

6/17/04 (PL)

400/500/805/900/600

Resolution No. 06-2004-124

**RESOLUTION OF THE
WHITE MOUNTAIN APACHE TRIBE OF THE
FORT APACHE INDIAN RESERVATION**

WHEREAS, the Tribal Council had previously authorized a five year lease between the Tribe and Smith Bagley, Inc. d/b/a Cellular One of Northeastern Arizona to provide cellular telephone service along roadways and populated areas on the reservation; and

WHEREAS, the lease with Cellular One has expired, and representatives from the Tribe and Cellular One have negotiated a new Lease Agreement to maintain the cellular services; and

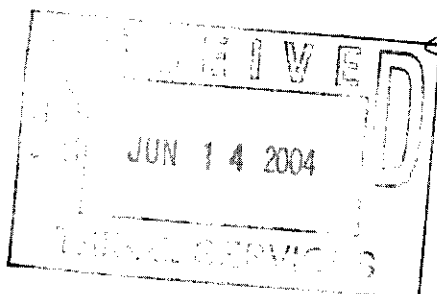
WHEREAS, the Tribal Council has this date reviewed the new Lease Agreement between the Tribe and Cellular One for a term of ten years, with a right of renewal for an additional eight year term by the lessee; and

WHEREAS, the Tribal Council finds that the Lease Agreement serves the best interest of the White Mountain Apache Tribe in the provision of cellular telephone service and compensation to the Tribe for the leasehold interest.

BE IT RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby approves and authorizes the Lease Agreement between the White Mountain Apache Tribe and Smith Bagley, Inc., d/b/a/ Cellular One in substantially similar form as attached herein.

BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it authorizes the Tribal Chairman to execute the Lease Agreement and related documents on behalf of the Tribe to complete the Lease Agreement.

The foregoing resolution was on JUNE 3, 2004 duly adopted by a vote of SIX for and ZERO against by the Tribal Council of the White Mountain Apache Tribe, pursuant to authority vested in it by Article IV, Section 1 (a), (h), (i), (s), (t), and (u) of the Constitution of the Tribe, ratified by the Tribe September 30, 1993, and approved by the Secretary of the Interior on November 12, 1993, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984).




Chairman of the Tribal Council


Secretary of the Tribal Council

CELLULAR ONE TOWER LOCATIONS

Seven Mile

Whiteriver Police Department

Cibecue

Cibecue II – [West and North of Cibecue I]

Cooley Mountain

LEASE AGREEMENT

This Lease Agreement ("Lease") is made and entered into as of this ____ day of _____, ("Effective Date") between the White Mountain Apache Tribe as Lessor ("Tribe") and Smith Bagley, Inc., a Washington D.C. corporation ("Lessee")."

WITNESSETH:

WHEREAS, Tribe is the owner of property and Lessee desires to lease from Tribe and Tribe desires to lease to Lessee space at certain locations to provide cellular telephone service to areas including, but not limited to, the Fort Apache Indian Reservation pursuant to the terms and conditions and for the purposes set forth herein;

NOW, THEREFORE, for and in consideration of the mutual promises and covenants herein contained, the parties hereto agree as follows:

1. **Purpose**

Lessee shall use the Lease Premises solely to provide cellular telephone service in compliance with FCC rules and regulations in populated areas and elsewhere within and without the Reservation, including the communities of Whiteriver, Hon Dah, McNary, and Cibecue, and in areas along State Highways 73 and 260, and U.S. Highway 60 within the Reservation.

2. **Lease Premises**

A. Pursuant to the terms and conditions herein provided, Tribe hereby does lease, let, and demise to Lessee and Lessee hereby does lease of and from Tribe certain real property at several sites throughout the Reservation for the purpose of installing and operating equipment for providing cellular telephone service. All such Sites shall be identified in EXHIBIT A to this Lease and shall be referred to collectively as the "Lease Premises." Except as may be otherwise provided in EXHIBIT A, all Sites constituting the Lease Premises include a communications tower owned by the Tribe and related fixtures and buildings. Lessee's leasehold interest in the Lease Premises is non-exclusive; other permittees, lessees, licensees, and entities of the Tribe may have access and use of the premises, as consistent with the terms and conditions of this Lease.

B. Lessee has examined and is familiar with the Lease Premises and verifies that no representations as to condition or suitability thereof for the purpose of this Lease have been

made by Tribe or any agent of Tribe prior to or at any time of the execution of this Lease. Lessee warrants that it has not relied on any warranty or representation made by or for Tribe but has relied upon Lessee's independent investigation of the Lease Premises and in so doing has found the Lease Premises to be suitable for the purposes of this Lease.

C. Upon the mutual consent of the parties, and with prior approval of the Secretary, and in compliance with Tribe's laws and regulations, including Tribe's Tribal Plan and Project Review ("TPPR") process or its successor regulatory process, the parties may amend EXHIBIT A from time to time during the term of this Lease to add or remove Sites for which Lessee shall hold a leasehold interest, provided that the Lease Premises shall consist of no fewer than four Sites at all times during the term of this Lease.

3. **Term**

The term of this Lease shall be ten (10) years commencing on _____. Provided that Lessee is in compliance with all material provisions of this Lease, Lessee, at its option may renew this Lease for one additional term of eight (8) years by providing written notice to Lessor not less than one hundred twenty (120) days prior to the expiration of the initial term.

4. **Rental Amount and Payment**

A. Lessee shall pay Tribe the sum of Fourteen Thousand Four Hundred Dollars (\$14,400.00) per year for each Site identified in Exhibit A. On the Effective Date of this Lease Exhibit A contains five (5) Sites, making the Rental Amount Seventy Two Thousand Dollars (\$72,000) per year. The Rental Amount shall change as Sites are added to or removed from Exhibit A as provided in Section 2, so by way of illustration only, in the event of amendment to Exhibit A resulting in the listing of seven Sites in Exhibit A, the Rental Amount would be \$100,800 per year (plus any applicable rental increase pursuant to sub-part B, below). The Rental Amount accrues as of the Effective Date of this Lease and must be paid within thirty (30) days of that date. Thereafter, for each subsequent Lease year the Rental Amount must be paid within thirty (30) days of each anniversary date of the Effective Date. Any Rental Amount owing for Sites added to Exhibit A during the course of the Lease year shall be calculated on a pro-rata basis and paid within thirty (30) days of the date when added to Exhibit A. The parties may agree to a lesser Rental Amount for smaller Lease Sites on the Tribe's land.

B. The Rental Amount has been calculated from the review by the parties of revenues and call volume generated during the term of the Lease between the parties dated October 9, 1998 to October 9, 2003, and represents the good faith estimate of the parties of the value of the Sites and the economic return to Lessee. During the initial term of this Lease the fixed rate rental amount shall be increased by a rate of three percent (3%) per year for each Lease year following the first year of this Lease, with such increase beginning on the first

anniversary of the Effective Date of this Lease. In the event this Lease is renewed for one additional term, as provided in Section 3, the parties shall meet and renegotiate the annual percentage increase based upon current market conditions, the rate of inflation as measured by the U.S. Department of Labor Consumer Price Index, and, if deemed necessary, a site appraisal.

5. Other Compensation

As additional compensation to Tribe, Lessee agrees to provide Tribe five (5) cellular telephones for Tribal use during the term of this Lease. Each of the five cellular telephones will include a nationwide calling and roaming plan at a value not to exceed \$300.00 per month for each telephone. The Tribe shall be responsible for monthly charges in excess of \$300.00 and for charges which are not covered under the terms of the applicable calling plan. In the event of established calling plan rate increases, the \$300.00 monthly limit will be adjusted to provide equivalent conditions and minutes as available at the onset of this Lease.

6. Use of Lease Premises/Compliance with Law

The Lease Premises shall be used and occupied by Lessee for the sole purpose of providing cellular telephone service on the Fort Apache Indian Reservation and in the White Mountain region. This Lease shall not be construed to permit the installation of other equipment by Lessee on the Lease Premises. Lessee agrees that its activities at all times must comply with Tribal law and regulations and all applicable state and federal law, including FCC regulations. Lessee agrees that it will not use or cause to be used or permit any part of the Lease Premises to be used for any unlawful conduct or purpose, or for any purpose unrelated to its purpose as defined in Section 1 of this Lease, nor do or permit anything to be done in or about the Lease Premises which will in any way obstruct or interfere with Tribe's or other authorized user's use of the Lease Premises, except as otherwise provided in this Lease. Lessee further agrees that it will shall not cause, maintain or permit any nuisance in, on or about the Lease Premises or commit or suffer to be committed any waste in, on or about the Lease Premises.

7. Utilities

Tribe authorizes Lessee to install on Lease Premises, at Lessee's own expense, electric meters and telephone connection equipment. Lessee agrees that it will provide battery backup power to be used in the event that electricity delivery is interrupted.

8. Lessee's Property

A. Items owned or to be provided by Lessee that Lessee will utilize on Lease Premises are identified in EXHIBIT B attached hereto and will hereafter be referred to as "Lessee's Communication Equipment." Upon the termination of this Lease, or the termination of that portion of the Lease pertaining to the Site, Lessee shall within thirty (30)

days remove Lessee's Communication Equipment and restore the Site to its prior condition. Any property of Lessee remaining on any portion of the Lease Premises following the termination of the Lease, or that portion of the Lease, after thirty (30) days shall become the property of Tribe.

B. After the Effective Date of this Lease Tribe may direct Lessee to relocate Lessee's Communications Equipment on Tribe's communications towers if needed to insure structural integrity or safety of persons or property, provided such directive is based upon the opinion of a licensed structural engineer obtained at Tribe's sole expense. Lessee will be afforded forty-five (45) days to complete the corrective measures unless Tribe finds, based on the recommendations of a licensed structural engineer, an imminent threat to the safety of persons or property, in which case Lessee will be required to remedy the problem immediately. Lessee's failure to do so will result in cessation of service from the site at issue extending to removal of Lessee's Communications Equipment from the site if the licensed engineer so recommends.

9. Site and Frequency Coordination

A. Subject to the covenants and agreements in this Lease, Tribe and its lessees, licenses, and permittees may install and operate antennas and transmission lines and other equipment on the radio towers identified in Section 2. Tribe will cooperate and help Lessee get copies of as-built plans and other documents indicating the exact locations on said towers of such other antennas, transmission lines and equipment, their transmission frequencies, and their transmitter output powers to the extent known by Tribe. Any copies of as-built plans or other documents contemplated by this Section shall be obtained at Lessee's sole expense.

B. Lessee shall identify in writing to Tribe the licensed frequencies in use at the Lease Premises. Upon request by Tribe, Lessee shall provide to Tribe copies of Lessee's FCC licenses and any associated reports. Lessee must receive prior written approval from Tribe for any equipment changes by Lessee which would result in additional load on or occupy additional space on any tower structure. Tribe may elect to establish a user's group to coordinate tower activities on the Lease Premises. If Tribe does establish such a group, Lessee hereby agrees to become a member and, subject to the terms of this Lease, abide by the group's decisions regarding tower use, particularly with respect to transmission frequency use.

C. *Interference with a Pre-Existing Use.* Lessee's use of the Lease Premises and its operation of Lessee's Communication Equipment thereon (including any subsequent modification or alteration thereto) shall be conducted in a manner that does not interfere electrically, or in any other manner whatsoever with any then pre-existing use of the Lease Premises by Tribe or other users of the Lease Premises ("Pre-Existing Use"). In the event that any Pre-Existing Use experiences interference caused by Lessee's use of the Lease Premises

Lessee shall be notified in writing of such interference and Lessee shall power down its equipment and/or cease operations in order to correct and eliminate such interference within seventy-two (72) hours after Lessee's receipt of such notice. If Lessee does not cease all interfering operation within such seventy-two (72) hour period, Tribe shall have the right to disconnect Lessee's Communication Equipment until such time as Lessee can affect repairs to the interfering equipment. If Lessee is unable to eliminate the interference, or reduce it to a level acceptable to the affected user of the Pre-Existing Use, within a period of thirty (30) days following such initial notice (provided that during such 30 day period, Lessee may operate its equipment intermittently during off-peak hours for testing purposes only), then Tribe may, in addition to any other rights it may have for Lessee's breach hereof, terminate this Agreement in whole or in part. In the event that Lessee is notified of any interference experienced by a Pre-Existing Use at the Lease Premises alleged to be caused by Lessee's operations thereon, Lessee shall be obligated to perform whatever actions are necessary, at Lessee's sole cost and expense, to eliminate such interference and shall not be released from its obligation to continue to pay the Lease Rental during any period that Lessee can not operate from the Lease Premises pursuant to this Section.

D. *Interference by a Subsequent Use.* Tribe agrees that use of the Lease Premises by Tribe or any person or entity authorized by Tribe, including any installation or modification of equipment subsequent to Lessee's then-current operation of the Lessee's Equipment thereon ("Subsequent Use") shall not interfere with Lessee's then-current permitted operations. In the event that Lessee experiences interference caused by any Subsequent Use, Lessee shall notify Tribe in writing of such interference and Tribe shall, or shall cause the operator of the interfering Subsequent Use, to power down its equipment and/or cease operations in order to correct and eliminate such interference within seventy-two (72) hours after Tribe's receipt of such notice. If such Subsequent Use is unable to operate without causing such interference, or if such interference is not reduced to a level acceptable to Lessee, within a period of thirty (30) days (provided that during such 30 day period the Subsequent Use may be operated intermittently during off-peak hours testing purposes only), then Lessee may, in addition to any other rights it may have for Tribe's breach hereof, terminate this Agreement. In the event that Tribe is notified of any interference experienced by Lessee alleged to be caused by a Subsequent Use on the Tower Site, Tribe shall be obligated to perform (or cause to be performed) whatever actions are commercially reasonable and necessary, at no cost or expense to Lessee, to eliminate such interference.

10. Right of Inspection

Tribe shall have the right, at any time during the term of this Lease, with reasonable notice to Lessee, to inspect the Lease Premises and all equipment therein.

11. Lessee's Right of Entry

Lessee, its authorized agents, employees, and contractors that are necessary to carry out the work permitted under this Lease, will, at all times during the term of this lease, be granted by Tribe a right of entry to Lease Premises.

12. Federal Government Trust Relationship

A. *Secretarial Approval.* As used in this Lease, the term "Secretary" means the Secretary of the Interior or duly authorized representative of the Secretary of the Interior. This Lease is subject to the approval of the Secretary pursuant to the Act of August 9, 1955, 60 Stat. 539, as amended, 25 U.S.C.S. § 415.

B. *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.

C. *Obligations of Lessee.* While the Lease Premises are in trust or restricted status, all of Lessee's obligations under this Lease and the obligations of Lessee's sureties are to the United States as well as to Tribe.

D. *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.

13. Holding Over

Holding over by Lessee after the expiration of the term of this Lease shall not constitute a renewal or extension thereof or give Lessee any rights hereunder to the Lease Premises. If Lessee should remain in possession of Lease Premises after the expiration of the primary term or any extension thereof without the renewal or execution by Tribe and Lessee of a new Lease, then Lessee shall be deemed to be occupying the Lease Premises as tenant-at-sufferance on a month-to-month basis, subject to all the covenants and obligations of this Lease. In this event, the rental amount will increase to 175% of the rental rate in effect at the time of the Lease termination for each of the locations comprising the Lease Premises at which Lessee is holding over.

14. Encumbrance

This Lease, or any right to or interest in this Lease or any of the improvements on the Lease Premises may not be encumbered by Lessee without the prior written consent of Tribe and the Secretary. Tribe's consent may be withheld for any reason. Any attempt to encumber the Lease Premises except by compliance with this Section shall be void and shall

constitute cause for immediate termination of the Lease by Tribe.

15. No Partnership

Lessee and Tribe are not in partnership or joint venture, notwithstanding any other provision of this Lease.

16. Notice

Any notice required or allowed by this Lease shall be in writing and shall be delivered by hand or sent by United States Registered or Certified Mail, postage prepaid and addressed as follows:

TRIBE:
Tribal Treasurer
White Mountain Apache Tribe
P.O. Box 700
Whiteriver, AZ 85941

LESSEE:
d/b/a Cellular One of Northeastern
Arizona
1500 S. White Mountain Rd.
Show Low, AZ 85901

Either Party hereto may change its address to which said notice shall be delivered or mailed by giving notice of such change as indicated above. Notice shall be deemed given when delivered (if delivered by hand) or when postmarked (if sent properly by mail).

17. Liens, Taxes, Assessments, Utility Charges

Lessee shall not permit to be enforced against the Lease Premises or any part thereof, any liens arising from any work performed, materials furnished, or obligations incurred by or for Lessee but Lessee shall discharge all such liens before any action is brought to enforce the same; further, Lessee shall pay before delinquent, all tax assessments, licenses, fees, and other like charges levied during the term of this Lease upon or against the Lease Premises and all interest therein and property thereon as they pertain to Lessee's use of Lease Premises. Lessee shall, upon Tribe's request furnish Tribe with written evidence duly certified that any and all taxes required to be paid by Lessee have been paid, satisfied, or otherwise discharged.

18. Liability and Indemnity

Lessee agrees to use and occupy Lease Premises at Lessee's own risk, and agrees to release, indemnify and save Tribe harmless from any and all liability, claims, lawsuits, and costs, including reasonable attorney's fees, costs and expert witness' fees, arising from or in any way relating to Lessee's use of Lease Premises or Lessee's activities pursuant to this Lease to the fullest extent permitted by law. Tribe, in turn, agrees to indemnify and save Lessee harmless from all liability, claim, lawsuit, or costs, including reasonable attorney's fees, costs and expert witness' fees, arising from Tribe's use of Lease Premises.

1 **Termination**

A. Parties shall have the right to terminate this Lease at any time upon any of the following events:

- (i) If the approval of any agency, board, court or other governmental authority necessary for the construction and/or operation of Lessee's Communication Equipment cannot be obtained or is revoked, or if Lessee determines the costs of obtaining or retaining such approval is prohibitive based on a showing of economic hardship;
- (ii) If either party determines that any of the Lease Premises are not appropriate for locating Lessee's Communication Equipment for technological reasons, including, but not limited to, signal interference, provided such determination is corroborated by an independent expert designated by Lessee and Tribe and retained at Lessee's expense; or
- (iii) Lessee's failure to broadcast from the Lease Premises for a period of fifteen (15) consecutive days, or for a period of fifteen (15) days in the aggregate within any consecutive thirty (30) day time period shall be deemed an abandonment of this Lease by Lessee.

B. Upon termination of this Lease, Lessee will owe no further obligation under terms of this Lease, except for the following:

- (i) Lessee's indemnity obligations contained in Section 19;
- (ii) Lessee's responsibility in compliance with this Lease, Tribal law, and other applicable laws to remove all of Lessee's Communication Equipment from Lease Premises;
- (iii) Lessee's obligation to restore the areas it occupied to as near as practicable to their original condition, save and except normal wear and tear and acts beyond Lessee's control in compliance with Tribal and other applicable laws; and
- (iv) All rents accrued but not paid to Tribe.

20. **Default and Remedies**

A. Except as may be otherwise expressly provided in this Lease, neither party shall be in default under this Lease until (30) days after receipt of written notice of a default from the other party, ("the cure period"); provided, however, that where any such default cannot reasonably be cured within such cure period, the party alleged to be in default shall not be deemed to be in default under the Lease if said party commences to cure such default within said cure period and thereafter diligently pursues such cure to completion, provided that in no event shall the cure period extend beyond sixty (60) days.

B. In the event of either party's failure to comply with any material provision of this Lease, the other party may, at its option, cure the default of the other party at the expense of the defaulting party, without affecting its right to demand, sue for, and collect all of its damages arising out of the other party's default, or terminate this Lease without affecting its right to use for any other damages to which it may be entitled. The prevailing party in any dispute arising under or relating to this Lease shall be entitled to recover its reasonable attorney's fees, costs, and expert witness fees.

C. The rights and remedies stated in this Lease are not exclusive and the parties, in the event of a breach hereof or a dispute, are entitled to pursue any of the remedies provided herein, by law, or by equity.

D. No course of dealing between the parties or any delay on the part of a party to exercise any right it may have under this Lease shall operate as a waiver of any of the rights hereunder or by law or equity provided, nor shall any waiver of any prior default operate as a waiver of any subsequent default, and no express waiver shall affect any term or condition other than the one specified in such waiver and that one only for the time and in the manner specifically stated.

E. In the event either party shall be rendered unable in whole or in part by force majeure to carry out any covenant, agreement, obligation or undertaking to be kept or performed by such party under this Lease, such covenant, agreement, obligation or undertaking, insofar as the same shall be affected by such force majeure, shall be suspended during the continuance of any liability so caused, and such default shall be remedied with all reasonable dispatch. The term "force majeure" as employed in this section shall include acts of God, strikes, lockouts, or other industrial disturbances, acts of a public enemy, war, blockades, riots, epidemic, earthquakes, explosions, accidents, or repairs to machinery or pipes, the delays of carriers, or inability by reason of governmental regulation to obtain materials, acts of public authorities, or other causes, whether or not of the same kind as specifically enumerated, not within the control of the party claiming suspension and which by the exercise of due diligence or the payment of money, such party is unable to overcome.

F. The parties agree to resolve all disputes through mediation before resorting to any formal legal action. Further, the parties will agree upon a mediator within ten days of notice that a dispute exists between them.

21. Insurance

Lessee shall, at its expense, maintain in force during the term of this Lease, a combined single limit policy of bodily injury and property damage insurance, designating the White Mountain Apache Tribe as an additional named insured, with a limit of not less than one

in an amount of one million dollars (\$1,000,000.00) insuring Tribe and Lessee against all liability arising out of Lessee's use, occupancy or maintenance of the Lease Premises and appurtenant areas, which policy shall be endorsed as primary insurance as to Tribe. Lessee shall provide a copy of said policy to Tribe at the effective date of this Lease.

22. Assignment and Subletting

Lessee shall not sublease, assign or transfer, in whole or in part, any right to or interest in this Lease or any improvements on the Lease Premises without the prior written approval of Tribe and the Secretary. No such sublease, assignment or transfer shall be valid or binding without such approval, and any attempt to sublease, assign or transfer this Lease without Tribe's and the Secretary's consent shall be deemed a violation of this Section and shall be cause to terminate this Lease at the option of Tribe. However, Lessee may, without Tribe's consent, transfer or assign Lessee's interest in this Lease to a buyer in conjunction with the sale by Lessee of its business or the sale or transfer by Lessee of all or substantially all of its assets. Lessee shall include a provision in its sales contract that the buyer shall acknowledge acceptance of this Lease and that buyer's use of the Lease Premises is subject to the terms and conditions of this Lease.

23. Other Conditions

A. Tribe and Lessee shall cooperate fully in maintaining in full force and effect during the term of this Lease and any extension thereof all necessary licenses, permits and approvals, zoning approvals, variances, use permits and other governmental permits and approvals necessary to carry out the purposes of this Lease.

B. Except as otherwise provided, whenever under the Lease the consent or approval of either party is required or a determination must be made by either party, no such consent or approval shall be unreasonably withheld or delayed.

C. Tribe covenants that the Lessee shall, upon paying the rent and observing the other covenants and conditions herein upon its part to be observed, peaceably and quietly hold and enjoy Lease Premises during the term of this Lease or as it may be extended without hindrance, ejection or molestation by the Tribe, any person or persons claiming under the Tribe, or any other tenant of Tribe, subject to Tribe's right of access to Lease Premises for the purposes described herein.

D. Each party warrants that it possesses full authority to enter into this Lease agreement and make and perform the covenants as provided herein.

E. The timely compliance with, and performance of, the representations, warranties, covenants and agreements contained in this paragraph are deemed to be material

terms of this Lease, the breach of which shall entitle the non-defaulting party to exercise all rights and remedies provided by this Lease, at law and in equity.

24. Eminent Domain

In the event that any government, public body or other entity with power of eminent domain shall take, or in the event Tribe shall transfer in lieu of such taking, all or such part of Lease Premises thereby making it physically or financially infeasible for the Lease Premises to be used in the manner that was intended pursuant to this Lease, Lessee shall have the right to terminate this Lease effective as of the date of the taking by the condemning party or the transfer in lieu thereof, the rent amount shall be pro-rated accordingly. If the Lease Premises are taken or transferred in lieu thereof, and if Lessee does not terminate this Lease pursuant to this Section, then rent payments provided under this Lease shall abate proportionally as to the portions that are taken or transferred which are not then usable by Lessee, and this Lease otherwise shall continue.

25. Damage to Lease Premises

A. If Lease Premises are damaged through no fault of Lessee so as to render all or any material part thereof substantially unusable for Lessee's intended use, as set out in this Lease, the Rental Amount shall abate proportionately for the site that is unusable while Tribe, at its expense, promptly restores Lease Premises to their fully functioned condition as existed prior to such damage; provided, however, in the event Tribe fails to repair Lease Premises within thirty (30) days, Lessee shall have the right to terminate this Lease in full or as it relates to the property so damaged without affecting its remedies permitted by law, equity, and/or this Lease.

B. If all or any part of Lease Premises are damaged for any reason other than Lessee's negligence, and if the damage does not render Lease Premises substantially unusable for Lessee's intended use, rent shall not abate. Notwithstanding any other provision of this Lease, Tribe shall not be required to repair or restore Lease Premises that have been damaged or destroyed; however, if Tribe elects not to repair or restore Lease Premises to the condition that existed prior to the damage then rent shall be reasonably adjusted to reflect the reduction in Lease Premises Lessee suffers as a result of the unrepaired or unrestored Lease Premises.

26. Entire Agreement and Binding Effect

This Lease and exhibits constitute the entire agreement between Tribe and Lessee; no prior, contemporaneous or subsequent written or oral promises or representations shall be binding. This Lease shall not be amended or changed except by written instrument signed by both parties hereto. Section captions herein are for reference only and neither limit nor amplify the provisions of this Lease. The provisions of this Lease shall be binding upon and inure to the benefits of the heirs, executors, administrators, successors and assigns of the

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pa s. The invalidity of any portion of this Lease shall not have any effect on the balance
he f.

27. **Counterparts**

This Lease may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one instrument. Each counterpart may consist of a number of copies each signed by less than all, but together signed by all the parties hereto.

-Signatures

Attachment B - Confidentiality Policy

DEFINITIONS:

- “Tribal Information” is defined as any verbal, visual, pictorial, graphic, electronically-stored, printed, recorded, or written material acquired from the Tribe or other person or entity or obtained in any other way including, but not limited to, reports, summaries, data, maps, photographs, correspondence, phone call records, audio and video recordings, and any other form of information pertaining to the Tribe or its property, assets, or interests, including information in the custody of the Trustee United States.
- Tribal Information may contain proprietary, privileged, commercial, confidential, religious, cultural, and ceremonial information that the TRIBE would not customarily release to the general public. Such information may include, but is not limited to:
 - ▶ sensitive and/or federally listed (*eg*, threatened, endangered, or candidate) species that may exist on the Fort Apache Indian Reservation [Reservation].
 - ▶ specific habitat or ecosystem conditions on the Reservation.
 - ▶ quality of Reservation water resources, including groundwater.
 - ▶ quantity and inventory of Reservation water resources, including groundwater, stream flow data, rating curves, water levels, number and locations of gaging stations, methods and frequency of data collection, or any other information pertinent to quantification of water resources on the Reservation.
 - ▶ commercial activities on the Reservation.
 - ▶ natural resource management practices or plans on the Reservation.
 - ▶ location and nature of sites of cultural or religious significance.

GENERAL RULE:

- Any and all Tribal Information shall remain the property of the Tribe, regardless of location or custody. All Tribal Information shall remain with the Tribe and may not be removed from the Fort Apache Indian Reservation, except as authorized in writing by the Tribe.

STATEMENT OF CONSENT:

As a consequence of my status as CONSULTANT to the TRIBE, I will have access to information not generally known to the general public. I will not, without authorization from the TRIBE, during or after the term of this Agreement, directly or indirectly use, disseminate, or disclose to any person, unauthorized governmental body, agency or employee, or any firm or other business entity for any purpose whatsoever, any Tribal Information as defined herein.