Resolution No. 01-2011-06

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

(Approving a Business Lease for Navopache Electric Cooperative, Inc. for Office Space at the Tribal Human Services Building)

WHEREAS, pursuant to Article IV, Section 1(a) of the Constitution of the White Mountain Apache Tribe, *inter alia*, the Tribal Council has the authority to represent the Tribe and act in all matters that concern the welfare of the Tribe; and

WHEREAS, Navopache Electric Cooperative, Inc. (Navopache) was leasing an office space in the Whiteriver Commercial Center to provide residential and business electrical utility services to residents of the Fort Apache Indian Reservation; and

WHEREAS, due to the recent collapse of the roof at their office site, Navopache was forced to vacate the premises and relocate to their main office in Lakeside, Arizona; and

WHEREAS, the relocation of the Navopache office to Lakeside has created an undue hardship on many local residents who are unable to travel to Lakeside to pay their electricity bills; and

WHEREAS, the Tribal Human Services Building has adequate space in which to create an office for Navopache Staff to relocate to, which would provide convenient services to the residents of the Fort Apache Indian Reservation; and

WHEREAS, the Tribal Construction Facilities Management Office and Navopache have selected an office space within the Tribal Human Services Building, which could be renovated for use as a suitable office space for Navopache staff; and

WHEREAS, Navopache has agreed to pay the renovation expenses to immediately convert the space into a suitable office for their staff, provided the Tribe is agreeable to a temporary waiver of rent, in whole or in part, to offset the costs of renovation made by Navopache; and

WHEREAS, the Tribal Council has considered this matter and believes it to be in the best interest of the Tribe and its residents to approve a new lease, in the form attached hereto, to Navopache Electric Cooperative, Inc. for a new office site located at the Whiteriver Tribal Human Services Building.

BE IT RESOLVED by the Tribal Council of the White Mountain Apache Tribe that:

1. It hereby approves a Lease Agreement, in the form attached hereto, to Navopache Electric Cooperative, Inc. for a new office space located at the Whiteriver Tribal Human Services Building.

BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that in the event that this Resolution conflicts with a prior Resolution or Policy, this Resolution shall govern.

BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that the Chairman, or in his absence, the Vice Chairman, is hereby authorized to execute any and all documents necessary to effectuate the intent of this Resolution.

The foregoing resolution was on **JANUARY 5, 2011** duly adopted by a vote of **EIGHT** for and **ZERO** against by the Tribal Council of the White Mountain Apache Tribe, pursuant to the authority vested in it by Article IV, Section 1 (a), (b), (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).

Ronnie Lupe, Chairman of the Tribal Council

Mariddie J. Craig, Secretary of the Tribal Council

WHITE MOUNTAIN APACHE TRIBE
FORT APACHE INDIAN RESERVATION
Whiteriver, Arizona

OFFICE SPACE LEASE AGREEMENT

Lease No. **BFA1000403**

THIS Lease, made and entered into this ___ day of _____, 2011 and between the **White Mountain Apache Tribe,** hereinafter "Lessor", whose address is P.O. Box 700, Whiteriver, Arizona 85941, and **Navopache Electric Cooperative, Inc.,** hereinafter "Lessee", whose address is 1878 W. White Mountain Blvd., Lakeside, Arizona 85929, is as follows:

WHEREAS, Lessee desires to obtain from Lessor the right to enter upon and occupy on office space located within the Whiteriver Tribal Social Services Building, on the Fort Apache Indian Reservation.

WHEREAS, Lessor desires to Lease to Lessee the premises herinafter more particularly described, and Lessor has evidenced its intention to enter into this Lease agreement by adoption of Resolution No. _____.

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

1. **Lease Premises**: For and in consideration of the rents, covenants, and agreements hereinafter set out, together with rights of ingress and egress, the Lessor agrees to lease to Lessee, those certain premises described as follows and hereinafter referred to as "Premises":

> Whiteriver Human Services Building, 202 East Walnut Street, located in the SW1/4SW1/4SW1/4 of Section 7, Township 5 North, Range 23 East, G&SRB&M.
>
> Office Space consisting of 156 square feet.

2. **Term**: The duration of this Lease shall be for a term of Five (5) years, with an option to renew the lease for an additional Five (5) year term. The effective date of this Lease shall be the date all signatures have been obtained by the parties. After the first five-year term, either party may terminate this Lease thirty (30) days after providing the other party proper written notice.

3. **Condition of Premises**: Lessee has examined and is familiar with the Premises and verifies that no representations as to the condition thereof have been made by Lessor or any agent of Lessor prior to or at the time of the execution of this Lease and Lessee warrants that it has not relied on any warranty or representation made by or for Lessor, but solely upon Lessee's independent investigation of the Premises.

4. **Use of Facility:** Nothing contained herein shall be deemed to require Lessee to occupy the Leased Premises. Should Lessee voluntarily close and abandon its facility on the Leases Premises for a period of thirty (30) consecutive days or more, or for a period of thirty (30) days in the aggregate within any consecutive sixty (60) day period for reasons other than repairs, restorations and/or alterations, Lessor, at its option, shall be entitled to terminate this Lease upon

22. **Holding Over**:

A. Holding over by Lessee after the expiration of this Lease shall not constitute a renewal or extension thereof or give Lessee any rights hereunder or in or to the Premises, and in event Lessee does holdover beyond the expiration of this Lease, Lessee shall be treated as a month-to-month Lessee.

B. Lessee agrees to remove all removable personal property as defined under the terms of this Lease at the termination of this Lease, and if Lessee fails to do so, Lessor shall have the right to cause Lessee's personal property to be removed from the premises and have it stored at Lessee's expense, or to exercise the rights otherwise set forth herein. If Lessee has not removed it personal property and trade fixtures within sixty (60) days as provided in Paragraph 10 of this agreement, and Lessor has granted an extension of time to remove, then in such event Lessee shall pay a daily rental computed at the rate of double the daily rental charged during the time immediately preceding termination of expiration of the Lease until said property is removed.

23. **Payments and Notices**: All notices, payments and demands shall be sent to the parties hereto at the addresses herein recited or to such addresses as the parties may hereafter designate in writing. Notices and demands shall be sent by registered mail. Service of any notice or demand shall be deemed complete five (5) days after mailing certified, return receipt requested, or the date actually received, whichever occurs first. Copies of all notices and demands shall be sent to the parties at the following addresses:

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

Navopache Electric Cooperative, Inc.
1878 W. White Mountain Blvd.
Lakeside, Arizona 85929

24. **Reservation Laws & Ordinances, Resolution of Disputes & Applicable Law**:

A. Lessee, Lessee's employees, agents and sub-Lessees and their employees and agents agree to abide by all laws, regulations and ordinances of the White Mountain Apache Tribe and the United States Government, including but not limited to, all environmental regulations applicable to the maintenance of the facility, now in force and effect or that may be hereafter in force and effect. Waste oil and other hazardous substances shall be recycled or disposed of in an environmentally safe manner.

B. The White Mountain Apache Tribal Court shall have original jurisdiction over all claims disputes, or actions filed by Lessee against Lessor, and arising from or relating to this Lease or breach thereof.

C. This Lease shall be construed and enforced in accordance with the laws of the White Mountain Apache Tribe, as applicable, and otherwise by federal law.

are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents, employees, or volunteers.

35. **Sovereign Immunity**: Nothing in this Lease Agreement shall be construed to constitute a waiver of sovereign immunity of the White Mountain Apache Tribe, its elected officials, agents, employees, or attorneys for any purpose whatsoever.

36. **Entire Agreement**: This instrument contained the entire agreement between the parties. There are no promises, terms, conditions, or obligations other than those contained herein; and no statement, promises, or inducements made by either party or agent of either party that is not contained in this written Agreement shall be valid or binding, and this Agreement shall supersede all previous communications, representations, or agreements, either verbal or written, between the parties hereto. This Agreement may not be enlarged, modified, or altered except in writing signed by the parties.

IN WITNESS WHEREOF, the parties have executed this Agreement at Whiteriver, Arizona this _____ day of _____, 2011.

Lessor: **WHITE MOUNTAIN APACHE TRIBE**
of the Fort Apache Indian Reservation

By: _____
Ronnie Lupe, Tribal Chairman

Attest: _____
Tribal Council Secretary

Lessee: **NAVOPACHE ELECTRIC COOPERATIVE, INC.**

By: _____

Name/Title: _____

APPROVED: SECRETARY OF THE INTERIOR

Pursuant to the Authority delegated to the Assistant Secretary-Indian Affairs by 209 DM 8, 230 DM 1, 3 IAM 4 (Release No. 00-03), 10 BIAM 11, as amended, and further delegations as needed to effectuate the Reorganization embodied in DM Releases dated April 21, 2003.

By_____ Date_____
Superintendent, Fort Apache Agency
UNITED STATES DEPARTMENT OF THE INTERIOR

Resolution No. 01-2011-06

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(Approving a Business Lease for Navopache Electric Cooperative, Inc. for Office Space at the Tribal Human Services Building)

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WHEREAS, due to the recent collapse of the roof at their office site, Navopache was forced to vacate the premises and relocate to their main office in Lakeside, Arizona; and

WHEREAS, the relocation of the Navopache office to Lakeside has created an undue hardship on many local residents who are unable to travel to Lakeside to pay their electricity bills; and

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The foregoing resolution was on **JANUARY 5, 2011** duly adopted by a vote of **EIGHT** for and **ZERO** against by the Tribal Council of the White Mountain Apache Tribe, pursuant to the authority vested in it by Article IV, Section 1 (a), (b), (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).

Ronnie Lupe, Chairman of the Tribal Council

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3. **Condition of Premises**: Lessee has examined and is familiar with the Premises and verifies that no representations as to the condition thereof have been made by Lessor or any agent of Lessor prior to or at the time of the execution of this Lease and Lessee warrants that it has not relied on any warranty or representation made by or for Lessor, but solely upon Lessee's independent investigation of the Premises.

4. **Use of Facility:** Nothing contained herein shall be deemed to require Lessee to occupy the Leased Premises. Should Lessee voluntarily close and abandon its facility on the Leases Premises for a period of thirty (30) consecutive days or more, or for a period of thirty (30) days in the aggregate within any consecutive sixty (60) day period for reasons other than repairs, restorations and/or alterations, Lessor, at its option, shall be entitled to terminate this Lease upon

thirty (30) days written notice to Lessee and upon such termination this Lease shall be null, void and of no force and effect.

5. **Purpose:** Lessee shall use and operate the leased premises for the purpose of collecting utility payments, customer advocacy, customer relations, utility connections and disconnections, and other office procedures as may be necessary to conduct the business activities of the Lessee in servicing the Whiteriver vicinity. Lessee shall restrict its use to such purpose and shall not use or permit the use of the premises for any other purpose without the written consent of Lessor or Lessor's authorized agent.

6. **Unlawful Uses**: Lessee agrees that it will not use or cause to be used or Lease any part of the Premises to be used for any unlawful conduct or purpose, or for any purpose unrelated to its purpose as defined in Paragraph 5 of this agreement. Lessee shall not do or cause to be done in or about the Premises, nor bring or keep or Lease to be brought or kept therein, anything which is prohibited by or will in any way conflict with any law, statute, ordinance or governmental rule or regulation now enforce or which may hereafter be enacted or promulgated in governing Lessee's use of the Premises. Lessee shall not do or cause anything to be done in or about the Premises which will in any way obstruct or interfere with the rights of other tenants, if any, in the building or improvements, or injure or annoy them, or use or allow the Premises to be used for any improper, immoral, unlawful or objectionable purpose, nor shall Lessee cause, maintain or cause any nuisance in, on or about the Premises or commit or suffer to be committed any waste in, on, or about the Premises. The lawfulness of Lessee's conduct shall be defined by the laws, ordinances and regulations of the White Mountain Apache Tribe and the applicable laws and regulations of the United States.

7. **Rental**:

A. Base Rent: Lessee, in consideration of the foregoing, covenants and agrees to pay in lawful money of the United States of America to the White Mountain Apache Tribe, the sum of Six Hundred Twenty-five ($625.00) Dollars per month, commencing _____, 2011 and thereafter due on the first day of each month, according to provisions set forth in 7(D).

B. Rental Adjustment: At not less than five (5) year intervals, this lease shall be reviewed and an appraisal conducted to determine any fair rental adjustment. Upon obtaining new appraised values for the Premises, Lessor shall provide notice to Lessee of such values and Lessee shall, no later than sixty (60) days after Lessor provides such notice to Lessee, increase the value of its base rent by the increase in the amount of the appraised fair market rental value.

C. Rent Abatement: The parties agree that an amount not to exceed Five Thousand ($5,000.00) Dollars is the amount which Navopache Electric Cooperative, Inc. advanced to the White Mountain Apache Tribe for improvements to the Whiteriver Tribal Human Services Building in order to make the building fit for occupancy. The parties further agree that Navopache Electric Cooperative, Inc. can recapture this amount through rent abatement, as outlined below, for its use of the Whiteriver Tribal Human Services Office Space as permitted in this Lease.

RENTAL RATE FOR YEAR 1:

BASE RENT:	PAID TO TRIBE:	ABATED:	CUMULATIVE:
$625.00 p/month	$200.00 p/month	$425.00 p/mo	$5,000.00

Upon full repayment of amount advanced by Lessee, beginning on or about January 1, 2012, the rental rate will be adjusted to reflect the then current rental rate as prescribed herein

8. **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, 69 Stat. 539, as amended, 25 U.S.C. §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. Obligation of Lessee. While the Premises are in trust or restricted status, all of Lessee's obligations under this Lease and the obligations of Lessees sureties are to the United States as well as to Lessor.

D. Interest of Members of Congress. No member of, or delegate to Congress, or Resident commissioner shall be admitted to any share or part of this Lease Agreement to any benefit that may arise herefrom, but this provision shall not be construed to extend to this Lease Agreement if made with a corporation or company for its general benefit.

9. **Lessor's Agent**: The Tribal Treasurer of the White Mountain Apache Tribe is hereby designated as Lessor's Agent for the administration of this Lease and for the receipt and collection of all proceeds due Lessor pursuant to the terms of this Lease, and for the receipt of all documents, certifications and correspondence arising out of or relating to this Lease.

10. **Improvements**:

A. Lessee shall have the right to place on Premises at its own expense, such alterations, additions, or improvements or may install such fixtures or equipment, as it may deem necessary and only as limited herein to carry on the purposes authorized by this Lease. Provided, however, that before any additional improvements shall be placed on the Premises, the consent of Lessor in writing must first be obtained. At the time such consent is requested, Lessee shall reasonably be requested by Lessor substantiating Lessee's ability to pay for the work. Lessor shall not be required to make any improvements on Premises, unless provided otherwise herein. Lessor has no obligation and has made no promise to alter, remodel, improve, repair, decorate or paint the Premises or any part thereof, except as specifically herein set forth. Furthermore, Lessee shall be under no duty or obligation to restore the Premises, which have been modified with Lessor's consent (as explained in Paragraph 7C above) to any former or other condition or state.

B. All buildings and improvements excluding removable personal property and trade fixtures located on the Premises shall remain on said property after the termination or expiration of this Lease, and shall thereupon become the property of Lessor. The term "removable personal property" as used in this Lease is defined to be all personal property of Lessee, including without limitation, all equipment, including tools, inventory, and trade fixtures, but except as defined above shall not include property which normally would be realty regardless of whether such property is in fact so placed in or on or affixed or attached to the property. However, it is understood that all removable personal property and all personal property trade fixtures and equipment shall be removed by Lessee within sixty (60) days from the termination of the Lease, and upon Lessee's failure to so remove all removable personal property trade fixtures, and equipment, unless an extension of time is granted in writing by Lessor, all removable personal property shall become the property of Lessor. (See Exhibits)

11. **Construction, Maintenance, Repair and Alterations**: Lessee, at Lessee's sole cost and expense, shall maintain the Premises and all improvements thereon in good order and repair and in a neat and attractive condition which exists as of this date at all times during the term of this Lease. Lessee shall construct, maintain, and repair, as required by law all improvements on the Premises and any alterations, additions, or appurtenances thereto, and shall otherwise comply with all existing laws, or subsequently enacted ordinances, and regulations of the White Mountain Apache Tribe, copies of which Lessor acknowledges are available for public inspection, and any other laws applicable to said premises.

12. **Utilities**: Lessor will provide gas, electricity, garbage disposal, water and sewer services to the Premises. Lessee shall be responsible for maintaining telephone services in its name and at its own expense to the premises.

13. **Community Services**: Lessor, except as herein specifically noted shall not be responsible for providing any services to the Premises including, but not limited to, police and fire protection, and medical services. Those services shall be provided on a nondiscrimination basis only as is customary in the community.

14. **Sub-Lease, Assignment, Transfer**: Lessee shall not, in whole or in part, sub-lease, assign or transfer this Lease or any right to or interest in this Lease or any of the improvements on the Premises without the prior written approval of Lessor and no such sub-lease, assignment or transfer shall be valid or binding without such approval, and then only upon the condition that the sub-lease, assignee or other successor in interest shall agree in writing to be bound by each and all of the covenants and conditions of this Lease. Any attempt to sub-lease, assign or transfer this Lease without the consent of the Lessor shall be deemed a violation of this paragraph and shall be cause to terminate the Lease at the option of Lessor.

15. **No Merger, Status of Sub-Leases**: The voluntary or other surrender of this Lease by Lessee, or a mutual cancellation thereof, shall not work a merger, and shall, at the option of Lessor, terminate all existing sub-Leases, or may, at the option of Lessor, operate as an assignment to it of any or all sub-Leases.

16. **Encumbrance**: This Lease, or any right to or interest in this Lease or any improvements on the Premises may not be encumbered by Lessee without the prior written consent of the Lessor

and the Secretary. Any attempt to do so shall constitute cause for immediate termination of the Lease by Lessor.

17. **Payment of Taxes, Assessments, Liens, Utility Charges**: Lessee shall not cause Lien (or this Lease as a Lien) to be enforced against the premises or any part thereof, any lien arising from any work performed, materials furnished, or obligations incurred by or for Lessee, but Lessee shall discharge any such lien 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 Premises and all interest therein and property thereon. Lessee shall, upon Lessor's request, furnish Lessor written evidence duly certified that any and all taxes required to be paid by Lessee have been paid, satisfied, or otherwise discharged.

18. **Lessor Paying Claims**: Lessor shall have the option to pay any lien, tax, or charge payable by the Lessee under this Lease, or to settle any action thereunder, if Lessee within ten (10) days after written notice from Lessor fails to pay or to post bond against enforcement. All costs and other expenses incurred by Lessor in so doing, shall be paid to Lessor by Lessee upon demand, with interest at the rate of ten percent (10%) per annum from the date of payment by Lessor until repaid. Default in such repayment shall constitute a breach of the covenants of this Lease.

19. **Eminent Domain**: (a) Lessee's Option. The term "total taking" as used in this Article means the taking of the entire leased land in fee under the power of eminent domain. The term "partial taking" means any other taking in fee under the power of eminent domain, except due to the small size of the Leased premises, that if [fifty] percent (50%) or more by area but not all of the leased land is taken, the Lessee shall have the option within sixty (60) days of the date of such taking by notice in writing to the Lessor to have such taking deemed a "total taking". (b) Total Taking. In case of total taking, the leasehold estate of Lessee and his liability for future installments or rental (except accrued percentage rental, if any) shall case and terminate as of the date of actual physical possession of the leased premises or portions thereof which shall be so taken. (c) Partial Taking. In the case of partial taking, this Lease shall continue in full force and effect as to the remainder of the leased premises and each ensuring installment of minimum rent only shall be abated in the ratio that the ground area of the leased land taken bears to the total area of said leased premises prior to the taking. If the taking does not interfere with the operation of the Lessee's business, then there shall be no abatement of the rental payment. (d) Refund of Advance Rentals. There shall be no refund of minimum rental paid in advance because of total or partial taking of the Premises. (e) Allocation of Award. All compensation and damages for the taking of the leased land or any portion thereof shall, except as otherwise provided, belong to and be the sole property of the Lessor.

20. **Default**:

A. Time is declared to be of the essence of this Lease. Should Lessee default in any payment of monies, as required by the terms of this Lease, and unless provided otherwise herein, and if such default shall continue uncured for a period of five (5) days after written notice thereof by Lessor to Lessee, during which five-day period 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 ten (10) days except when delay is attributable to action or non-action of Lessor, after written notice thereof by Lessor to Lessee, during which ten-day period Lessee shall have the

privilege of curing such breach, then Lessor may, in addition to any other remedies provided herein or by lay, either:

(1) Collect by suit or otherwise, all monies as they become due hereunder, or at the option of Lessor, collect by suit or otherwise all monies due for the full term of the Lease, or enforce, by suit or otherwise, Lessee's compliance with any other provision of this Lease, or

(2) Re-enter the premises and remove all persons and property there from excluding the personal property belonging to any authorized sub-Lease, and either,

(a) Re-let Premises without terminating this Lease, as the agent and for the account of Lessee, but without prejudice to Lessor's right to terminate any obligations of Lessee hereunder. The terms and conditions of such re-letting shall be at the discretion of Lessor, who shall have the right to alter and repair the Premises as deemed advisable, and to re-let with or without any equipment or fixtures situated thereon. Rents from any such re-letting, shall be applied first to the expenses of re-letting, collecting, altering, and repairing the Premises and to satisfy any attorney's fees or other cost of collecting, and any real estate commission actually paid by Lessor in connection with re-letting or collecting, and any insurance, taxes and assessments and thereafter the remainder shall be applied as payment to liquidate the total rental due from Lessee, Lessee shall pay to Lessor monthly, when due, any deficiency, and Lessor may sue thereafter as each monthly deficiency shall arise, or,

(b) Terminate this Lease at any time and event though Lessor has exercise rights as outlined in Subparagraph 1 above. Exercise of this remedy shall exclude recourse to any other remedy, but shall not preclude recovery of any amount due to Lessor for the period prior to termination.

(3) Take any other action deemed necessary to protect any interest of Lessor. 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.

B. Any action taken or suffered by Lessee as a debtor under any insolvency or bankruptcy act shall constitute a breach of this Lease. In such event, Lessor shall have the options set forth in Subparagraph 2(a) and 2(b) above, and furthermore, Lessor is hereby declared to be a first preferred creditor.

C. Breaches of the Lease, which occur due to events beyond the control of either party, including acts of God, shall not be cause to terminate this Lease.

21. **Attorney's Fees**: If an action is 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 the reasonable attorney's fees of the prevailing party, said fees to be fixed by the Court as a part of the costs in any such action.

22. **Holding Over**:

A. Holding over by Lessee after the expiration of this Lease shall not constitute a renewal or extension thereof or give Lessee any rights hereunder or in or to the Premises, and in event Lessee does holdover beyond the expiration of this Lease, Lessee shall be treated as a month-to-month Lessee.

B. Lessee agrees to remove all removable personal property as defined under the terms of this Lease at the termination of this Lease, and if Lessee fails to do so, Lessor shall have the right to cause Lessee's personal property to be removed from the premises and have it stored at Lessee's expense, or to exercise the rights otherwise set forth herein. If Lessee has not removed it personal property and trade fixtures within sixty (60) days as provided in Paragraph 10 of this agreement, and Lessor has granted an extension of time to remove, then in such event Lessee shall pay a daily rental computed at the rate of double the daily rental charged during the time immediately preceding termination of expiration of the Lease until said property is removed.

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Lakeside, Arizona 85929

24. **Reservation Laws & Ordinances, Resolution of Disputes & Applicable Law**:

A. Lessee, Lessee's employees, agents and sub-Lessees and their employees and agents agree to abide by all laws, regulations and ordinances of the White Mountain Apache Tribe and the United States Government, including but not limited to, all environmental regulations applicable to the maintenance of the facility, now in force and effect or that may be hereafter in force and effect. Waste oil and other hazardous substances shall be recycled or disposed of in an environmentally safe manner.

B. The White Mountain Apache Tribal Court shall have original jurisdiction over all claims disputes, or actions filed by Lessee against Lessor, and arising from or relating to this Lease or breach thereof.

C. This Lease shall be construed and enforced in accordance with the laws of the White Mountain Apache Tribe, as applicable, and otherwise by federal law.

D. Lessor warrants that this Lease is fully authorized and complies with all applicable laws of the White Mountain Apache Tribe and the United States, and that Lessor is empowered to execute and deliver the same; Lessor will use its best efforts and due diligence at its expense to secure further approvals, if needed.

25. **Employment**: Lessee agrees to give employment preference Tribal Members pursuant to the Tribal Employment Rights (TERO) laws of the White Mountain Apache Tribe currently or hereafter in force and effect and comply with all applicable TERO laws and regulations, including payment of any TERO fees.

26. **Inspection:** Lessor and its authorized representatives shall have the right, at any reasonable time during the term of this Lease, to enter upon the Premises, or any part thereof, to inspect the same and all buildings and other improvements erected and placed thereon.

27. **Delivery of Premises**: At the termination of this Lease, Lessee will peaceable and without legal process deliver up possession of the Premises to Lessor.

28. **No Partnership**: Lessee or Lessor is not in partnership or joint venture, notwithstanding any other provision of the Lease.

39. **Upon Whom Binding**: It is understood and agreed that the covenants and agreements herein mentioned shall extend to and be binding upon the parties subscribing hereto, and their heirs, assigns, successors, executors and administrators.

30. **Joint and Several Liability**: If Lessee is composed of more than one signatory to this Lease, each signatory will be jointly and severally liable with each other signatory for payment and performance according to this Lease.

31. **Captions, Exhibits, Gender and Number**: The captions and table of contents are inserted in this Lease only for convenience of reference and do not define, limit, or describe the scope or intent of any provisions of this Lease. The exhibits attached to this Lease Agreement are incorporated into the Lease Agreement. Unless the context clearly requires otherwise, the singular includes the plural, and vice-versa, and the masculine, feminine and neuter adjectives include one another.

32. **Severability**: If any provision of this Lease is found by a court of competent jurisdiction to be illegal, invalid, unenforceable, or inoperable, its invalidity shall not affect the validity and effect of the other provisions hereof.

33. **No Construction against the Preparer of the Lease**: This Lease has been prepared by Lessor and its professional advisors and reviewed by Lessee and its professional advisors. Lessor, Lessee and their separate advisors, believe that this Lease is the product of all of their efforts, that it expresses their agreement, and that it should not be interpreted in favor of either Lessor or Lessee, or against either Lessor or Lessee merely because of their efforts in preparing it.

34. **Indemnification**: Each party (as "indemnitor") agrees to indemnify, defend, and hold harmless the other party (as "indemnitee") from and against any and all claims losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "claims") arising out of bodily injury of any person (including death) or property damage, but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee,

are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents, employees, or volunteers.

35. **Sovereign Immunity**: Nothing in this Lease Agreement shall be construed to constitute a waiver of sovereign immunity of the White Mountain Apache Tribe, its elected officials, agents, employees, or attorneys for any purpose whatsoever.

36. **Entire Agreement**: This instrument contained the entire agreement between the parties. There are no promises, terms, conditions, or obligations other than those contained herein; and no statement, promises, or inducements made by either party or agent of either party that is not contained in this written Agreement shall be valid or binding, and this Agreement shall supersede all previous communications, representations, or agreements, either verbal or written, between the parties hereto. This Agreement may not be enlarged, modified, or altered except in writing signed by the parties.

IN WITNESS WHEREOF, the parties have executed this Agreement at Whiteriver, Arizona this _____ day of _____, 2011.

Lessor: **WHITE MOUNTAIN APACHE TRIBE**
of the Fort Apache Indian Reservation

By: _____
Ronnie Lupe, Tribal Chairman

Attest: _____
Tribal Council Secretary

Lessee: **NAVOPACHE ELECTRIC COOPERATIVE, INC.**

By: _____

Name/Title: _____

APPROVED: SECRETARY OF THE INTERIOR

Pursuant to the Authority delegated to the Assistant Secretary-Indian Affairs by 209 DM 8, 230 DM 1, 3 IAM 4 (Release No. 00-03), 10 BIAM 11, as amended, and further delegations as needed to effectuate the Reorganization embodied in DM Releases dated April 21, 2003.

By_____ Date_____
Superintendent, Fort Apache Agency
UNITED STATES DEPARTMENT OF THE INTERIOR