



200712110064

Skagit County Auditor

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AFTER RECORDING MAIL TO:Name Tom SpencerAddress Box 784City/State LaConner WA 98257**U.S. DEPARTMENT OF THE INTERIOR****Bureau of Indian Affairs****Residential Ground Lease**5602
SKAGIT COUNTY WASHINGTON
REAL ESTATE EXCISE TAX

DEC 11 2007

Amount Paid \$
By Skagit Co. Treasurer DeputyP95829
5196.000-003-0000Lease No. 8568 01-51

Subdivision _____

Lot No. 3 Morris DanAllotment No. 122 34-1THIS CONTRACT, made and entered into this 5th day of Sept., 2000, by and

between the Indian or Indians named below hereinafter called the "Lessor" and

Name(s): Mr. Thomas SpencerAddress: P0 Box 784LaConner, Washington 98257

Social Security Number(s): _____

Permanent Address: _____

Telephone Number(s): (360) 466-3233

Hereinafter called the "Lessee(s)" with the approval of the Secretary of the Interior or his authorized representative, in accordance with and subject to the provisions of existing law and the regulations (25 CFR 162) which by reference are made a part hereof.

New Lease (50 years) 07/01/01 - 6/30/51

WITNESSETH:

- A. That the Lessor, in consideration of the rents, covenants and agreements hereinafter provided, does hereby lease to the Lessee certain real property on the Swinomish Indian Reservation, Skagit County, Washington, described on the attached Exhibit "A" which by this reference is incorporated herein as though set forth in full, subject to all easements and uses now in existence for rights-of-way and utilities, and reserving the Lessor the right to grant to any public utility or government authority, including that of the Swinomish Indian Tribal Community, as now or hereafter established or enacted, such rights-of-way over, across and under said real property for lines and other transmission facilities and appurtenances for electricity, gas, telephone, cable vision, water, sewer, drainage and similar public services and utilities and the right to enter said premises for the construction, maintenance, operation and repair of such facilities. To the extent possible, any future rights-of-ways will be granted in such a manner as to not adversely impact Lessee's use and enjoyment of the leased premises.
- B. To have and to hold said premises, together with the rights, easements, privileges and appurtenances belonging or pertaining thereto, to Lessee for the term of fifty (50) years in return for Lessee's payment of annual rentals during the term of the lease. Said rentals shall be paid to the Secretary in advance on the first day of the term hereof and the first day of each and every July thereafter during said term, together with any adjustments, in amounts as are set forth in Section 1.
- C. Lessor hereby covenants with Lessee that upon payment of the rent and upon observance and performance by Lessee of all covenants and promises contained herein, Lessee shall peaceably hold and enjoy said premises for the leased term without hindrance or interruption by Lessor or any other person or persons lawfully claiming by, through or under it, except as herein expressly provided.

Section 1 RENTALS

- 1.1 Lessee agrees and covenants to pay without further demand to the Secretary the rent; without offset, demand or deduction for each and every lease year during the term hereof, payable in advance and in accordance with the amounts set forth below, and thereafter annually during the term of this Lease except as hereinafter provided for the same to be adjusted. **The effective date of the Lease shall be the 1st day of July, 2001.**
- 1.2 **The rent is \$6760 for the first year and the remaining years until the fifth anniversary of the effective date of this Lease.** \$6760 for each of the first 5 years
- 1.3 The rental in Section 1.2 shall be adjusted, every fifth year during the entire fifty (50) year term

On the tenth (10), twenty-fifth (25) and thirty-fifth (35) anniversaries of the effective date of this Lease the rent shall be adjusted based upon an appraisal of the fair market rent of the subject real property in accordance with 25 CFR 162 and the following provisions:



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- a. An appraiser of the Bureau of Indian Affairs, or a Washington State certified appraiser chosen and paid for by the Lessee, shall appraise the leased property to determine its fair market rental value. The appraisal shall give consideration to the economic conditions at the time exclusive of the value of the improvements or building located upon the real property, unless said improvements have been provided by and are owned by the Lessors. The appraisal report when prepared by the Lessee selected appraiser shall be reviewed by the Bureau of Indian Affairs.
- b. The appraiser shall follow the Uniform Standards of Professional Appraisal Practice (USPAP) or other generally accepted appraisal standards.
- c. Fair market rent shall be defined as the highest price in terms of money which a property will bring in a competitive and open market under all conditions requisite to a fair rent, the Lessor and Lessee each acting prudently, knowledgeably, and assuming the rent is not affected by undue stimulants.
- d. The rental shall be adjusted to be equal to the fair market rental of the leased property, as approved by the Bureau of Indian Affairs.

- 1.4 On each fifth year anniversary of the effective date of this Lease, except for the tenth (10, twenty-fifth (25) and thirty-fifth (35) anniversaries of the effective date of this Lease, the rent shall be adjusted by the cumulative percentage change in unimproved land value during the period of time following the most recent previous rental adjustment. This cumulative percentage change in unimproved land value will be determined by the Skagit County Assessor's Office preparation of its Statistical Update. Any subsequent changes to the Statistical Update as specified above all subsequent rental adjustments shall be determined following the procedures described Section 1.3 except that such adjustment shall be made every five (5) years for the duration of the lease term.

Cumulative percentage change in unimproved land value shall be determined by the valid sales in the Skagit County Assessor's property rolls in the LaConner school district. In the event that there are insufficient valid sales during the review period to justify a statistical update, then valid sales from properties with average waterfront and average marine views along all marine waterfront in Skagit County shall be included for computation of the cumulative percentage change. Rents shall be adjusted as follows:

- a. Cumulative percentage change for unimproved land with neighborhood codes for average waterfront shall be applied toward lease land with waterfront frontage.
- b. Cumulative percentage change for unimproved land with neighborhood codes for average marine view shall be applied toward leased land without waterfront frontage.
- c. The cumulative percentage change shall be determined from the Skagit County Assessor's Office Statistical Update. Such percentage change, if any, shall be applied to the existing rental as determined by the most recent fair market rental appraisal of the subject real property.

- 1.5 **Late Charge:** If the Lessee has not paid the full amount of any rental or other charge or payment due hereunder by the end of the thirty (30) calendar days after the date it is due, such amounts due and owing shall incur at the rate of one and one-half percent (1.5%) simple interest per month, from the date payment was due, until said payment, including all late charges, is paid.

- 1.6 **Rental Payment:** The rents called for herein shall be paid without prior notice or demand. Payment shall be made payable to the "Bureau of Indian Affairs" in the form of a cashier's check or money order. All rentals due hereunder shall be mailed to:



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Bureau of Indian Affairs
Puget Sound Agency
Realty Office
2707 Colby Avenue Suite 1101
Everett WA 98201-3528

Please write your lease number on the cashier's check or money order. Thank you.

- 1.7 **Lease Administrative Fee:** Lessee will pay an administrative fee to the Bureau of Indian Affairs which shall be used to maintain BIA lease management records. Lessee will pay an administrative fee on approval of each lease, sublease, assignment, transfer, renewal, extension or modification requested by the Lessee. The fees to be paid are as follows, unless revised by 25 CFR 162.13(b)(1), based on the lease rent:

On the First \$500.00	3%
On the next \$4,500.00	2%
On all rents above \$5,000.00	1%

In no event shall the fee be less than \$2.00 nor exceed \$250.00.

Section 2 PAYMENT OF TAXES AND ASSESSMENTS

- 2.1 Lessee will pay before they become delinquent any and all real, leasehold and/or personal property taxes and assessments of every description to which said premises or any part thereof or any improvement thereon, or to which Lessor or Lessee, in respect thereof, are now or may, during said term, be assessed or become liable, whether assessed to or payable by Lessor or Lessee; PROVIDED HOWEVER, that with respect to any assessment made under any betterment or improvement law or special assessment which may be payable in installment. Lessee shall be required to pay only such installments, together with interest, as shall become due and payable during said term.

Section 3 PAYMENT OF RATES AND OTHER CHARGES

Lessee will pay, before they become delinquent, all charges, duties, and rates of every description to which said premises or any part thereof or any improvement thereon, or to which Lessor or Lessee, in respect thereof, may, during said term, be assessed or become liable. This includes, but is not limited to, electricity, gas, garbage and refuse collection, telephone, cablevision, sewage disposal, water or any other utility services, whether made by any governmental authority or public or community service companies and whether assessed to or payable by Lessor or Lessee. All such services when required shall be promptly hooked-up or obtained at the Lessee's cost and expense unless otherwise agreed to in writing by the Lessor.

Section 4 OBSERVANCE OF LAW

Lessee agrees they will not use or cause to be used any part of the leased premises for any unlawful conduct or purpose. Lessee will, at all times during the term of this Lease, observe and adhere to all laws, ordinances, rules and regulations now or hereafter adopted by the Swinomish Indian Tribal Community or any other lawful governmental authority, and will indemnify Lessor against all actions, suits, damages and claims by whomsoever brought or made by reason of the nonobservance or nonperformance by Lessee, it's guests and/or invitees of said laws, ordinances, rules and regulations or of this covenant.



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Section 5 CONSTRUCTION, REPAIR AND MAINTENANCE

- 5.1 Lessee will, during the term of this Lease and its own expense; repair, maintain and keep premises and all buildings and improvements now or hereafter built on the leased land in a decent, safe and sanitary condition.
- 5.2 Lessee covenants that he/she will, at all times; build, construct operate and maintain said premises strictly in accordance with all health and sanitation, electrical, plumbing and building codes, laws, regulations and ordinances of the Swinomish Indian Tribal Community and will pass inspection thereunder where required.
- 5.3 Lessee will, prior to the application and/or issuance of a building construction permit from the Swinomish Office of Planning and Community Development, obtain utility hook up authorization for water and sewer service from the Swinomish Utility Authority.
- 5.4 Lessee covenants that he/she will ensure that any improvements, including landscaping, constructed on the lease premises, are within the lot boundary lines. In the event the Lessee violates this provision, he/she shall be liable for all costs incurred in moving said improvements or pay the cost of leasing the additional lot or acreage on which Lessee has trespassed.

Section 6 RESIDENTIAL USE

Lessee will use and allow the use of said premises for residential dwelling purposes only and will not, at any time during said term; erect, place, maintain or allow on said premises more than one single family dwelling (exclusive of a personal automobile garage and/or accessory buildings which, if an accessory building, shall not exceed 500 square feet provided a tribal building permit is first had and obtained), nor keep or allow to be kept on said premises any livestock including, but not limited to: poultry, rabbits or fowl, nor use nor allow the use of any building or structure on said premises as a tenement house, rooming house, apartment house, or for or in connection with the carrying on of any business, commerce or trade whatsoever; unless such business, commerce or trade is otherwise allowed by applicable Tribal zoning ordinances.

Section 7 CASUALTY

In the event of partial or complete destruction of the improvements located upon the leased premises, Lessee shall within twelve (12) months, or sooner if such improvements are judged by the Swinomish Tribal Health Officer to be a risk or public health or safety, of the occurrence of the casualty causing said destruction either restore the improvements to habitable condition in accordance with all covenants and requirements of this Lease or remove all remainder and residues of the improvements from the premises and restore said premises to their natural condition and thereafter maintain the same in good order and condition to a standard equal to neighboring Lessee's care and upkeep of open spaces that is otherwise required by this Lease. In the event Lessee restores said partial or completely destroyed improvements to habitable condition, such restoration or rebuilding shall be done strictly in accordance with the restrictions, covenants and conditions contained in this Lease.

Section 8 INDEMNITY

Lessee will defend, indemnify and hold Lessor harmless against all claims and demands for loss or damage, including property damage, personal injury and wrongful death, arising out of or in connection with the use and occupancy of said premises by lessee or any person claiming by,



through or under Lessee, or any accident or fire on said premises by the act or neglect of the Lessee, its guest or invitees, or any nuisance made by the Lessee, its guests or invitees, or suffered thereupon or any failure by Lessee to keep said premises in a safe condition, and will reimburse Lessor for all its costs and expenses, including reasonable attorney fees, incurred in connection with the defense of any such claims, and will hold all goods, materials, furniture, fixtures, equipment, machinery and other property whatsoever on said premises at the sole risk of the Lessee and hold Lessor harmless from any loss or damage thereto by any cause whatsoever or caused thereby.

Section 9 **LIENS**

- 10.1 **Consent Required:** Lessee will not assign this Lease in whole or part, nor sublet all or any part of the leased premises, except as provided in Section 10.2 without the approval of the Secretary and the prior written consent of Lessor in each instance, which consent shall not be unreasonably withheld. The consent by the Lessor to any assignment or subletting shall not constitute a waiver of the necessity for such consent to any subsequent assignment or subletting. This prohibition against assigning or subletting without prior written consent shall be construed to include prohibition against any assignment or subletting by operation of law. If this lease is assigned, or if the leased premises or any parts thereof are sublet or occupied by anybody other than Lessee, no such assignment, subletting, occupancy or collection shall be deemed a waiver of this covenant, or the acceptance of the assignee, subtenant or occupant as tenant, or a release of Lessee from further performance by Lessee of covenants on the part of the Lessee herein contained; furthermore, notwithstanding any assignment or sublease, Lessee shall remain fully liable on this Lease and shall not be released from performing any of the terms, covenants and conditions of this Lease; PROVIDED, HOWEVER, that in the event the Lessor approves an assignment for the entire balance of the Lessee's term then remaining, such act shall constitute a release of the Lessee from performing any of the then remaining terms, covenants and conditions of the lease.

Any oral sub-tenancy created by Lessee for a single, nonconsecutive term of occupancy of less than nine (9) months is exempted from the requirements of consent and fees contained herein; however, the Lessee shall in such event of the creation of any oral sub-tenancy notify the Lessor and the Bureau of Indian Affairs in writing of the name, term and prior terms of such person or persons without delay. Subleases shall not relieve the sublessor from any liability nor diminish any supervisory authority of the Secretary provided for under this Lease.

- 10.2 **Consent to Mortgage:** The Lessee may from time to time, without further consent, provided the encumbrance instrument has been approved by the Secretary, assign this lease by way of mortgage and/or encumbrance to any bank, insurance company or other established lending institution for borrowing capital for the sole purposes of:

- a. The construction, maintenance, enlargement and/or betterment of the premises and/or leasehold improvements located thereupon; or
- b. The bona fide sale or purchase of the leasehold interest and/or leasehold improvements located thereupon.

A mortgage and/or encumbrance instrument to secure a refinancing of a loan for the purposes described in Section 10.2(a) and Section 10.2(b) shall also fall within this consent.

In addition, the Lessee or the mortgagee or assignee, shall deliver a true copy of such mortgage or encumbrance and of any assignment thereof to the Lessor and the Bureau of Indian Affairs of the



address of the mortgagee or encumbrancer to which notice may be sent, and the mortgagee, encumbrancer, or its assigns, may cause the lease, and the mortgage or encumbrance, or either of them to be recorded in the office of the Auditor of Skagit County, Washington.

If a sale or foreclosure under the approved mortgage or encumbrance occurs and the mortgagee or encumbrancer is the purchaser, he may enforce such mortgage or encumbrance and acquire title in any lawful way to the leasehold and any of the mortgaged or encumbered improvements placed thereon and assign the leasehold interest without the approval of the Secretary or the consent of the other parties to the Lease, PROVIDED that the assignee accepts and agrees in writing to be bound by all the terms, conditions and covenants of this Lease. If the purchaser is a party other than the encumbrancer, approval by the Secretary of any assignments will be required, and such purchaser will be bound by the terms of this Lease and will assume in writing all the obligations hereunder.

10.3 **Standards for Consent:** The following standards applicable to lease assignments or subletting as specified in Section 10.1, among other such reasonable ones, may be considered by Lessor in determining whether or not to approve a requested assignment or subletting of all or any part of the leased premises as specified in Section 10.1:

- a. Credit rating and financial ability and resources of assignee or subtenant.
- b. Similarity of proposed assignee's or subtenant's relative ability to care, repair, improve or otherwise maintain the premises and its improvement(s).
- c. The conformity of the proposed use of the leased premises by the proposed assignee or subtenant with the use permitted herein.

10.4 **Procedure:** No such assignment or sublease shall be effective to transfer any interest in this Lease unless the Lessor, Tribal Realty Office and the Secretary shall have first received true executed copies of such proposed transfer, assignment or sublease, and all papers, documentation and other materials relating to the transfer of any interest in improvements located upon the leased premises, including the gross sales price or other consideration or value of the transfer of any interest of the Lessee in the leased premises and improvements located thereon. If consent is refused, then upon the request of the Lessee, the Lessor and/or Secretary will give its reasons for such refusal.

Section 11 **DEFAULT**

11.1 It is mutually understood and agreed that if any defaults are made in the payment of rental herein provided or in the performance of the covenants, conditions, or agreement herein, or should Lessee fail to fulfill in any manner the uses and purposes for which said leased premises are leased as stated, and such default shall not be cured within ten (10) days after written notice thereof if default is in the payment of rent or payment of any fee or charge required herein, or sixty (60) days after written notice thereof if default in the performance of any other covenant, condition or agreements, the Secretary shall have the right to immediately cancel this Lease; and in the event of such cancellation, Lessee shall have no further rights hereunder and Lessee shall thereupon without delay remove themselves, invitees, and its personal effects and belongings excluding that personal property consisting of the Lessee's improvements, dwellings, and structures, the removal for which is otherwise provided for in this Lease, from the leased premises and shall have no further right to claim thereto, and the Lessor shall have the absolute right, without recourse to the courts, to reenter and take possession of the leased premises. The Lessor shall further have all other rights and remedies as provided by law, including without limitation the right to recover damages from Lessee in the amount necessary to compensate the



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Lessor for all the detriment proximately caused by the Lessee's failure to perform the obligations under the Lease or which, in the ordinary course of things, would be likely to result therefrom, including but not limited to attorney fees, storage charges, and costs and expenses of reletting, and rent for the balance of the term of this lease) to the extent not received by Lessor through reletting the premises).

- 11.2 It is further agreed that the Lessor shall afford any mortgagee or beneficiary in any deed of trust, mortgage, or other security instrument the right to cure any default by Lessee within said time periods stated above after written notice to said beneficiary and to any encumbrancer as provided herein, so long as the Lessee has complied with notice requirements in Section 10.2. The time periods to cure shall be computed from the date of receipt by said beneficiary by certified mail of such notices from the Lessor, or if returned unclaimed, the date the certified mail is returned to the Superintendent of Puget Sound Agency, Bureau of Indian Affairs.
- 11.3 In the event of the cancellation of this Lease pursuant to the provisions in this Section (11), the Lessor shall have any rights to which it would be entitled in event of the expiration or sooner cancellation of this Lease.
- 11.4 Lessor shall be and hereby is, granted a lien and security interest, subject to and subordinate to any mortgage or encumbrance permitted and approved under Section 10.2, on all buildings and other improvements place upon the premises by the Lessee and in all rents from such buildings and other improvements and all appurtenances attached thereto kept or used on the premises, whether such property is exempt from execution or not, to secure the payment of rent or other sums due the Lessor under the provisions of this Lease and to secure performance of all other obligations of Lessee hereunder. The Lessee shall assist the Lessor in perfecting such personal property security interest by executing when required by Lessor all necessary financing statements.

Section 12 PERMITS AND RIGHT-OF-WAYS

- 12.1 Lessor does hereby give and grant unto Lessee access for ingress and egress to the premises hereby leased over and upon any roadways now or hereafter established by the Lessor, subject to Swinomish Tribal laws, rules, regulations and fees regarding tideland access. Lessee may also use, for the purpose of access to Skagit Bay, all public roads, paths and beaches. Such access shall be nonexclusive, to be used in common with other Lessees of the Lessor and members of the Swinomish Indian Tribal Community and said Tribal members' guests and invitees. Lessor specifically disclaims any intent or purpose to dedicate such public places to a public purpose and such use by Lessee is subject to reasonable rules and regulations as the Swinomish Indian Tribal Community may, from time to time, establish for the purposes of public health, safety and welfare, the protection of such ways and accesses and beaches, the exclusive and quiet enjoyment of adjoining and adjacent lands, and the protection, utilization and enjoyment of Swinomish Indian Tribal Community treaty fishing rights and ceremonial grounds.
- 12.2 In the establishment, construction, repair, maintenance and operation of public utilities as herein set forth, Lessee's use and enjoyment of the leased premises or the improvements located thereon shall not be interfered with except as is reasonably necessary in the course of said construction, operation, repair and maintenance, nor will such utilities be so located as to deprive the Lessee of use of the leased premises for residential purposes.



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- 12.3 Lessee shall obtain written permission from the Secretary prior to removal of any trees or vegetation. No charge shall be incurred by the Lessee for the stumpage value of the forest products so removed as long as such products are made available to Lessor. Should Lessee wish to use products for his/her own personal use, the Lessee is responsible for paying stumpage value as determined by the Secretary. Lessor, Tribe and the BIA assume no responsibility for cost or removal of trees on leased, vacant or unleased land.

Section 13 REMOVAL and TITLE TO IMPROVEMENTS

- 13.1 Structures, installations or improvements now existing or hereafter placed on the leased premises by Lessee are, shall be and remain personal property of the Lessee and shall be removed by Lessee within sixty (60) days after the expiration of the term of this Lease or sooner cancellation thereof, provided the terms and conditions of this lease are current. If the Lessee fails to completely remove such structures, installations, or improvements within sixty (60) days, title thereto shall then immediately vest in the Lessor subject to any existing encumbrance. Should the Lessor in his reasonable judgement be required to remove or demolish said improvements after the expiration of the sixty (60) days time period, then the cost thereof shall be chargeable to the Lessee. Lessee's obligations in this subsection will not apply at the time an encumbrancer takes title at a foreclosure sale or via deed in lieu of foreclosure. Any other purchaser at a foreclosure shall be subject to the obligations in this subsection if his/her interest in the lease subsequently expire or are canceled.
- 13.2 Machines, appliances, equipment, furniture and fixtures of any kind now existing or hereafter placed on the leased premises by Lessee shall be removed by Lessee within sixty (60) days after the expiration of the term of this Lease or sooner cancellation thereof; PROVIDED, HOWEVER, Lessee agrees to repair any and all damages occasioned by the removal thereof. If any such machines, appliances, equipment, furniture, and trade fixtures are not removed within sixty (60) days after the cancellation of this Lease, the same may be considered abandoned and shall thereupon become the property of the Lessor without cost to the Lessor and without any payment to the Lessee; except that the Lessor, at its sole option, shall have the right to have the same removed and stored at the expense of the Lessee.
- 13.3 During any period of time employed by Lessee under this Section to remove structures, installations, improvements, machines, appliances, equipment, furniture, fixtures, Lessee shall pay rent to the Lessor in accordance with the Lease which rent shall be prorated.

Section 14 MISCELLANEOUS

- 14.1 Acceptance of rent by Lessor shall not be deemed to be a waiver by it of any breach by Lessee of any covenant contained herein or of Lessor's right to reentry for breach of any condition or covenant.
- 14.2 Lessor's waiver of any breach by Lessee shall not operate to extinguish the term, covenant or condition, the breach for which has been waived, nor be deemed a waiver of Lessor's right to declare a forfeiture or termination for any other breach thereof.
- 14.3 The words "Lessor" and "Lessee" used herein or any pronouns used in place thereof shall mean and include the masculine or feminine, the singular or plural, and jointly and severally, individuals or corporations, and their and each of their respective successors, executors, administrators, heirs and assigns, and this Lease, and the covenants, terms and conditions thereof shall be binding upon and insure to the benefit thereof.



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- 14.4 Nothing contained in this Lease shall operate to delay or prevent a termination of the Federal trust responsibilities with respect to the leased premises during the term of this Lease; HOWEVER, such termination shall not abrogate this Lease.
- 14.5 While the lease premises are in trust or restricted status, all of the Lessee's obligations under this Lease, and the obligations of his sureties, are to the United States as well as the owner(s) of the land.
- 14.6 This Lease shall be valid and binding only after approval of the Secretary.
- 14.7 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 heretofore, but this provision shall be construed to extend to this contract if made with a corporation or company for its general benefit.
- 14.8 "Secretary" as used herein means the Secretary of the Interior or his authorized representative.
- 14.9 If a new 50 year lease which indexes the 10 year Treasury Note is offered, lessee will have the right to modify the lease to include that language.

Lessee(s)

Thomas Spencer

Lessor:

Ms. Janice Edwards

Bureau of Indian Affairs

Acting

Supt. for Estates

Marvin Brown

Putt Edwards

Date approved:

Acting

Mr. Ernie John (Lessor)

Ms. Bertha Dan (Lessor)

Ms. JoAnn Kaubin (Lessor)

Superintendent, Puget Sound Agency

William A. Black

Saul Kardouni, Acting Supt.
Puget Sound Agency

Approved Per 25 CFR 162.2



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