to the rights of the Lessee in the sublease according to the terms and provisions of the agreement and as hereinafter set forth for default of the sublease by the Sublessee.

B. DEFAULT BY SUBLESSEE

In the event of default by the Sublessee under any of the terms of an approved encumbrance, the leasehold interest may be sold under power of the sale or foreclosure and sale, provided the following actions have taken place.

(1) NOTICE

(a) Notice by Encumbrancer to Lessor and Lessee of Default by Sublessee

An approved encumbrance executed by a Sublessee encumbering a subleasehold interest may provide that failure to pay rent by the Sublessee to the Lessee under the terms of the sublease is a default under said approved encumbrance. The Lessee shall agree to give Encumbrancer of a subleasehold interest notice of any default of the payment of rental by the Sublessee when said rent becomes past due. The Encumbrancer shall furnish the Secretary and the Lessee copies of any Notice of Default sent the Sublessee, and Encumbrancer may exercise any rights provided in such approved encumbrance, provided, that before any sale of the subleasehold interest whether under power of sale or foreclosure, the

Encumbrancer shall give to the Secretary and the Lessee notice of the same character and duration as is required to be given to the Sublessee-Obligor by either, or both, such approved encumbrance or the laws of the State of Washington.

(2) TERMINATION OF LEASE FOR DEFAULT BY SUBLESSEE

At least forty-five (45) days prior to termination of a sublease for default on the part of the Sublessee, the Lessee shall give notice in writing to the Encumbrancer expressing Lessee's intention to terminate and describing said default or breach.

When there is an approved encumbrance on the subleasehold interest which provides that a default or breach of the sublease by the sublessee constitutes a default of the approved encumbrance, the sublease shall not be terminated by the Lessee for default on the part of the Sublessee if, after receiving notice of Lessee's intent to terminate, the Encumbrancer shall hold the Sublessee in default on the approved encumbrance and shall undertake and perform either of the following:

- (a) Cure the default or breach by payment of money within the forty-five (45) day period.
- (b) Initiate within the forty-five (45) day period and thereafter diligently pursue to completion, proceedings for foreclosure and/or sale of the subleasehold interest under and pursuant to the terms of the approved encumbrance.

(3) FORECLOSURE AND/OR SALE BY ENCUMBRANCER

The Encumbrancer shall not be obligated to pay any past due or current rent or other monies due or coming due to Lessee during the period of foreclosure and/or sale and the sublease shall not be terminated by reason thereof. Payment of rents and other monies due the Lessee by the Sublessee shall be deemed by the Encumbrancer to be current during such period, except that all unpaid rentals and other monies due shall bear interest if so provided for in the sublease, and the payment of the rents and such other monies due shall be tolled until either one of the following has occurred:

- (a) Encumbrancer acquires the subleasehold interest of the Sublessee and within ten (10) days thereafter pays all past due rent and any other monies due, plus accrued interest due the Lessee; or
- (b) Purchaser on foreclosure or sale acquires the subleasehold interest of the Sublessee and within ten (10) days thereafter pays all past due rent and any other monies due, plus accrued interest due the Lessee; or
- (c) The Lessee terminates the sublease and makes payment to the Encumbrancer, or assumes the obligation of the balance of encumbrance as hereinafter provided; in that event, all payments of the Encumbrancer on the sublease shall be discharged.

The Encumbrancer, on acquiring the leasehold interest as provided in subparagraph (a) above, shall be obligated to pay rent and all other monies becoming due thereafter and to carry out all applicable provisions of the sublease while holding the subleasehold interest and until such time as the Encumbrancer relinquishes the interest so acquired to the Lessee as hereinafter set forth in Paragraph C or elects to act as Trustee as hereinafter set forth in Paragraph D. If, upon sale or foreclosure under the approved encumbrances, the purchaser is a party other than the Encumbrancer or if the Encumbrancer is the purchaser or acquires the property by assignment in lieu of foreclosure and in either case does not elect to operate the property as Trustee as provided herein, said purchaser, as successor in interest to the Sublessee, will be bound by all of the terms of the sublease and will assume all the obligations of the Sublessee under the terms of said sublease.

C. RIGHT OF LESSEE TO CURE DEFAULT OF SUBLESSEE AND TERMINATE SUBLEASE

The Lessee shall have the right to correct the default of the Sublessee on an approved encumbrance at any time prior to sale on foreclosure or sale under the terms of the approved encumbrance and terminate the Sublease, by paying to the Encumbrancer the amount of any delinquent payments plus accrued interest and costs; or at any time after such sale, the Lessee shall have the right to terminate the sublease, and either pay to the Encumbrancer the balance of the approved encumbrance or execute to the Encumbrancer a new promise to pay for the balance of the encumbrance, payable upon the same terms and conditions as originally provided by the approved encumbrance. Such new promise to pay shall be secured by a new encumbrance, approved by the Secretary, on the leasehold interest, and Lessee shall deliver to the Encumbrancer a policy of title insurance, issued for the balance of encumbrance, by a reputable insurance company, insuring that the new encumbrance is a first encumbrance on such leasehold interest, subject only to current taxes and to conditions, restrictions, and reservations of record at the time of recording the approved encumbrance, and subject further to any agreements for utility lines entered into by the Lessee and rights of way lawfully granted by the Secretary, in connection with the development of such property pursuant to this lease and any protective covenants of record. The Lessee shall have the right to terminate the sublease in such an event as provided for in the sublease.

D. ENCUMBRANCER AS TRUSTEE

Upon default by the Sublessee to Lessee of the approved encumbrance and sale of the subleasehold interest under power of sale or foreclosure or by assignment in lieu of foreclosure of an approved encumbrance and the subleasehold interest is thus acquired by the Encumbrancer, such Encumbrancer may elect to operate the subleasehold interest as Trustee as hereafter provided by furnishing the Lessee notice in writing of such election within sixty (60) days after date of acquisition of such subleasehold interest and as such Trustee shall collect all income and other monies due from the operation of the subleasehold interest and, after deducting any reasonable costs of collecting the same, shall hold such income and other monies in trust to pay in the following order:

- First: Taxes upon said property and any improvements erected thereon;
- Second: Premium for insurance policies required by the sublease or by the approved encumbrance;
- Third: Utility charges and costs of maintenance of said property, including charges for maintenance of roads, water system, common areas and buildings;
- Fourth: To the Encumbrancer until the amount which would have been due on the approved encumbrance as of the date when the payment was made by the Encumbrancer as provided in subparagraph IIB(3)(a) above, had the default, foreclosure and/or sale not occurred, plus costs of foreclosure and/or sale, has been paid, so that the amounts due on the sublease and the approved encumbrance will be current as of that date.
- Fifth: Rental and other monies due the Lessor under this lease, including any rent or other monies that become due since payment was made by the Encumbrancer as provided in subparagraph IIB(3)(a) above. If there is insufficient funds to pay all the rent and other monies due, or that become due, in the current year, such unpaid portion shall be cumulative and paid, together with interest on the rents that may be due under the sublease in successive years prior to any payments under Sixth below.
- Sixth: To the Encumbrancer until the approved encumbrance has been paid in full.

Upon receipt of the full amount due under the approved encumbrance, the trust herein created shall cease; and all the right, title and interest of the Encumbrancer in the property and the subleasehold interest, including all improvements constructed or erected thereon by the sublessee and the Encumbrancer, shall automatically pass to the Lessee or his successors and assigns, and the Encumbrancer shall execute any documents that are necessary as evidence of the transfer of his interest. If the Encumbrancer elects to operate the subleasehold interest as Trustee, as provided above, such operation shall be subject further to the following conditions and limitations:

- (1) The Lessee, if not in default, shall have the right to terminate the sublease and pay to the Encumbrancer the balance of encumbrance, or execute to the Encumbrancer a new promise to pay for the balance of the encumbrance, payable upon the same terms and conditions as originally provided by the approved encumbrance. Such new promise to pay shall be secured by a new encumbrance on that portion of the leasehold interest as described in the approved encumbrance and deliver to such Encumbrancer a policy of title insurance issued for the balance of encumbrance by a reputable title insurance company, insuring that the new encumbrance is a first encumbrance upon that portion of the leasehold interest as described in the approved encumbrance, subject only to current taxes and to conditions, restrictions and reservations of record at the time of recording the approved encumbrance, and subject further, to any agreements for utility lines entered into by the Lessee and rights of way lawfully granted by the Secretary, in connection with the development of such property pursuant to this lease.
- (2) The Encumbrancer shall furnish the Secretary and Lessee, within twenty-one days after the end of each month of his operation of the leased premises, a report on the receipts, purchases, expenses and financial results of such month's operation. Upon termination of the trust and subleasehold interest as herein provided, the Encumbrancer shall immediately account to the Secretary and Lessee for all income and other monies collected while acting as Trustee and pay over to the Lessee all such income and other monies not already paid out as hereinabove provided.
- (3) The Encumbrancer may assign the subleasehold interest without consent and thereby be relieved of further liability for the lease upon giving the Secretary and Lessee sixty (60) days notice in writing in advance of such assignment, subject, however, to the right of termination by Lessee provided for in this article, said right to be exercised prior to any such assignment by the Encumbrancer, and subject to the further condition that the Assignee shall have agreed in writing to be bound by all of the terms and conditions of this lease and the sublease.
- (4) As limited by the intent, purpose, and provisions of this article, the Encumbrancer shall succeed to all of the rights, privileges and obligations of the Sublessee as set forth elsewhere in the sublease. Exercise of any of the above mentioned rights of termination shall not invalidate or impair any sublease which may be executed by the Encumbrancer operating the property as Trustee as hereinabove authorized; provided, that, such sublease shall be for a term not extending beyond the date upon which the Encumbrancer receives the balance of encumbrance, or the date upon which the encumbrance obligation would have been paid in full in accordance with its terms, whichever date is later, except that in no event shall such date be later than the expiration date of this lease, provided further that any sublease entered into by Encumbrancer shall contain a provision for the payment of a rent not inconsistent with rents earned by comparable properties in the vicinity.

E. PAYMENT OF RENT BY SUBLESSEE

Payment of rent by a Sublessee to Lessee shall preserve the tenancy of the Sublessee as to payment of rent and shall be considered to be the receipt of rent by Lessor, until the Sublessee has been notified in writing that the leasehold interest has been terminated or acquired by someone other than the Lessee.

F. ASSIGNMENT OF SUBLEASE

In the event of termination of this lease due to a default of the Lessee, all subleases are automatically assigned to Lessor; and the Sublessee, after notice, shall thereafter pay full rental due under the sublease directly to the Bureau of Indian Affairs for deposit to account of Lessor. Should Encumbrancer thereafter acquire title by either foreclosure action or assignment in lieu of foreclosure, rental to be paid to the Bureau of Indian Affairs for deposit to the accounts of Lessor may be collected by the Encumbrancer and paid to the Bureau of Indian Affairs as provided for in Paragraph D of this Article.

III. GENERAL

A. ASSIGNMENT IN LIEU

Acquisition of the interest of Lessee and/or any Sublessee by Encumbrancer by assignment, in lieu of foreclosure, shall confer upon Encumbrancer the same rights as if Encumbrancer has acquired title by foreclosure and/or sale.

B. AMENDMENT

No amendment to this lease which affects the rights of any Encumbrancer shall be effective as to any encumbrance approved prior to the amendment without such Encumbrancer's written consent.

C. CONFLICT

In the event there is a conflict between the provisions of this Encumbrance Article and any other provisions of this lease, this Encumbrance Article, approved by the Secretary, shall control as to the rights of the Encumbrancer, Assignees of Encumbrancer, or purchasers of any foreclosure sale.

D. NON-CURABLE DEFAULTS

It is understood that Encumbrancer shall not be required to cure any type of default which can be construed to be non-curable or which, because of its nature, may not be feasible or practical to cure, provided, however, Encumbrancer shall keep and perform all other covenants and conditions of this lease. In case a default or breach on the part of the Lessee occurs preceding, during, or due to the bankruptcy, receivership, or insolvency thereof of the Lessee, and the Encumbrancer, prior to the receipt of the notice of intent to terminate described herein or within 45 days after the receipt thereof, shall have filed in the court having jurisdiction over such bankruptcy, receivership, or insolvency, a petition for permission to foreclose, the filing of such petition shall be deemed to be the beginning of foreclosure proceedings for the purpose of this paragraph. The bankruptcy, receivership, or insolvency of the Lessee shall be considered a breach which cannot reasonably be cured by Encumbrancer and one not curable by the payment of money. Any notice provided for herein shall be by registered mail, return receipt requested, and shall be directed to Encumbrancer at its address last shown on the record of Lessor or Secretary and shall be deemed to have been given on the date it is received by Encumbrancer.

18. LIENS, TAXES, ASSESSMENTS, UTILITY CHARGES.

Lessee shall not permit to be enforced against the leased premises or any part thereof, any liens arising from any work performed, materials furnished or obligations incurred by Lessee. The Lessee shall either discharge all such liens before any action is brought to enforce the same or post bond as hereinafter provided. Lessee shall pay, when and as the same become due and payable, all taxes, assessments, licenses, fees and other like charges levied during the term of this lease upon or against the leased land, the improvements and all interests therein; however, this requirement shall not be construed as an admission by the parties that any of the land, the improvements or interests therein are subject to tax, for the Lessee shall have the privilege as provided below to contest any tax or assessment, even though the same may be levied against property of the Lessor. Lessor shall execute and file any appropriate documents with reference to tax exemption of the land or improvements when requested by Lessee. Lessee shall have the right to contest any claim, lien, tax, or assessment by posting bond to prevent enforcement of any lien resulting therefrom, and Lessee agrees to protect and hold harmless the Lessor and the Secretary from any lien therefor or sale or other proceedings to enforce payment thereof, and all costs in connection therewith. In addition, Lessee shall hold Lessor harmless of all charges for water, sewage, gas, electricity, telephone, and other utility services supplied to said premises. Upon written request the Lessee shall furnish to the Secretary written evidence, duly certified, that any and all taxes have been paid, satisfied, or otherwise discharged.

19. LESSOR'S PAYING CLAIMS.

Lessor shall have the option to pay any lien or charge payable by Lessee under this lease, or settle any action therefor, if the Lessee after written notice from the Lessor or Secretary fails to pay or to post bond against enforcement. All such sums so paid by the Lessor together with costs and other expenses incurred by Lessor in so doing, shall be paid to Lessor by Lessee upon demand, with interest at the rate of eight percent (8%) per annum from date of payment until repaid. Default in such repayment shall constitute a breach of the covenants of this lease.

20. PUBLIC LIABILITY INSURANCE.

At all times during the term of this lease, Lessee shall carry a public liability insurance policy in the minimum amount of One Hundred Thousand Dollars (\$100,000.00) for personal injury and One Hundred Thousand Dollars (\$100,000.00) for property damage, said policy to be written jointly to protect Lessee and Lessor. Copy of said policy shall be furnished the Secretary. Neither the Lessor nor the United States Government, nor their officers, agents, and employees shall be liable for any loss, damage, or injury of any kind whatsoever to the person or property of the Lessee or sublessees or of any other person whomsoever, caused by any use of the leased premises, or by any defect in any structure erected thereon, or arising from any accident, fire, or other casualty on said premises or from any other cause whatsoever; and Lessee, as a material part of the consideration for this lease, hereby waives on Lessee's behalf all claims against Lessor and/or the United States Government and agrees to hold Lessor and/or the United States Government free and harmless from liability for all claims for any loss, damage, or injury arising from the use of the premises by Lessee, together with all costs and expenses in connection therewith.

21. FIRE AND DAMAGE INSURANCE.

Lessee, his sublessees and assigns, shall at all times carry fire insurance with extended coverage endorsements, to include vandalism, covering the full insurable value of all commercial improvements hereafter placed upon the leased premises.

Lessee shall assure Lessor that all premiums and other charges payable in connection with insurance carried by Lessee, sublessees or assigns as above required shall be paid; and furnish the receipts showing that each premium or other charge has been paid when requested to do so by the Lessor.

In the event of damage to any commercial improvement on the leased premises, the Lessee, his sublessees or assigns shall use the insurance proceeds to reconstruct the commercial improvement so damaged or to construct some other commercial improvement of equal value, either construction to be in compliance with applicable laws and building regulations and in accordance with plans to be approved pursuant to Article 9, "Plans and Design", and Article 10, "Construction, Maintenance, Repair and Alteration". Such reconstruction or construction shall commence within one (1) year after the damage occurs and shall be pursued diligently.

In the event of damage to the extent of seventy-five percent (75%) or more of the total value of any single commercial improvement damaged on the leased premises during the last five years of the extended term of this lease, the Lessee shall have the option whether to reconstruct or not to reconstruct said damaged improvement. Should Lessee elect not to reconstruct, the leased premises shall be cleaned at the Lessee's expense; and the Lessor shall be paid the balance of rental due for the remaining portion of the extended term of this lease from the insurance proceeds. The annual rental for the balance of the extended term of this lease shall be the average of the annual rentals paid over the five years immediately preceding the year of the damage.

An encumbrancer shall be named as a beneficiary under the insurance mentioned herein, and in the event of loss or damage to the improvement upon which an approved encumbrance remains unpaid, the proceeds of such insurance (not exceeding the amount of the approved encumbrance) shall be paid to the encumbrancer. Provided, however, that all approved encumbrances shall provide that the encumbrancer shall hold said proceeds as an escrow to be used for the construction or reconstruction of the damaged improvement or improvements, and that the encumbrancer shall disburse said proceeds during the progress of construction or reconstruction on proper architect's, engineer's or contractor's certificates. In the event the damage is to the extent of seventy-five (75%) or more of the total value of any single commercial improvement damaged on the leased premises, and the Lessee elects not to reconstruct the said damaged improvement, the encumbrancer may apply the balance of the proceeds after payment of the balance of the rental due to the Lessor as hereinabove provided, which shall constitute a first encumbrance on said proceeds, to the unpaid balance of the approved encumbrance.

22. UNLAWFUL USES.

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

23. ADDITIONAL TIME.

Whenever under this instrument a time is stated within which or by which original construction, repairs, or reconstruction of said improvement shall be made and during such period a general or sympathetic strike or lockout occurs, war or rebellion ensues or some event unquestionably beyond Lessee's power to control, the period of delay so caused shall be added to the period limited herein for the completion of such work.

24. EMINENT DOMAIN.

If, at any time during the term of this lease, the leased premises or any part thereof is taken or condemned under the laws of Eminent Domain, then and in every such case, the leasehold estate and interest of the Lessee in said premises or part thereof taken, shall forthwith cease and terminate. All compensation awarded by reason of the taking of the leased land and any taking of or injury to the buildings or improvements located thereon shall be awarded to the Lessee and the Lessor as their interests appear at the time of such taking. The rental thereafter payable hereunder for the remainder of the term of this lease shall be reduced in the proportion that the value of the entire premises is reduced by such taking or condemnation.

In the event of condemnation of the leased premises or any part thereof, the compensation or award insofar only as it is awarded for damages to the improvements on the leased property, to the extent of the unpaid balance of any approved encumbrance, shall be paid to the Encumbrancer. As between Lessor and Lessee or sublessor and sublessee as the case may be, such amount shall be deemed paid to the Lessee or sublessee and if such amount exceeds the amount to which Lessee or sublessee is entitled under the other terms of this lease, Lessee shall pay any such excess to Lessor.

25. ARBITRATION.

Whenever during the term of this lease the Lessee, the Lessor, and the Secretary are unable to reach an agreement as required by this lease, and it becomes necessary to submit a matter to arbitration for settlement, an Arbitration Board shall be established. Said Arbitration Board shall consist of three persons, one member to be selected by the Lessee, one member to be selected by the Lessor, and the third to be selected by the other two members. If the two members selected by Lessee and Lessor are unable to agree upon a third member within twenty (20) days after selection of the second member has been made, the senior judge of the Federal District Court for the District wherein the leased premises are located shall select the third member. The costs of such Arbitration Board shall be shared equally by the Lessee and the Lessor. It is further understood and agreed that the Secretary may be expected to accept any reasonable decisions reached by said Arbitration Board, but he cannot be legally bound by any decision which might be in conflict with the interests of the Indians or the United States Government.

26. DEFAULT.

Time is declared to be the essence of this lease. Should the Lessee default in any payment of monies or fail to post bond, as required by the terms of this lease, and if such default shall continue uncured for the period of thirty (30) days after written notice thereof by the Secretary to Lessee, during which 30-day period the Lessee shall have the privilege of curing such default, or should Lessee breach any other covenant of this lease, and if such breach shall continue uncured for a period of sixty (60) days after written notice thereof by the Secretary to Lessee, during which 60-day period Lessee shall have the privilege of curing such breach, then Lessor and the Secretary may re-enter the leased premises, terminate the lease, and remove all persons and property therefrom, excluding authorized sublessees and property belonging to such sublessees.

Any action taken or suffered by the Lessee as a debtor under any insolvency or bankruptcy act shall constitute a breach of this lease and entitle the Lessor to terminate this lease as herein provided. In such event the Lessor shall be a first preferred creditor except as provided in Article 17.

At least forty-five (45) days prior to any termination of the lease, the Lessor shall give to the encumbrancer written notice of his intention to so terminate. If such proposed termination be for any default of Lessee under the lease, the encumbrancer shall be entitled to remedy such default at any time before such termination occurs, and thereby prevent termination for such default, or if such default cannot be remedied within forty-five (45) days, to commence the remedy thereof within thirty (30) days and diligently prosecute the same thereafter, during which time the lease shall not be terminated for such default, nor if fully rectified shall it thereafter be terminated for such default.

No waiver of a breach of any of the covenants of this lease shall be construed to be a waiver of any succeeding breach of the same or any other covenant.

27. ATTORNEY'S FEES.

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

28. HOLDING OVER.

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

Lessee agrees to remove all property removable under the terms of this lease within sixty (60) days after termination of this lease or pay a daily rental computed at the rate of double the daily rental charge during the year immediately preceding termination of the lease, from the day following the termination date of the lease until said property is removed.

29. TERMINATION OF FEDERAL TRUST.

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

30. STATUS OF SUBLEASES.

Termination of this lease, by cancellation or otherwise, shall not serve to cancel subleases and/or subtenancies, but shall operate as a substitution of Lessor as landlord of any and all such subleases and/or subtenancies; provided, that such subleases and/or subtenancies have been entered into in accordance with Article 14.

31. NOTICES.

All notices and demands shall be sent to the parties hereto at the address herein recited or to such address as the parties may hereafter designate in writing. Notices and demands shall be sent by registered or certified mail. Service of any notice or demand shall be deemed complete ten (10) days after mailing or on the date actually received, whichever occurs first. Copies of all notices and demands shall be sent to the Secretary in care of Superintendent, Western Washington Indian Agency, Federal Building, 3006 Colby Avenue, Everett, Washington, 98201.

32. INSPECTION.

If the Secretary has reasonable grounds to believe that the building or other improvements erected thereon fails to comply with the general plans and design, protective covenants or any standard herein required, he shall have the right, at any reasonable time during the term of this lease, to enter upon the leased premises, or any part thereof, to inspect the same and all buildings and other improvements erected and placed thereon.

33. DELIVERY OF PREMISES.

The Lessee shall surrender possession of the premises upon the expiration or termination of this lease and, if required by the Lessor, shall within 60 days thereafter, or within such additional time as may be mutually agreed upon, return the premises in as good condition as that existing at the time of entering upon the same under this lease; provided that, if the Lessor requires the return of the premises in such condition, the Lessor shall give written notice thereof to the Lessee at least 30 days before the expiration or termination of the lease; and provided further, that should the Lessor give such notice within the time specified above, the Lessee shall have the right and privilege of making a cash settlement with the Lessor in lieu of performance of its obligation to restore the real estate. Should a mutually acceptable settlement be made hereunder, the parties shall enter into a supplemental agreement hereto effectuating such settlement. The restoration of the premises as aforesaid shall include, but not be limited to, the removal of all debris, concrete slabs and foundations; the opening of septic tank tops and backfilling the entire cavity with bank run gravel; the filling of basement and swimming pool excavations, holes and depressions; and grading as required in conjunction with the foregoing. This provision shall not be applied to require restoration of growing timber or trees removed pursuant to Article 7B hereof or to require reseeded of former timber areas or future payments in lieu thereof; nor shall this provision be applied to require the backfilling of areas dredged, the removal of piers or bulkheads, the removal of underground electrical lines or utilities or the removal of asphalt roads or walkways in usable condition.

34. RESTORATION OF BOND.

No later than nine (9) months prior to the termination or expiration of this lease, the Lessee agrees to post a bond satisfactory to the Secretary, in a penal sum of reasonable amount as prescribed by the Secretary, to provide security which will guarantee completion of restoration work required pursuant to Article 33 hereof. Corporate surety bond or other type of security acceptable to the Secretary as outlined in Article 11 may be furnished by the Lessee for the restoration bond herein required.

35. LEASE BINDING.

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

36. INTEREST OF MEMBER OF CONGRESS.

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

37. VALIDITY.

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

38. LESSEE’S OBLIGATIONS.

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

39. EXECUTION AND COUNTERPARTS.

This lease may be executed in any number of counterparts, no one of which needs to be executed by all parties, and shall be binding upon all those parties who have executed such a counterpart with the same force and effect as if all such parties had signed the document and regardless of whether or not it is executed by all other parties owning or claiming an interest in the lands covered by this lease.

40. WATER POLLUTION CONTROL.

The Lessee agrees to comply with all applicable water pollution control laws, regulations, and State and Federal water pollution control agencies’ recommendations, in the construction of all sewerage systems, sewage treatment or disposal plants or systems, or in the improvement or extension of any sewerage systems or sewage treatment or disposal plants.

41. DREDGING WORK.

The Lessee shall obtain any permit that may be required by the Corps of Engineers, Department of the Army, before undertaking any dredging which affects the Swinomish Channel. A copy of any application made by the Lessee for a permit shall be forwarded to the Secretary.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands.

ATTEST:

s/Irene Siddle
Secretary, Swinomish Indian Senate

LESSOR (as its interest might appear):
SWINOMISH INDIAN TRIBAL COMMUNITY,
a constitutional body and corporation

s/Dewey Mitchell
Chairman, Swinomish Indian Senate

LESSOR:

s/by 20 Allottee Family Representatives

ATTEST:

s/William J. Pierce
Secretary

LESSEE:
INDIAN BAY COMPANY,
a Washington corporation

s/Allan F. Osberg
President