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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

STIMSON LUMBER COMPANY,)	
)	Case No.
Plaintiff,)	
)	COMPLAINT (DECLARATORY
vs.)	RELIEF)
)	
THE COEUR D'ALENE TRIBE,)	Prayer Amount: \$50,000,000
)	
Defendant)	

Plaintiff Stimson Lumber Company ("Stimson") alleges as follows:

INTRODUCTION

1.

This is an action for declaratory relief. Stimson and The Coeur d'Alene Tribe (the "Tribe") are parties to a Lease and Option Agreement ("the Agreement") dated May 31, 2000. Under the terms of the Agreement, Stimson leased and operated a sawmill located in Benewah County, Idaho ("the Mill"). In addition, Stimson was granted an option to purchase the Mill from the Tribe. Stimson exercised its purchase option, but the Tribe refused to sell the Mill and

threatened to terminate Stimson's lease and eject Stimson from tribal lands.

2.

Under Section 19.3, the Parties agreed to a comprehensive dispute resolution process. The Parties agreed that the exclusive jurisdiction for all disputes is the United States District Court for the District of Idaho ("this Court"). The parties further agreed that, should this Court decline jurisdiction, then the dispute would be resolved in binding arbitration. Finally, the Parties agreed that the dispute would not be adjudicated in tribal court.

PARTIES

3.

Stimson is an Oregon corporation with its principal place of business in Oregon. Stimson is a forest products company.

4.

The Tribe is a federally recognized Indian tribe possessed with the full legal power of a sovereign domestic government. On information and belief, the Tribe is incorporated with its principal place of business in Idaho.

JURISDICTION AND VENUE

5.

This Court has original jurisdiction pursuant to 28 U.S.C. § 1331 because the question of whether an Indian tribe retains the power to compel a non-Indian "to submit to the civil jurisdiction of a tribal court is one that must be answered by reference to federal law and is a 'federal question' under § 1331," *National Farmers Union Ins. Co. v. Crow Tribe*, 471 U.S. 845, 853 (1985), and involves an actual case or controversy pursuant to 28 U.S.C. § 2201, *Plains Commerce Bank v. Long Family Land & Cattle Co.*, 554 U.S. 316, 324 (2008).

6.

By contract, the Parties agreed to personal jurisdiction in Idaho.

7.

Venue is proper in this District and Division under 28 U.S.C. § 1391 because the Mill, and the land upon which it resides, is located in Benewah County, Idaho.

8.

Under Section 19 of the Agreement, the Tribe expressly granted a limited waiver of sovereign immunity for any suit in action, declaratory judgment or injunction as to any obligation arising out of the Agreement, and consented to jurisdiction in this Court. On July, 28, 2022, this Court determined that the Tribe waived sovereign immunity for purposes of the resolving the dispute regarding Stimson's right to purchase the Mill. A copy of Order is attached as Exhibit 1.¹

FACTUAL ALLEGATIONS

9.

On May 31, 2000, the Tribe entered into the Agreement with TOBD, Inc. A copy of the Agreement is attached as Exhibit 2. The purpose of the agreement was to permit TOBD, Inc. to lease certain land and assets and to construct and operate a sawmill.

10.

TOBD, Inc. made the required investment and built, opened and began operating the Mill.

11.

In 2006, with the consent and approval of the Tribe, the Agreement was assigned to Stimson. Stimson has continuously operated the Mill since 2006, and has honored all of its obligations under the Agreement.

///

¹ July 28, 2022 Memorandum Decision and Order on Plaintiff Stimson Lumber Company's Motion for Preliminary Injunction, Case No. 2:22-cv-00089-DCN.

12.

Under Section 14.1 of the Agreement, Stimson was granted an option to purchase the Mill.

13.

On May 27, 2020, Stimson sent the Tribe written “notice of exercise of the [Purchase Option] for immediate effect.”

14.

The Tribe refused to sell the Mill to Stimson and threatened to file suit in tribal court to evict Stimson from the Mill and its premises.

15.

On February 25, 2022, Stimson sued the Tribe in this Court seeking declaratory and injunctive relief compelling the Tribe to sell the Mill to Stimson (“the Mill Purchase Lawsuit”).

16.

On July 28, 2022, this Court issued Preliminary Injunction providing:

The Tribe and its agents are **ENJOINED** from terminating the Agreement, from evicting Stimson from the Mill property and premises, and from interfering in any way with Stimson’s ability to possess, access, and operate the Mill. The status quo, including Stimson’s Holdover Tenancy and rental payments to the Tribe, must continue during the pendency of this litigation.

17.

On August 22, 2022, this Court entered a judgment dismissing the Mill Purchase Lawsuit for lack of jurisdiction. This Court determined that there was no diversity of citizenship between Stimson and the Tribe.

18.

Stimson has demanded the Tribe honor the dispute resolution procedures set out in the Section 19.3 of the Agreement. The Tribe refused. The Tribe declined to engage in mandatory mediation and refuses to participate in binding arbitration, as required under Section 19.3.

Instead, the Tribe has threatened to file suit in tribal court to evict Stimson from the Mill and its premises.

19.

This Court has determined that the dispute resolution process, Section 19.3.2 of the Lease Agreement, has “no temporal deadline” and “is not limited to suits brought while the Agreement is in effect.”² Therefore, the Tribe cannot escape its application by arguing that the Agreement is terminated.

CLAIM FOR RELIEF
(Declaratory Judgment)

Stimson realleges and incorporates the allegations of paragraphs 1 - 19 above.

20.

An actual controversy exists between Stimson and the Tribe regarding the enforceability of the terms of Section 19.3 of the Agreement and consequently, the jurisdiction of the Tribe’s courts to hear and decide disputes arising from the Agreement. Stimson maintains that, under Section 19.3, the Tribe waived any right to sue Stimson in tribal court and, accordingly, disputes must be adjudicated in federal court or binding arbitration. The Tribe maintains that Stimson is subject to jurisdiction in tribal court and that the Tribe is not bound by the terms of Section 19.3

21.

Stimson is entitled to a declaration that Section 19.3.2 is enforceable against the Tribe; therefore, the Tribe’s court does not have jurisdiction to resolve disputes regarding the Parties’ rights and duties under the Agreement.

PRAYER

WHEREFORE, Plaintiff Stimson Lumber Company prays for relief as follows:

A. On Stimson’s First Claim for Relief:

² *Supra* note 2.

- 1) An order declaring that the Agreement's dispute resolution provisions are binding against the Tribe;
- 2) An order declaring that the Tribe waived its right to sue Stimson in tribal court;
- 3) An order enjoining the Tribe from asserting jurisdiction in tribal court throughout the pendency of this action;
- 4) Its reasonable attorney fees and costs;
- 5) Its reasonable costs and expenses incurred herein; and

B. The right to amend this Complaint to supplement facts and/or causes of action upon discovery of additional information; and

C. Such other and further relief as this Court deems just and equitable.

DATED: August 23rd, 2022.

LUKINS & ANNIS, P.S.

By /s/ Michael J. Hines
Michael J. Hines, ISB #6876
Jonathan D. Hallin, ISB #7253
Attorneys for Plaintiff Stimson Lumber
Company

Exhibit 1

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

STIMSON LUMBER COMPANY,

Plaintiff,

v.

COEUR D'ALENE TRIBE,

Defendant.

Case No. 2:22-cv-00089-DCN

**MEMORANDUM DECISION AND
ORDER**

I. INTRODUCTION

Pending before the Court is Plaintiff Stimson Lumber Company's Motion for Preliminary Injunction. Dkt. 3. On March 17, 2022, the Court held oral argument and took the motion under advisement. The Court also has before it Defendant's First Motion to Dismiss for Lack of Jurisdiction ("Motion to Dismiss"), which was filed after oral argument. Dkt. 35. Upon review, and for the reasons set forth below, the Court GRANTS the Motion for Preliminary Injunction. Because of the complicated nature of the Motion to Dismiss, the Court will rule on the Motion to Dismiss after oral argument is held. Although some of the arguments raised in the Motion to Dismiss duplicate those presented in the Motion for Preliminary Injunction, the Court declines to delay ruling on the Motion for Preliminary Injunction because, as of now, the parties have been acting under a verbal injunction the Court issued at the preliminary injunction hearing, and the parties are entitled

to an official order on the matter.¹

II. BACKGROUND

On May 31, 2000, a third party, TOBD, Inc., entered into an Agreement² with the Defendant, Coeur D’Alene Tribe (the “Tribe”),³ under which TOBD, Inc. would lease certain land and assets from the Tribe and construct and operate a sawmill (the “Mill”). Dkt. 1, ¶ 8. TOBD, Inc. subsequently made the required investment and began operating the Mill. *Id.* at ¶ 9. TOBD’s rights under the Agreement were later acquired by Plummer Forest Products (*id.*), which were then acquired in 2006 by the Plaintiff, Stimson Lumber Company (“Stimson”). *Id.* at ¶ 10. Notably, the Agreement contained a Purchase Option under which Stimson could, after a certain period of time, purchase the Mill and certain other assets. Dkt. 6-3, at 7, Section 14.1. To exercise this Purchase Option, Stimson was, *inter alia*, required to give sixty days written notice. *Id.* Through various pre-arranged and automatic renewals, the full term of the Agreement did not officially expire until June 1, 2020. Dkt. 1 at ¶ 13.

A few days before the expiration, on May 27, 2020, Dan McFall, the Chief Operating Officer of Stimson Lumber Company, emailed the Tribe, claiming that Stimson

¹ The Court spent significant time reviewing the Motion to Dismiss and had hoped to resolve both motions simultaneously. However, the complicated factual background of the situation made this impossible.

² The Lease and Option Agreement is alternately “referred to as the ‘Lease’ or the ‘Agreement.’” Dkt. 6-2, at 25. This Court will refer to it similarly.

³ The Court understands that the parties are currently disputing whether this Agreement was entered into by the Tribe or by the Tribe’s corporation. However, for simplicity’s sake, the Court will refer to the signing entity as “the Tribe.” This is not meant to be a preview of the Court’s decision, nor should it be construed as a holding on the matter.

had been unsuccessfully trying to contact the Tribe for a few months to extend the Agreement for a year. Dkt. 6-4, at 2. McFall also submitted notice that Stimson was exercising its Purchase Option. *Id.*

Eric Van Orden, legal counsel for the Tribe, responded the next day. Van Orden indicated that the May 27th letter was the first written communication he had received regarding the expiration of the Agreement. *Id.* at 6. Van Orden explained that the terms of the Agreement renewal could not be discussed until after June 8, 2020, when the new Tribal Council would be sworn in. *Id.* Van Orden stated: “I understand this may create a holdover situation under the Lease so the Tribe will not expect a rent payment for the month of June 2020, until we can meet and discuss the terms of a new lease agreement.” *Id.*

On July 1, 2020, Peter Smith IV, outside counsel for the Tribe, wrote to Stimson and stated that Stimson did not provide timely notice to exercise its Purchase Option because notice was due on April 1, 2020, and Stimson had not exercised the Purchase Option until May 27, 2020. *Id.* at 9. Additionally, Smith wrote: “At this time, the Tribe declines to extend the term of the Lease. As such, beginning on June 1, 2020, *Stimson is a holdover tenant of the Property.*” *Id.* (emphasis added). After offering to negotiate the new lease agreement, Smith requested that Stimson pay the excused June rent and send payment for July’s rent. *Id.*

However, the negotiations broke down. Stimson claims that the Tribe’s proposed extension would remove the Purchase Option and require Stimson to sell approximately 41,000 acres of timberlands to the Tribe. Dkt. 1 at ¶ 28. On January 25, 2022 (after twenty months of holdover rent payments), the Tribe requested that Stimson cease sending its

monthly rent payments and attempted to return Stimson's rent payments. Stimson refused the returned payments and sent the check back to the Tribe.

On February 23, 2022, Chief J. Allan, Chairman of the Tribe, informed Stimson that because the Agreement expired on May 31, 2020, "Stimson is in trespass and has been trespassing since expiration of the Lease on May 31, 2020." *Id.* at 11. Chief Allan ordered Stimson to vacate the Premises immediately and threatened legal action if Stimson was not out by March 31, 2022. *Id.* Shortly thereafter, Stimson brought this action against the Tribe, raising claims for breach of contract, unjust enrichment, and conversion. Dkt. 1. Stimson seeks specific performance, damages, and declaratory and injunctive relief. *Id.* The claims for unjust enrichment and conversion were withdrawn by Stimson in its Amended Complaint. Dkt. 26.

On March 2, 2022, Stimson filed a Motion for Temporary Restraining Order and Motion for Preliminary Injunction asking that the Court enjoin the Tribe from terminating the Agreement and evicting Stimson. Dkt. 3, at 1. The Court denied the Motion for Temporary Restraining Order on March 3, 2022, and scheduled a hearing regarding the instant Motion for Preliminary Injunction. Without notice to the Court, Stimson inopportune filed hundreds of pages of supplemental documents relating to the Tribe's corporate status the night before the hearing, after business hours. Dkt. 30. The Court refrained from ruling on the Motion for Preliminary Injunction until the Tribe had time to file its own supplemental briefing, and Stimson, as plaintiff, was given a chance to file a final sur-reply. However, before Stimson filed its final sur-reply, the Tribe filed a Motion to Dismiss, which elaborated on several of the arguments regarding subject matter

jurisdiction that it had raised in its earlier Response to the Motion for Preliminary Injunction.⁴ Dkt. 35. As explained above, the Court will decide the Motion for Preliminary Injunction now and will issue a subsequent decision on the Motion to Dismiss so that the parties do not need to continue relying on the verbal injunction the Court temporarily entered at the hearing.

III. SOVEREIGN IMMUNITY

As a threshold matter, the Court will first address the issue of sovereign immunity raised by the Tribe. Stimson claims the Court has subject matter jurisdiction because the requirements for diversity jurisdiction have been met. Dkt. 1, ¶ 4. The Tribe contends that the Court cannot hear the case because “the Tribe has not expressly waived its sovereign immunity for Stimson’s claims.” Dkt. 25, at 7.⁵ Although the Court will not yet rule on whether the Tribe is a corporation (which will most likely determine whether the Court has diversity jurisdiction), the Court will rule on the question of sovereign immunity, since the Tribe’s purported sovereign immunity would bar Stimson’s suit.

Tribes and Tribal governmental entities enjoy common-law sovereign immunity from suit. *Stock West Corp. v. Lujan*, 982 F.2d 1389, 1398 (9th Cir. 1993). Therefore,

⁴ During the hearing on the preliminary injunction, the Court specifically instructed the Tribe that Stimson was to have the final word on the issue of subject matter jurisdiction, which the Tribe raised as a defense to Stimson’s Motion for Preliminary Injunction. As such, the Tribe’s subsequent Motion to Dismiss based on the Court’s purported lack of subject matter jurisdiction needlessly duplicated the proceedings and delayed resolution of the jurisdictional issue.

⁵ The Court acknowledges the Tribe has also claimed that, as an Indian tribe, “it is stateless for jurisdictional purposes and its presence destroys diversity.” Dkt. 25, at 6. To once again reiterate so there is no confusion, the Court is neither ruling on, nor disregarding, this argument. It is rather preserving this argument for a future ruling after oral argument on the Motion to Dismiss. The Court is only taking this uncommon step so that it may properly and appropriately rule on subject-matter jurisdiction without leaving the Motion for Preliminary Injunction unresolved.

absent a waiver of sovereign immunity, a plaintiff cannot sue a Tribe or a Tribal entity in federal court. *See Kennerly v. United States*, 721 F.2d 1252, 1258–59 (9th Cir. 1983) (holding that, because “there has been no express waiver [of sovereign immunity] or consent to suit, nor any congressional authorization for such a suit against the Tribe, [the federal courts] are without jurisdiction”).

Here, the Agreement does contain a limited waiver of immunity. Section 19.1 states:

Lessor acknowledges and agrees that in entering into this Agreement, it may incur obligations to Lessee, and Lessee’s successors and assigns, and may become liable to these parties for injunctive or declaratory relief or for damages. Lessor further acknowledges that Lessee would not enter into this Agreement with Lessor if Lessor could defeat or hinder enforcement against them of the rights granted to Lessee by claiming sovereign immunity or asserting any other attribute of tribal sovereignty that may be applicable. Lessor hereby consents to suit, arbitration, enforcement and collection of judgments, awards, injunctions and declaratory judgments as to any obligations arising out of this Agreement. Lessor hereby expressly waives any claim or assertion of sovereign immunity from suit in actions to interpret or enforce any provision of or rights granted in this Agreement, to seek judgment for monetary obligations arising under this Agreement, and to enforce and collect any judgment in any suit or arbitration concerning or arising out of this Agreement in the manner specified in paragraph 19.3 below.

Dkt. 6-3, at 14.

The Tribe argues that because the Agreement is no longer in effect, and “does not provide that this waiver survives,” the aforementioned waiver “is inoperable.” Dkt. 25, at 7. The Tribe’s argument is somewhat circular. In essence, the Tribe is arguing that because the Agreement is inoperable, the Court has no jurisdiction to determine whether the Agreement is inoperable. Further, based on the plain language of the waiver, it is clear that the Tribe *has* waived its immunity for the purposes of this lawsuit.

First, there is no temporal deadline for the waiver to expire. The waiver is for any “suit, arbitration, enforcement and collection . . . as to *any* obligations arising out of this Agreement.” Dkt. 6-3, at 15. The waiver is not limited to suits brought while the Agreement is in effect. Rather, it is for “any” obligation arising out of the Agreement. *Id.* Thus, even if the Court holds that the Agreement has expired, the waiver of sovereign immunity for disputes arising out of the Agreement is still valid.⁶

Second, the Tribe acknowledged in the Agreement “that Lessee would not enter into this Agreement with Lessor if Lessor could defeat or hinder enforcement against them of the rights granted to Lessee by claiming sovereign immunity.” *Id.* With this acknowledgement, the Tribe essentially agreed that it would not raise the sovereign immunity argument it asserts here against Stimson or its predecessors.

Third, the language in Section 19.3.2 indicates an intent to waive sovereign immunity. Section 19.3.2, which concerns jurisdiction and venue, states:

The Parties agree that any disputes concerning, relating to or arising out of this Agreement present a federal question. With respect to any Proceeding each Party irrevocably submits to the exclusive jurisdiction of the United States District Court for the District of Idaho. Each Party hereby irrevocably waives any objections which it may have at any time to the venue of any Proceedings brought in the United States District Court for the District of Idaho, waives any claim that such Proceedings have been brought in an inconvenient forum and further waives the right to object, with respect to such Proceedings, that such court should not exercise its jurisdiction or should defer to some other judicial or administrative tribunal, whether federal, state or tribal.

Dkt. 6-3, at 15. Thus, under the plain language of the Agreement, the parties agreed to this

⁶ Furthermore, the Agreement likely has *not* expired because the Tribe made Stimson a holdover tenant, and thus extended the Agreement. *See infra* Part IV, Section C.

Court's jurisdiction, and even agreed to construe the lawsuit as a federal question in order to submit to this Court's jurisdiction. While the case was brought pursuant to 28 U.S.C. § 1332, and not 28 U.S.C. § 1331,⁷ the Tribe's explicit agreement to submit to the jurisdiction of this Court reinforces the Court's conclusion that the Tribe waived its sovereign immunity.

Finally, the Supreme Court has held that less explicit language, such as an arbitration clause, can waive sovereign immunity. In *C&L Enterprises, Inc. v. Citizen Band Potawatomi Indian Tribe of Oklahoma*, the Supreme Court dealt with the question of whether Potawatomi Nation had waived its sovereign immunity in a form contract with the plaintiff. 532 U.S. 411, 414 (2001). Notably, the Potawatomi Tribe had proposed the form contract and the plaintiff had accepted it. *Id.* The form contract contained an arbitration clause that "expressly agreed to arbitrate disputes with [plaintiff] relating to the contract, to the governance of Oklahoma law, and to the enforcement of arbitral awards 'in any court having jurisdiction therefore.'" *Id.* at 415. The Supreme Court held that the arbitration clause unequivocally waived the Tribe's sovereign immunity. *Id.* at 422. In so holding, the Supreme Court explained, "[u]nder the law of the United States . . . an agreement to arbitrate is a waiver of immunity from jurisdiction in . . . an action to enforce an arbitral award rendered pursuant to the agreement. . . ." *Id.* at 422, n. 3 (quoting Restatement (Third) Of The Foreign Relations Law Of The United States § 456(2)(b)(ii) (1987)). Notably, the Supreme Court further held Potawatomi Nation was a "federally recognized

⁷ The Court is not deciding that it has federal question jurisdiction over the case but is rather using this as intent of the waiver.

Indian Tribe,” not a corporation. Its status as a Tribe (i.e., not a corporation) did not bar it from waiving its sovereign immunity.

Here, the Tribe has signed an Agreement with even more explicit language than the arbitration clause at issue in *C&L Enterprises, Inc.* What’s more, the Agreement also contains an arbitration clause. Dkt. 6-3, at 19.3.3. Given this, the Tribe has waived its sovereign immunity. *C&L Enterprises, Inc.*, 532 U.S. at 422.

For the foregoing reasons, the Court holds that the Tribe waived its sovereign immunity for purposes of this suit, regardless of whether the Tribe entered into the Agreement as a federally recognized Indian Tribe or as a corporation.

IV. PRELIMINARY INJUNCTION

A. Legal Standard

A preliminary injunction’s purpose is to prevent irreparable harm that occurs before a court can render a decision on the merits. Injunctive relief “is an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008) (quoting *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997)) (cleaned up). A party seeking a preliminary injunction must establish: (1) a likelihood of success on the merits; (2) likely irreparable harm in the absence of a preliminary injunction; (3) that the balance of equities weighs in favor of an injunction; and (4) that an injunction is in the public interest. *Id.* at 20.

Although a plaintiff seeking injunctive relief must satisfy all four of the *Winter* factors, the Ninth Circuit has expressly affirmed a “sliding scale” approach post-*Winter*. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011). Under this

approach, “serious questions going to the merits and a balance of hardships that tips sharply towards the plaintiff can support issuance of a preliminary injunction, so long as the plaintiff also shows that there is a likelihood of irreparable injury and that the injunction is in the public interest.” *Id.* at 1135 (citations omitted).

B. Purchase Option

Before turning to the merits of the Motion, the Court first provides context for the relief Stimson seeks. Stimson requests that the Court preliminarily enjoin the Tribe from terminating the Agreement, from evicting Stimson, and from interfering with Stimson’s possession and operation of the Mill. As such, the issue before the Court is whether Stimson could prevail on a claim that the Purchase Option was properly exercised.

There are two critical parts of the Agreement. First, the Purchase Option in Section 14.1(a)–(c), which states:

Lessor grants to Lessee during the Lease Term and all Renewal Terms the sole, exclusive, and irrevocable right and option (“Option”) to purchase the Leased Assets (including the Premises and Equipment) in accordance with the following terms and conditions:

- (a) Such Option shall be exercised, if at all, by written notice given by Lessee to Lessor (“Exercise Notice”) not less than sixty (60) days prior to the termination of the Lease Term or any Renewal Term. The date the Exercise Notice is given shall be referred to as the “Exercise Date.”
- (b) Upon exercise of this Option, Lessee shall be obligated to purchase the Leased Assets described in the Exercise Notice from Lessor, and Lessor shall be obligated to sell these Leased Assets to lessee, for the price set forth below, and in the manner stated in this Agreement.
- (c) The entering into this Lease, and payment of rent hereunder by Lessee, and the mutual covenants of Lessor and Lessee under this Agreement, and other good and sufficient consideration, shall be deemed adequate consideration for this Option, and Lessee shall be required to pay no other or additional fee or consideration or any kind to maintain this Option; provided (i) all rentals paid to Lessor

hereunder shall be credited to the purchase price for the Leased Assets as set forth below; and (ii) this Option shall not terminate or expire in the event of any non-payment of rent by Lessee, but shall terminate only upon (1) the exercise of all Options granted hereunder by Lessee in accordance with the terms hereof or (2) any termination of this Agreement.

Dkt. 6-3, at 7–8. The second critical section is the Holdover Clause in Section 21, which states:

If Lessee should occupy the Premises with the consent of Lessor after the expiration of this Agreement, and rent is accepted from lessee, such occupancy and payment shall be construed as an extension of this Agreement for a month-to-month tenancy from the date of expiration, unless other terms of such extension are endorsed in writing and signed by the parties hereto; provided Lessee's entry on the Premises for the purpose of removing Lessee's Property pursuant to paragraph 9.2 above shall not be deemed a holdover occupancy.

Id. at 22. The interplay between these two sections is what the case rests upon.

C. Likelihood of Success on the Merits

A party seeking a preliminary injunction must establish a likelihood of success on the merits. *Winter*, 555 U.S. at 20. Stimson claims that it is likely to succeed on the merits because, under the express terms of the Purchase Option and the Holdover Clause, it had not run out of time to exercise the Purchase Option at the time it did so. The Tribe, on the other hand, claims that under the plain language of Section 14.1(a), Stimson did not timely exercise the Purchase Option and its attempt to exercise the Purchase Option was conditional.⁸

⁸ The Tribe also claims that Stimson has not shown it will likely succeed on its conversion and unjust enrichment claims. That may be so. However, Stimson brought several other claims, and a failure to prove those claims would not doom Stimson's case. In any event, the point is moot because Stimson dropped these claims in its Amended Complaint. Dkt. 26.

Stimson did not notify the Tribe of its intent to exercise the Purchase Option sixty days before the last Renewal Term expired. On its face, this clearly violates the requirement in Section 14.1(a) that the Purchase Option must be exercised sixty days “prior to the termination of the Lease Term or any Renewal Term.” However, Section 14.1(c) modifies this language, as it clearly states that the Purchase Option shall “terminate only upon (1) the exercise of all Options granted hereunder by Lessee in accordance with the terms hereof or (2) any termination of this Agreement.” As such, the Purchase Option lasts for the life of the Agreement, not the life of the Lease Term or any pre-arranged Renewal Term. Upholding the Tribe’s claim that the Purchase Option only lasts for the life of the Lease Term or the Renewal Terms would render Section 14.1(c) essentially meaningless, and as such, is an interpretation the Court cannot endorse at this juncture.⁹ *See* Restatement (Second) of Contracts § 203(a) (“an interpretation which gives a reasonable, lawful, and effective meaning to all the terms is preferred to an interpretation which leaves a part unreasonable, unlawful, or of no effect”).

Thus, the question is whether the Agreement was terminated, not whether the Renewal Term or Lease Term had expired at the time Stimson exercised the Purchase Option. Section 21 clearly states that “occupancy and payment shall be construed as an extension of this Agreement for a month-to-month tenancy from the date of expiration.”

⁹ Further digging into the Tribe’s argument, the Tribe is asking the Court to read into 14.1(a) the implicit statement that the Purchase Option expires sixty days before the Lease Term or Renewal Terms end. The Court does not need to read implicit expiration terms into 14.1(a) because they are *explicitly* contained in 14.1(c). The Tribe’s distinction that 14.1(a) is about the natural expiration of the Purchase Option and 14.1(c) is about the forced expiration is dubious at best, and is not supported by the plain language of the Agreement.

Thus, the holdover tenancy by Stimson, *whose status as a holdover tenant was explicitly acknowledged by the Tribe, which accepted payment for almost two years for the holdover tenancy*, extended the term of the Agreement, meaning the Purchase Option was likely properly exercised. While the Tribe did signal that it believed the Purchase Option was no longer valid, the Tribe nevertheless created a holdover tenancy and prolonged the Agreement. The Tribe's declaration that the Purchase Option was no longer valid was not sufficient to alter the Agreement, as Section 21 clearly states that the Agreement *as it currently exists*, continues in force "unless other terms of such extension are endorsed in writing and signed by the parties hereto." As there were no agreed upon terms of extension that both parties signed, the entire Agreement as it existed as of the end of the last Renewal Term controlled the holdover tenancy.

The Tribe claims that the Purchase Option expired when the last Renewal Term ended, arguing that courts "refuse to allow an option to purchase to be exercised after expiration of the original lease." Dkt. 25, at 11 (citing *Lewiston Pre-Mix Concrete, Inc. v. Rohde*, 718 P.2d 551, 556 (Idaho Ct. App. 1985)). However, *Lewiston* is clearly distinguishable. In *Lewiston*, the parties did not have a written agreement governing their relationship after the lease expired. In that case, the term of the lease expired, with no holdover clause, and the tenant simply stayed and paid rent. Under such circumstances, the court determined that only the terms relating to a landlord-tenant relationship carried over. Here, the parties specifically agreed to what terms would carry over in the event a holdover tenancy began—all of the terms of the Agreement, *which included the Purchase Option*, carried over into the holdover tenancy.

The Tribe also claims that Stimson did not exercise the Purchase Option because its attempt to do so was conditional. The Tribe points to potentially conditional language in McFall's May 27th letter,¹⁰ as well as to Stimson's alleged failure to move forward with the purchase, as evidence that Stimson did not actually exercise the Purchase Option. The Tribe also claims that Stimson's conduct as a holdover tenant for two years indicates that Stimson had not intended to exercise the Purchase Option but only to renegotiate the lease and "has only now claimed it exercised the option after negotiations for a new lease agreement failed." Dkt. 25, at 13. Stimson counters that the Tribe's conduct stopped Stimson from properly exercising the Purchase Option.¹¹ Here, both parties have offered reasonable explanations for why (and why not) such an action was unequivocal. As such, this becomes a question of fact, which preliminary injunctions are not particularly designed to determine.

At this stage of the proceedings, the Agreement's language clearly supports Stimson's claim that the Purchase Option survived into the holdover tenancy and was thus timely exercised. Even though the *facts* may later support the Tribe's claim that the Purchase Option was not exercised, Stimson has a clear likelihood of success based upon the Court's interpretation of the Agreement. Although heavily contested, this factor weighs

¹⁰ The Tribe points to Stimson's stated willingness "to extend the Lease for another year at the current monthly rental rate, and defer until at least early 2021 exercising the option . . ." and to Stimson's statement that it was submitting the notice "as a precautionary measure, and in the alternative to extending the Lease." Dkt. 6-4, at 2.

¹¹ Stimson claims that its "exercise of the Option triggered a series of duties on the part of the Tribe . . . none of which the Tribe performed." Dkt. 27, at 7. Additionally, Stimson claims that the Tribe delayed acting on the Purchase Option because of the Covid-19 pandemic. *Id.*

in Stimson's favor.

D. Likelihood of Irreparable Injury

A party seeking a preliminary injunction must establish likely irreparable harm in the absence of a preliminary injunction. *Winter*, 555 U.S. at 20. The Tribe claims that Stimson has not offered concrete evidence adequate to prove the likelihood of irreparable injury. The Tribe put forward several cases supporting its position. However, each case rises and falls on facts easily distinguishable from the instant case.¹² Here, based on the affidavits and the facts that both parties can agree upon (namely, that Stimson and its employees operate a Mill that makes money), it is clear that Stimson will suffer significant and severe harm if a preliminary injunction is not granted.

Specifically, if Stimson is evicted from the Mill, it will have to lay off employees. Those laid-off workers will not wait around for the Tribe and Stimson to resolve their fight—they will go look for work elsewhere. Stimson will also lose customers and supplies because Stimson will be unable to fill their orders in a reliable, prompt manner—if at all. Stimson will lose contracts with timber sellers because the sellers will prefer to sell their goods to more stable buyers. If Stimson is evicted and later wins the litigation but does not have any employees, customers, sellers, and its land has been changed by the Tribe in its absence, Stimson will have won only a devastating Pyrrhic victory. While the Tribe claims that money damages can remedy all of Stimson's harms in the event Stimson wins, this is

¹² The only cases cited by the Tribe involving a landlord-tenant relationship were *Goldie's Bookstore, Inc. v. Super. Ct. of State of Cal.*, 739 F.2d 466, 472 (9th Cir. 1984) and *L.A. Mem'l Coliseum Comm'n v. Nat'l Football League*, 634 F.2d 1197, 1202 (9th Cir. 1980). However, unlike the instant case, neither *Goldie* nor *L.A. Memorial Coliseum Commission* involved a property ownership interest.

not true because land is unique. *See Thomas v. Campbell*, 107 Idaho 398, 405 (1984) (“The basic premise underlying the remedy of specific performance in land transactions is the uniqueness of land, as distinguished from chattels”). In short, this is not a case in which a bell can be unrung. Therefore, the strong likelihood of irreparable injury weighs in favor of granting a preliminary injunction.

E. Balance of Equities

A party seeking a preliminary injunction must establish that the balance of equities weighs in favor of an injunction; *Winter*, 555 U.S. at 20. When balancing the equities, the court should “balance the interests of all parties and weigh the damage to each, mindful of the moving party’s burden to show the possibility of irreparable injury to itself and the probability of success on the merits.” *L.A. Mem’l Coliseum Comm’n v. Nat’l Football League*, 634 F.2d 1197, 1203 (9th Cir. 1980). Here, denying the preliminary injunction would significantly harm Stimson, as explained above. On the other hand, the Tribe will not suffer any significant damage if the preliminary injunction is granted. The Tribe claims that it will be injured because it cannot find a new tenant and will be forced to accept the current rent payments, which the Tribe claims are below market. The Tribe also argues that the harm to Stimson is of Stimson’s own making because the parties have been engaged in negotiations for a new lease for two years. This may be so. Nevertheless, the Court finds the balance of equities cuts sharply in Stimson’s favor. Refusing the preliminary injunction would shutter one of Stimson’s mills, cause approximately 80 employees to be laid off, and cut into the limited national supply of wood products. It may also lead to Stimson losing its rights to exercise its Purchase Option and wrongfully losing its land. While the

Tribe may not receive as high a monthly rent as it could with a different tenant, the Tribe will continue to profit by receiving several more months of rent as the litigation process unfolds. Additionally, it is unclear (because Stimson owns the equipment inside the Mill), that the Tribe could actually find a tenant in short order. Moreover, even if the Tribe can find a new tenant before the end of litigation, a victory for Stimson would require the Court to evict a different tenant from the Mill. Finally, when the Court was preparing to issue its decision on the preliminary injunction, the Tribe filed a Motion to Dismiss. The Tribe should have been aware that such a filing could further delay the Court's decision on the preliminary injunction, and appears not to have been overly concerned with remedying its injury by evicting Stimson as quickly as possible. As such, the balance of equities weighs in Stimson's favor.

F. Public Interest

Finally, a party seeking a preliminary injunction must establish that an injunction is in the public interest. *Winter*, 555 U.S. at 20. "The public interest inquiry primarily addresses impact on non-parties rather than parties." *League of Wilderness Defenders/Blue Mountains Biodiversity Project v. Connaughton*, 752 F.3d 755, 766 (9th Cir. 2014) (cleaned up). As the dispute is between two private parties, the impact on non-parties is rather limited. However, what public impact there is cuts in favor of Stimson. The Covid-19 pandemic has made a wreck of supply chains, and this has led to an increased demand, and decreased supply, of forest products. Virginia McDaniel, *A Supply, Demand Primer*, COMPASSLIVE (Jun. 9, 2022), <https://www.srs.fs.usda.gov/compass/2022/06/09/a-supply-demand-primer/>. Allowing a factory to shut down would be a blow to the wood supply in

the United States. Perhaps more importantly, shutting down the factory would put roughly 80 employees out of work. It is not hard to assume that many of those employees have a family, and that those families will be in some financial trouble if the Mill is closed. Conversely, denying the preliminary injunction would not harm any non-parties. Although the Tribe is a governmental entity with members who rely on programs funded by the rent profits, granting a preliminary injunction would only preserve the current rate of monthly payments, not end them. As such, the public interest weighs in favor of granting the preliminary injunction.

V. CONCLUSION

Findings of fact and conclusions of law made by a court granting a preliminary injunction are not binding at trial on the merits. *Univ. of Texas v. Camenisch*, 451 U.S. 390, 395 (1981). This is because a preliminary injunction is generally issued “in the early stages of litigation, when the record is insufficiently complete to allow a reliable resolution of the merits.” *Sierra On-Line, Inc. v. Phoenix Software, Inc.*, 739 F.2d 1415, 1422 (9th Cir. 1984). As the Ninth Circuit has explained, a preliminary injunction, “is not a preliminary adjudication on the ultimate merits: it is an equitable device for preserving rights pending final resolution of the dispute. The district court is not required to make any binding findings of fact; it need only find probabilities that the necessary facts can be proved.” *Id.* at 1423.

As such, when a federal district court has granted a preliminary injunction, the parties generally will have had the benefit neither of a full opportunity to present their cases nor of a final judicial decision based on the actual merits of the controversy. *Camenisch*,

451 U.S. at 396. Although the Court finds Stimson satisfies the elements of a preliminary injunction based on the record currently before it, this finding may change once the Tribe has the full opportunity to present its case—whether on summary judgment or at trial—and receives a final decision on the actual merits. This finding may also change based on the Court’s order involving the pending Motion to Dismiss.

Here, although both sides have raised serious questions about their respective positions, Stimson has demonstrated that it has a reasonable likelihood of success on the merits. Stimson has also demonstrated an extreme likelihood of an irreparable harm. Indeed, the harm of losing the mill, employees, and orders that can be prevented here is a prototypical harm that preliminary injunctions seek to avoid. The balance of equities tips sharply in Stimson’s favor, as does the public interest.

In *Cottrell*, the Ninth Circuit specifically held that district courts may issue preliminary injunctions in cases when there are “serious questions going to the merits” (as there are here), and where the “balance of hardships . . . tips sharply towards the plaintiff” (as it does here) as long as the other two factors are met (which they are). Additionally, granting a preliminary injunction would preserve the current status quo, a status quo which has lasted since 2000, and only recently became unpalatable to the parties. This is preferable, safer, and less intrusive than allowing the eviction to occur, especially if the Court later decides that Stimson properly exercised its Purchase Option.

Therefore, the Court GRANTS Stimson’s Motion for Preliminary Injunction (Dkt. 3).

VI. ORDER

Now, therefore, **IT IS HEREBY ORDERED:**

1. Stimson's Motion for Preliminary Injunction (Dkt. 3) is **GRANTED**.
2. The Tribe and its agents are **ENJOINED** from terminating the Agreement, from evicting Stimson from the Mill property and premises, and from interfering in any way with Stimson's ability to possess, access, and operate the Mill. The status quo, including Stimson's Holdover Tenancy and rental payments to the Tribe, must continue during the pendency of this litigation.



DATED: July 28, 2022

A handwritten signature in black ink, appearing to read "D. Nye", written over a horizontal line.

David C. Nye
Chief U.S. District Court Judge

Exhibit 2

LEASE AND OPTION AGREEMENT

LESSOR:

THE COEUR D'ALENE TRIBE,
A federally recognized Indian tribe

LESSEE:

TOBD, INC.,
an Idaho corporation

May 31, 2000

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LEASE AND OPTION AGREEMENT

This Lease and Option Agreement (sometimes herein referred to as the "Lease" or the "Agreement") is dated as of May ____, 2000, but is deemed effective as of June 1, 2000, and is between THE COEUR D'ALENE TRIBE, a federally recognized Indian tribe ("Lessor") and TOBD, INC., an Idaho corporation ("Lessee"). Lessor and Lessee are sometimes herein referred to as "Parties." Lessor is sometimes herein referred to as the "Tribe." The United States Department of Commerce, Economic Development Administration ("EDA") is a party to this Agreement for the limited purposes set forth in Section 49 below and the effectiveness of this Agreement is contingent upon EDA approval and execution hereof.

RECITALS:

- A. Lessor has acquired certain real property in Benewah County, Idaho, with improvements thereon, including a sawmill and other improvements on the property, plus certain personal property, including but not limited to rolling stock, equipment and tools.
- B. Lessee desires to lease the land and assets of Lessor herein described and to construct and operate a sawmill thereon. Lessee estimates that its sawmill improvements will cost between \$4.0 and \$5.0 million dollars.
- C. Lessor is willing to enter into such Lease with Lessee, and to grant to Lessee (i) an Output Contract, to the extent permitted by law, for Lessee to acquire the logs and timber assets described below; and (ii) an option in favor of Lessee to purchase the Leased Assets (defined below) upon and subject to the terms set forth herein.
- D. Lessee's business is newly formed and its operations on the Premises (described below) are not a relocation of an existing business.
- E. The economic interests of Lessor and its tribal members will be enhanced through Lessee's operations under this Agreement in a number of ways, including the following: Lessee's employment of tribal members under the Tribal Employment Rights Ordinance ("TERO") entered into between the parties under Section 39.7.1 below; the provision of a market for Lessor's logs and timber under the Log and Timber Output Contract under Section 43 below; Lessor's potential sharing in profits produced by the sale of electrical power generated by the Boiler under Section 41 below; Lessee's payment of property taxes on a portion of the real and personal property acquired by Lessor from Rayonier, Inc. under Section 5 below; and the general benefit to be realized by the Reservation Community due to the renovation and opening of the now defunct and closed sawmill facility.

AGREEMENT:

1. THE LEASED ASSETS.

Lessor demises to Lessee, and Lessee leases from Lessor, upon the terms and conditions herein, the following assets (herein collectively called the "Leased Assets"):

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1 - LEASE AND OPTION AGREEMENT

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1.1 Real Property Leased.

(a) Certain real property in Benewah County, Idaho, more particularly described in Exhibit 1.1 attached hereto and incorporated herein, and all buildings, improvements, structures, fixtures, appurtenances, easements, rights-of-way and other interest appurtenant thereto, all Permits (defined below), all water rights appurtenant to the Premises, and all Lessor's interests in all property leased from the City of Plummer, Idaho, and in the leases therefore (more specifically described in Section 1.1(b) below) and in all other property or structures of any kind leased to Lessor (collectively, "Leases" or "Lease" in singular), which real property is more particularly described in said Exhibit 1.1 hereto (all of the above properties, interests, Leases and subleases being herein collectively referred to as the "Premises").

(b) Lessor has been assigned the lessee's interest in two leases having the City of Plummer as Lessor for real property related to the Premises: (i) a December 31, 1995 lease having Wood Power, Inc. as lessee and (ii) an April 1, 1995 lease having Rayonier, Inc. as lessee (collectively "the City of Plummer Leases"); the real property covered by the City of Plummer leases shall be referred to herein as "the City Property." The City of Plummer Leases were modified in a February 25, 2000 Modification of Lease between the City of Plummer and Lessor ("the Modification"). Lessor hereby assigns to Lessee its interest in the City of Plummer Leases, as modified by the Modification, and the Lessee hereby assumes the City of Plummer Leases, as modified, and agrees to perform them according to their terms. This assignment and assumption shall be effective on the Commencement Date.

1.2 Personal Property Leased.

The equipment, rolling stock, tools, and fixtures listed on Exhibit 1.2 attached hereto and incorporated herein (collectively, the "Equipment"). Except as specifically set forth herein, the Equipment is accepted by Lessee in "as-is, where-is" condition. Section 14 below designates which Equipment is Free and Clear, and which Equipment is subject to the EDA Lien, as defined therein.

2. EXCLUDED ASSETS.

Excluded from this Lease, if any, are Lessor's assets described on Exhibit 2 attached hereto and made a part hereof.

3. TERM OF LEASE.

3.1 Lease Term.

The term of this Lease shall be one (1) year, commencing June 1, 2000 ("Commencement Date"), and terminating on midnight on May 31, 2001 ("Lease Term"); provided, if an Exercise Notice for the exercise of the Option (defined below) has been given under paragraph 14.1 before the expiration of the Lease Term or any Renewal Terms (defined below), then this Lease shall not be deemed to terminate until the Closing Date (defined below) of the Option.

3.2 Extensions.

3.2.1 As more specifically described in Section 14 below, the Leased Assets are divided into three categories: the Clear Assets, the Encumbered Assets and the Boiler. The Boiler is a subcategory included within the Encumbered Assets. (In Section 14, the Encumbered Assets are divided into the 10-Year Assets and the 20-Year Assets.) The term of the lease for the Clear Assets is ten (10) years, being the Lease Term and the first two Renewal Terms ("the Clear Asset Term"). The term of the lease for the 10-Year Assets category of the Encumbered Assets is ten (10) years (being the Lease Term and the first two Renewal Terms) and the lease term for the 20-Year Assets category of the Encumbered Assets is twenty (20) years, being the Lease Term and the four Renewal Terms ("the Encumbered Asset Term").

3.2.2 In the event that Lessee is not in default of its obligations hereunder and the Lease has not otherwise been terminated, the Lease Term shall be automatically extended for one successive renewal period of four (4) years and three (3) successive renewal periods of five (5) years each (individually, a "Renewal Term" and collectively, the "Renewal Terms"), unless Lessee delivers written notice to Lessor no later than sixty (60) days prior to the expiration of the Lease Term or then current Renewal Term to the effect that Lessee does not desire to exercise the applicable renewal option. In the event that Lessee provides Lessor with such a notice within the time period set forth above, then the applicable renewal option shall expire and be of no further force and the Lease shall terminate automatically at the end of the then current Lease Year (defined below). Each Renewal Term shall be on the same terms and conditions of this Lease applicable to the Lease Term.

4. RENT.

Rent shall be divided into two categories: (i) for the Clear Assets and the 10-Year Assets and (ii) for the 20-Year Assets. Rent due for the Clear Assets and the 10-Year Assets is \$450,000, allocated \$225,000 to the Clear Assets and ~~\$225,000 to the 10-Year Assets~~; rent for the 20-Year Assets is \$450,000, resulting in total rent of \$900,000.

4.1 Lease Term.

Prior to the execution hereof, Lessee has paid Lessor TWENTY FIVE THOUSAND AND 00/100 DOLLARS (\$25,000) in prepaid rent. On the Commencement Date, Lessee shall pay TWENTY FIVE THOUSAND AND 00/100 DOLLARS (\$25,000) rent for the Lease Term. Of this \$50,000, \$25,000 shall be credited to rent due for the Clear Assets and the 10-Year Assets (\$12,500 each) and \$25,000 shall be credited to the rent for the 20-Year Assets.

4.2 Rent for Clear and 10-Year Assets.

(a) During the first two years of the first Renewal Term, Lessee covenants to pay rent in the sum of \$2,250 per month.

(b) During the second two years of the first Renewal Term, Lessee covenants to pay rent in the sum of \$4,416.66 per month.

(c) During the second Renewal Term, Lessee covenants to pay rent in the sum of \$4,416.66 per month.

4.3 Rent for 20-Year Assets.

(a) During the first two years of the first Renewal Term, Lessee covenants to pay rent in the sum of \$2,250 per month.

(b) During the second two years of the first Renewal Term, Lessee covenants to pay rent in the sum of \$1,818.62 per month.

(c) During the second, third and fourth Renewal Terms, Lessee covenants to pay rent in the sum of \$1,818.62 per month.

4.4 Date and Place of Payment.

Rent under this Section 4 ("Rent") shall be paid in advance on the 1st day of each month thereafter to Lessor at S. 3000 Highway 95, Worley, Idaho 83876.

5. TAXES.

5.1 Lessee shall pay when due all personal property taxes which accrue against the Lessee's Property (defined below) and the Leased Assets, prorated as of the Commencement Date and as of the termination of this Lease, as applicable. Lessor shall have paid all taxes in full as of the Commencement Date. Lessee shall also pay when due all property taxes for property owned by Lessee and brought upon the property by Lessee. Lessee shall also pay when due taxes assessed on the value of the Lease itself. Lessee shall pay when due all taxes assessed, if any, of every kind, on the Premises, prorated as of the Commencement Date and as of the termination of this Lease, as applicable, which includes payments in lieu of taxes negotiated in good faith by Lessor, as a sovereign governmental entity, with the County of Benewah or the City of Plummer, so long as such payments do not exceed the taxes or assessments that would otherwise be assessed against the premises. Notwithstanding the preceding portion of this Section 5, in no event shall combined taxes to be paid by Lessee on the assets described above (including this Lease) exceed the tax which would be assessed against the same property owned in fee (as opposed to leased), by a non-Indian which is located within Lessor's Reservation.

5.2 In addition to the taxes set forth in Section 5.1 above for a period of 20 years after the Commencement Date Lessee shall pay when due all real property taxes on that real property described in Exhibit 5.2 hereto, consisting of approximately 10 acres; provided that Lessee's obligations under this Section 5.2 shall terminate at such time as Lessor makes any type of improvement upon this real property.

6. UTILITIES.

Lessee shall pay when due all charges for electricity, heat, light, water, sanitation, and all other public utilities which shall be used in the Premises during the term of this Lease. Such

charges shall be prorated between Lessor and Lessee as of the Termination Date of this Agreement.

7. LIABILITY INSURANCE.

Lessee shall obtain comprehensive public liability insurance coverage for personal liability and property damage for any injury to persons or property arising on the Premises or in the operation of Lessee's business, in a company reasonably acceptable to Lessor, naming Lessor as additional insured, with the limits of not less than One Million Dollars (\$1,000,000) straight line. Lessee agrees to furnish a copy of such policy to Lessor and Lessee agrees to pay all premiums thereon, with such coverage to remain in full force and effect for the duration of the Lease Term and Renewal Terms.

8. MAINTENANCE AND REPAIRS.

Lessee shall at all times maintain and keep the Equipment in substantially the same or better condition as the Equipment was in at the time of the Commencement Date of this Lease, reasonable wear and tear excepted. All repairs and maintenance of the Equipment shall be at Lessee's sole cost and expense, and at the expiration of this Lease (provided Lessee has not exercised its rights to acquire the Leased Assets set forth herein) Lessee shall quit and surrender the Leased Assets to Lessor in substantially the same or better condition. This paragraph shall not apply to equipment, tools, machinery, rolling stock, fixtures, and other personal property owned or independently leased by Lessee from third parties or otherwise brought onto the Premises or the Log Yard (defined below) by Lessee or others ("Lessee's Property"). Lessor has, and shall have, no right, interest, or claim in Lessee's Property.

9. LESSEE'S ALTERATIONS/ADDITIONS.

9.1 Lessee's Responsibilities.

Except where the aggregate cost per project would exceed \$50,000, or where a change to the basic structure of a building on the Premises would be involved (collectively, "Major Alterations"), Lessee may make all such alterations, additions, or improvements to the Leased Assets for its sawmill and timber production business on the Premises as it sees fit without the consent of Lessor. For Major Alterations, Lessee shall, before work begins, seek the prior written consent of Lessor, which consent shall not be unreasonably withheld or delayed. Lessee may remove or dismantle the Equipment from the Premises (including without limitation for the purpose of repair or renovation). All alterations, additions, and improvements which shall be made by Lessee shall be at the sole cost and expense of Lessee.

9.2 Lessee Retains Title to Improvements and Additions.

Lessee shall retain title to all of Lessee's Property during this lease and after the final Renewal Term of this Lease. Lessee's Property shall not be subject to any claim or lien by Lessor or those claiming through or under Lessor. Lessee may, but shall not be obligated to, remove all of Lessee's Property (regardless of whether or not affixed to the Premises or improvements) at Lessee's expense on termination of this Lease. Lessee shall have not less than ninety (90) nor

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more than one hundred eighty (180) days after the termination of this Lease to effectuate such removal; provided that at the conclusion of removal, Lessee shall restore and return the Leased Assets to Lessor in substantially the same or better condition as existed at the Commencement Date, reasonable wear and tear excepted.

10. LIENS; LESSEE FINANCING.

10.1 Except as provided herein, Lessee shall keep the Leased Assets free from liens, encumbrances, or security agreements.

10.2 Upon the execution hereof Lessor shall deliver to Lessee's lender(s) a loan guaranty, which is acceptable to Lessee's lender(s), in their absolute discretion ("Lessor's Guaranty"), to allow Lessee to borrow \$500,000, utilizing a log barker to be installed on the Premises by Lessee as the sole security for the loan. The maturity of the loan shall not exceed 3 years. Lessee agrees that the loan proceeds shall be used to acquire fixed assets to be installed in its sawmill.

10.3 Lessee shall additionally have the right to mortgage, pledge, hypothecate and grant security interests in all or any portion of the Clear Assets (defined in Section 14 below) to obtain financing for any Lessee purpose.

10.4 Lessor agrees, without cost or expense to Lessee, to (a) consent to such financing; (b) join in such mortgage, pledge, hypothecation and/or grant of security interest, and encumber and subordinate Lessor's interest in the Clear Assets to the lien and interest of Lessee's lender or lenders; and (c) execute any other instrument or document reasonably necessary for such purposes, including, without limitation, consent to partial or complete assignment of loan documents by Lessee's lenders or lessors.

10.5 Lessee shall indemnify Lessor for loss or damage incurred by Lessor as a result of Lessor's Guaranty and joinder and subordination in such financing. Except as specifically agreed to in the contemplated Lessor's Guaranty and writing, Lessor's agreements as to sovereign immunity set forth in this Agreement shall not apply to third parties.

11. ACCESS.

Lessee shall allow Lessor or Lessor's agents free access at all reasonable times to the Premises for the purpose of inspection of the Premises. Lessor shall provide Lessee not less than twenty-four (24) hours advance written notice of any such inspection.

12. LAWS.

Lessee shall at all times, at its expense, operate its business in accordance with applicable tribal, local, state, federal, and other laws and regulations governing the conduct of the business. Lessor warrants that a lumber sawmill and manufacturing facility is a permitted use of the Premises.

13. EMINENT DOMAIN.

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13.1 Sale in Lieu of Condemnation.

Sale of all or part of the Leased Assets to a purchaser with the power of eminent domain in the face of the probability of the exercise of the power shall be treated for the purposes hereof as a taking by condemnation.

13.2 Partial or Total Taking.

If a condemning authority takes all of the Premises or portions sufficient to render the remaining portion thereof unsuitable for purposes of Lessee's use, then this Lease shall terminate as of the date title vests in the condemning authority. Lessee shall be entitled to all of the proceeds of condemnation relating to the value of Lessee's leasehold estate and its leasehold improvements, whether from total or partial taking, except for any portion of the award made to Lessor for Lessor's reversionary interest in the Premises after the expiration date of the Lease Agreement. If the Agreement is continued under a partial taking, Lessor shall, to the extent possible and as can be paid out of compensation awarded to Lessor pursuant to an award under paragraph 13.3, proceed as soon as reasonably possible to make such repairs or alterations to the Leased Assets as are necessary to restore the Leased Assets to a condition as comparable as reasonably practicable to that existing at the time of condemnation. In the event this Lease is not terminated following a partial taking, the Rent payable by Lessee hereunder shall be equitably abated or adjusted for the remainder of the Term hereof.

13.3 Award.

All compensation awarded or paid upon a total or partial taking of the fee title to the Premises shall belong to Lessor. Lessee shall be entitled to that portion of any award allocable to diminution in the value of the Leasehold, Lessee's loss or interruption of business, depreciation to or costs of removal of machinery, or equipment, or to the taking of improvements placed on the Premises by Lessee at its expense.

14. OPTION OF LESSEE TO PURCHASE.

Pursuant to EDA Award No. 07-01-03948 to the Lessor ("the Award"), as more specifically set forth below, EDA is retaining a lien in the sum of \$1,612,000 ("the EDA Lien or the EDA Lien Amount") in certain of the Leased Assets, namely 74 acres of land, all buildings and structures described in the National Appraisal Company, Inc. appraised dated December 15, 1999 ("the Appraisal"), the rail spur, kiln equipment, boiler equipment and Peerless residual chip bins ("the Encumbered Assets").

There are three categories of property for which Lessor is granting Lessee purchase options ("Option") under this Section: (1) those Leased Assets not subject to the EDA lien, described in Exhibits 1.1 and 1.2 hereto ("the Clear Assets"); (2) the Encumbered Assets; and (3) a subcategory of the Encumbered Assets, the boiler equipment ("the Boiler"). The Boiler is described in detail in Exhibit 1.2(A) hereto.

The EDA has established a useful life of 10 years for the chip bins, Boiler and kiln equipment ("the 10-Year Assets"), and a useful life of 20 years for the remaining Encumbered Assets, namely the land, building structures and rail spur ("the 20-Year Assets").

The parties agree that, if Lessee exercises one or more Options granted herein, Lessee shall, in addition to paying the applicable Option Price to Lessor, adjusted downward for rental paid hereunder as outlined in Section 14.1(d) (i.e., total to be paid to Lessor is \$900,000), at closing pay the corresponding Federal Share, if required by the EDA. In no event shall the cumulative Federal Share to be paid by Lessee hereunder exceed the EDA Lien Amount. Provided that Lessee performs its duties under this paragraph, Lessor shall at no expense to Lessee, take such actions as are required to obtain a full release of the EDA Lien in the Encumbered Assets which are the subject of the Option exercise(s).

The parties acknowledge that the Boiler is not presently operable, in either the legal "permissible" sense nor the "state of the art technology" sense required for efficient and competitive operation, and that it is not practical to rebuild the Boiler if it is not owned by Lessee, free of all liens. Accordingly, Lessee has the option, upon the prepayment of rent for the 10-Year Assets, in the amount of the appraised value for the Boiler set forth in the Appraisal to exercise its Option to purchase the Boiler free of the EDA lien. If the EDA requires the payment of Federal Share as a condition of the release of the EDA Lien in the Boiler, it shall be paid by Lessee, in cash unless the EDA allows payment terms.

Lessee's regular rental payments will not be reamortized to reflect this prepayment.

The provisions of Sections 14.1-14.6 below shall, as applicable, apply to all Option Exercises by Lessee hereunder. Lessee's exercise of one or more Options shall not limit its right to exercise the remaining Options during the Lease Term and Renewal Terms hereof.

14.1 Grant of Options.

Lessor grants to Lessee during the Lease Term and all Renewal Terms the sole, exclusive and irrevocable right and option ("Option") to purchase the Leased Assets (including the Premises and Equipment) in accordance with the following terms and conditions:

(a) Such Option shall be exercised, if at all, by written notice given by Lessee to Lessor ("Exercise Notice") not less than sixty (60) days prior to the termination of the Lease Term or any Renewal Term. The date the Exercise Notice is given shall be referred to as the "Exercise Date."

(b) Upon exercise of this Option, Lessee shall be obligated to purchase the Leased Assets described in the Exercise Notice from Lessor, and Lessor shall be obligated to sell these Leased Assets to Lessee, for the price set forth below, and in the manner stated in this Agreement.

(c) The entering into this Lease, and payment of rent hereunder by Lessee, and the mutual covenants of Lessor and Lessee under this Agreement, and other good and sufficient consideration, shall be deemed adequate consideration for this Option, and Lessee shall be

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required to pay no other or additional fee or consideration or any kind to maintain this Option; provided (i) all rentals paid to Lessor hereunder shall be credited to the purchase price for the Leased Assets as set forth below; and (ii) this Option shall not terminate or expire in the event of any non-payment of rent by Lessee, but shall terminate only upon (1) the exercise of all Options granted hereunder by Lessee in accordance with the terms hereof or (2) any termination of this Agreement.

(d) The purchase price to be paid for the Leased Assets shall be the sum of NINE HUNDRED THOUSAND AND NO/100 DOLLARS (\$900,000.00) adjusted downward by Lessee's payments for Rent hereunder as provided below. Said sum (the "**Purchase Price**") shall be payable in cash on the Closing Date (defined below). The Purchase Price is allocated \$225,000 to each of the Clear Assets and 10-Year Assets and \$450,000 to the 20-Year Assets. Lessee shall receive a credit against the Purchase Price at the time of closing in an amount equal to all of the rent monies paid to Lessor by Lessee pursuant to this Agreement from the Commencement Date until the Closing Date. The parties acknowledge that the Purchase Price is based principally upon the salvage value of the Leased Assets, and as such, the Purchase Price shall not bear interest, or be increased or decreased with time, reappraisal, changes in accounting methods, inflation, Lessor's charges, or other circumstances.

(e) The date of closing of the transaction for the purchase shall be no more than sixty (60) days from the Exercise Date or such other date as may be mutually agreed to in writing by Lessor and Lessee ("**Closing Date**"), time being of the essence in the closing of this transaction.

(f) Upon Lessee's exercise of the Option, this Agreement shall constitute a binding and enforceable contract for Lessee's purchase of the Leased Assets described in the Exercise Notice and Lessor's sale of these Leased Assets to Lessee on the terms and conditions herein set forth. Lessor shall thereupon satisfy the Conditions (defined in Section 14.2 below) to enable closing of the transaction on the Closing Date.

(g) Promptly after exercise of the Option, Lessee will open an escrow for the transaction with an escrow selected by Lessee, hereinafter called "**Escrow Agent**." Lessee shall deposit with Escrow Agent an executed copy of this Agreement and the Exercise Notice.

(h) Within twenty (20) days before the Closing Date, Lessor shall provide for Lessee's review the Deed for the Premises and the Bill of Sale for the Equipment, as applicable, sufficient to convey to Lessee or its nominee the title to the Premises and Equipment respectively, consistent with the Conditions. Lessor shall provide Lessee at such time with all other necessary or appropriate documents required to consummate the purchase and sale of the described Leased Assets and transfer of all applicable Permits to Lessee on the Closing Date (all of such documents, including the Deed and Bill of Sale, in form and content as provided herein, are herein sometimes referred to as the "**Conveyance Documents**").

(i) Lessor shall execute the Conveyance Documents and deposit same with Escrow Agent not later than two (2) days prior to the Closing Date, with instructions to close consistent with this Agreement.

(j) Upon satisfaction of the Conditions, the parties shall cause the purchase and sale transaction to close on the Closing Date, and cause Escrow Agent to record the Deed and/or deliver the Bill of Sale and to credit the Purchase Price to the extent provided in paragraph 14.1(d) above.

14.2 Conditions for the Benefit of Lessee.

Lessee's obligation to purchase the Leased Assets after exercise of the Option shall be contingent upon satisfaction of the following conditions precedent ("Conditions"), each of which is intended solely for the benefit of Lessee, who shall have the right to waive, by written notice, any of the Conditions, at its sole discretion; giving the Exercise Notice shall not constitute such a waiver. In the event any Condition is not satisfied or waived on or before any deadline for satisfaction specified herein, then Lessee shall have the right to terminate its obligations under this Option, at its sole election, by written notice to Lessor, and to exercise any remedy available to Lessee in the event that the Condition was not satisfied by reason of a breach of this Agreement by Lessor. Unless otherwise specified, the Conditions must be satisfied on or before the Closing Date. The Conditions are as follows:

(a) On the Closing Date, Lessor shall have the power to convey to Lessee fee simple absolute title to the Premises, except for the Leases, as a separate legal lot, and the Equipment and the Leases, free and clear of all liens and encumbrances including, without limitation, liens of the United States Economic Development Administration ("EDA"), all assessments, encumbrances, tenancies, rental agreements, reservations, covenants, conditions, restrictions, easements, rights of way and encroachments onto or from said property, or claims of any kind except for Permitted Exceptions (defined in Section 14.2(d) below) approved in writing by Lessee on or before fifteen (15) days prior to the Closing Date. Conveyance shall be by enforceable bargain and sale deed for the Premises (excluding the Leases) in the form of Exhibit 14.2(a) hereto, warranty bill of sale for the Equipment, and Assignment of Lease for the Leases (excepting the City of Plummer Leases), if any, in form and content acceptable to Lessee, subject only to the Permitted Exceptions.

(b) Title to the Premises shall be insurable as of the Closing Date by an ALTA extended coverage owners title policy (1970 form with 1984 revisions) (the "Title Policy") issued by a title insurance company selected by Lessee ("Title Company") in the amount of the Purchase Price, subject only to the Permitted Exceptions. Lessor shall pay the cost of a standard owner's policy. If Lessee elects to obtain an extended coverage policy, it shall pay the increase in premium above the premium for the standard owner's policy.

(c) On or before fifty (50) days before the Closing Date, Lessor shall have furnished Lessee, at Lessor's cost, a current preliminary commitment issued by the Title Company, showing fee simple title in the Premises and Log Yard (defined below) vested in Lessor, and committing to insure such title in Lessee by the issuance of the Title Policy, together with copies of all instruments creating each exception listed therein and together with legible copies of the Leases (collectively, the "Title Commitment"). In addition, Lessor shall furnish to Lessee by said time any survey or maps that Lessor may have pertaining to the Premises and Log Yard ("Survey").

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(d) The Lessee shall have had the opportunity, not less than ten (10) days from the date of receipt of the Title Commitment and Survey, in which to notify Lessor in writing of any exceptions noted in the Title Commitment to which Lessee objects, in Lessee's sole and absolute discretion. In the event an exception is later discovered which is not noted in the Title Commitment, Lessor shall furnish Lessee, within ten (10) days of such discovery, written notice of such exception, together with copies of any instruments pertaining thereto, and Lessee shall have ten (10) days from date of receipt of such notice in which to notify Lessor whether or not Lessee objects to said exception. Lessor shall have twenty (20) days from receipt of Lessee's objection to remove all such defects or objections or to provide assurances acceptable to Lessee in Lessee's sole and absolute discretion that same will be removed at or before the Closing Date; provided, however, that mortgages, deeds of trust or other liens securing undisputed liquidated obligations, (the grant of which by Lessor shall be subject to the written consent of Lessee, in its sole and absolute discretion), shall be discharged before or at closing by Lessor. If Lessor fails to cure (or provide assurances acceptance to Lessee with respect to) any and all such defects or objections within the twenty (20) day period, then Lessee may, at its option, elect to terminate the Option, or to waive its objections and proceed to closing. Any such exception to which Lessee does not object (or waives its objection) shall be considered a "Permitted Exception."

(e) Deleted.

(f) Lessor has executed the Log Yard Lease, as that term is defined in paragraph 38 below, and Lessor's warranties, representations and covenants with respect to the title and environmental suitability of the Log Yard, contained in said paragraph 38, and with respect to the Permits, contained in paragraph 34, are true and correct as of the Closing Date.

(g) Lessee, during the Lease Term and Renewal Terms, shall have made such surveys and site analyses (including soil tests) on the Premises as Lessee has deemed necessary or appropriate to evaluate the environmental condition of the Premises. Lessee will indemnify and defend Lessor against all claims for personal injury or property damage arising from Lessee's site analysis and related activities on the Premises.

(h) Lessee acknowledges receipt from Lessor of the documents and items listed in Exhibit 14.2(h) attached hereto and incorporated herein (collectively, "Seller's Documents"). Unless already included within Seller's Documents, within ten (10) days after the Exercise Date, Lessor shall have provided Lessee with copies of any and all of the following additional materials in its possession, or reasonably obtainable by Lessor:

(i) All permits from any governmental authority or regulatory agency ("Governmental Authority") pertaining to the Leased Assets and Log Yard.

(ii) All compliance and enforcement files, records, notices or citations of or from any Governmental Authority.

(iii) All reports, files, records or studies, including without limitation environmental assessments or impact statements conducted with respect to the Leased Assets and Log Yard, of any description.

(iv) Any notices of claims, threats or asserted causes of action by any person or entity or any Governmental Authority pertaining to the Leased Assets and Log Yard.

(v) Evidence that the Premises constitute a legal lot capable of being separately conveyed to Lessee, and that the Log Yard may be separately leased.

Lessor shall have also furnished Lessee with copies of any new documents, notices or information pertaining to the Leased Assets which were not previously provided to Lessee hereunder (collectively, "New Information"), immediately upon Lessor's receipt of the New Information. Lessee shall have had the reasonable opportunity to review and approve this New Information.

(i) All of Lessor's warranties, covenants and representations set forth in this Agreement shall be true and correct as of the Closing Date.

(j) There shall have been no environmental contamination or hazardous waste discovered on the Premises or Log Yard, which was unknown to Lessee at the time of the Exercise Notice.

(k) In the event there has been a material adverse change in the Leased Assets or the Permits (such material adverse change being herein referred to as "New Matter") from the Exercise Date to the Closing Date, Lessor shall promptly notify Lessee thereof in writing, indicating in such notice whether the New Matter is capable of being cured, and if so by when, and whether Lessor intends (at its own expense) to undertake such cure. If Lessor indicates in the notice such New Matter is capable of being cured at Lessor's expense within sixty (60) days after the Closing Date, and in fact commits such cure, the Closing Date shall be deemed extended by sixty (60) days, or such other time as may be mutually agreeable to the Parties. If Lessor fails to provide such notice or commitment as provided above, or if Lessor fails to cure the New Matter within such time, Lessee shall have the option of (i) extending the time for Lessor's cure; (ii) undertaking to cure the New Matter itself, and obtaining a credit to the Purchase Price for Lessee's expense of curing the New Matter; (iii) waiving any objections it may have to the New Matter and proceeding to closing; or (iv) terminating this Agreement.

14.3 Further Documents and Assurances.

Lessor and Lessee shall execute such other and further documents as may reasonably be required to consummate the sale transaction herein, after exercise of the Option by Lessee.

14.4 No Other Sale.

Lessor shall not sell or offer to sell the Leased Assets to any person or entity so long as this Option exists.

14.5 Lease to Terminate at Closing.

The Lease shall terminate on the Closing and conveyance of all of the Leased Assets to Lessee.

14.6 Title May Be Taken in Name of Nominee.

Prior to the Closing Date, Lessee may designate another person or entity affiliated with Lessee to take title to the Leased Premises. "Affiliated with Lessee" shall mean any person or entity that owns shares of stock of Lessee, or is owned in whole or in part by Lessee, or which is owned, in whole or in part, by an entity which also owns shares in Lessee, or is formed by a Shareholder of Lessee to take such title.

15. DELETED.

16. NOTICES.

All notices given under any of the provisions of this Agreement shall be deemed to have been given on the earlier of the date of actual receipt or three (3) days after being mailed by registered or certified mail, return receipt requested, to the addresses stated below:

Lessor: Coeur d'Alene Tribe Planning and Development
 Attn: Chief Executive Officer
 S. 30001 Highway 95
 Worley, ID 83876
 Telephone: (208) 686-5151
 Facsimile: (208) 686-5222

With a copy to: Tara Salisbury-Allgood or
 In-House Tribal Attorney
 P.O. Box 408
 Plummer, ID 83851
 Telephone: (208) 686-0400
 Facsimile: (208) 686-8813

Lessee: TOBD, Inc.
 P.O. Box 220
 Laclede, ID 83841
 Telephone: (208) 265-6502
 Facsimile: (208) 263-1566

With a copy to: Kirk Johansen
 Schwabe, Williamson & Wyatt
 1211 S.W. Fifth Avenue, Suite 1800
 Portland, OR 97204
 Telephone: (503) 796-2897
 Facsimile: (503) 796-2900

17. DEFAULT.

17.1 Events of Lessee's Default.

Each of the following shall constitute an "Event of Default" on the part of Lessee:

(a) Failure of the Lessee to pay, within thirty (30) days after Lessee's receipt of written notice from Lessor to Lessee that the same is delinquent, the full amount of any installment of Rent payable under this Lease; or

(b) Except for events subject to other provisions of this Lease allowing a longer or shorter cure period, failure of Lessee to comply fully with any material requirement, covenant, term or condition hereof binding upon Lessee or to perform fully any material obligation of Lessee hereunder, in either case within thirty (30) days following written notice of noncompliance or nonperformance, or if such compliance or performance cannot with diligence occur within such time, the failure of Lessee within such time to initiate and at all times thereafter, until such compliance or performance occurs, to diligently prosecute and pursue all steps reasonably necessary to effect such compliance or performance.

17.2 Lessor's Remedies.

(a) Lessor may treat any uncured Event of Default, after notice duly given, as a material breach of this Lease. In addition to any and all other rights or remedies of Lessor expressly stated in this Lease or provided by law, Lessor shall have the right to declare a termination of this Lease in which case Lessee shall commence removal of such items of Lessee's Property as Lessee elects to remove, and Lessee shall quit the Premises unless the Event of Default is promptly rectified.

(b) If Lessor elects to terminate this Lease under the provisions of this Section, Lessor may take immediate possession of the Premises by forcible entry or otherwise by judicial order and may recover from Lessee any and all damages permitted under applicable law, all such damages to bear interest at the Default Rate which is defined as twelve percent (12%) per annum, or if such interest rate is deemed unlawful or usurious, then the highest rate permitted under applicable law; provided, Lessor shall in any event provide Lessee the opportunity to remove Lessee's Property in accordance with the provisions of paragraph 9.2 above.

17.3 Lessor's Default.

Except as otherwise provided in this Lease, Lessor shall be in default under this Lease if (i) Lessor fails to perform any of its obligations hereunder or (ii) there has occurred any misrepresentation or breach of warranty on the part of Lessor, and in either case of (i) or (ii) (if such breach is curable) said failure continues for a period of thirty (30) days after written notice thereof from Lessee to Lessor (unless such failure cannot reasonably be cured within thirty (30) days and Lessor shall have commenced to cure said failure within said thirty (30) days and continues diligently to pursue the curing of the same to completion). In addition to any rights Lessee may have under this Lease or by law or in equity, Lessee may, at its option and upon written notice, without waiving any rights or remedies (including the right to recover damages) incur any expenses necessary to perform the obligation of Lessor specified in such notice, and

deduct such expenses from the Rent or other charges next coming due. If Lessor shall be in default under this Lease and, if, as a consequence of such default, Lessee shall incur any expense as aforesaid or recover a money judgment against Lessor, or both, the amount of any expense incurred until recovered by deduction from Rent or other charges coming due shall bear interest at the Default Rate and shall credit to the Purchase Price upon closing of Lessee's purchase, if any, of the Leased Assets.

18. ASSIGNMENT AND SUBLETTING.

Subject to receipt of Lessor's written consent (and that of EDA, if required by applicable law), which shall not be unreasonably withheld, conditioned or delayed, Lessee shall have the right to assign or sublet all or any portion of the Premises and the other Leased Assets, and to assign, sell, encumber, pledge, or otherwise transfer its interest in this Agreement. Any assignee or sublessee shall be bound by all terms and conditions contained in this Lease. Lessor shall have no interest or claim in any sublease rents, proceeds, or revenue from the Leased Assets. If Lessee does not receive Lessor's written objection to the proposed transaction articulating in detail the basis of its objection, within ten (10) days after Lessor's receipt of Lessee's written request for consent, Lessor's consent shall conclusively be deemed to have been given. This Section 18 does not affect Lessee's rights under Section 14.6 above.

19. LESSOR'S ENTITY STATUS; WAIVERS AND CONSENT TO JURISDICTION.

19.1 Limited Waiver of Immunity

Lessor acknowledges and agrees that in entering into this Agreement, it may incur obligations to Lessee, and Lessee's successors and assigns, and may become liable to these parties for injunctive or declaratory relief or for damages. Lessor further acknowledges that Lessee would not enter into this Agreement with Lessor if Lessor could defeat or hinder enforcement against them of the rights granted to Lessee by claiming sovereign immunity or asserting any other attribute of tribal sovereignty that may be applicable. Lessor hereby consents to suit, arbitration, enforcement and collection of judgments, awards, injunctions and declaratory judgments as to any obligations arising out of this Agreement. Lessor hereby expressly waives any claim or assertion of sovereign immunity from suit in actions to interpret or enforce any provision of or rights granted in this Agreement, to seek judgment for monetary obligations arising under this Agreement, and to enforce and collect any judgment in any suit or arbitration concerning or arising out of this Agreement in the manner specified in paragraph 19.3 below.

19.2 Choice of Laws

This Agreement shall be governed by, and construed, interpreted and enforced in accordance with, the substantive law of the State of Idaho (without reference to any principles of conflicts of laws), except to the extent such Idaho laws may be preempted by the laws of the United States of America.

19.3 Dispute Resolution

19.3.1 Mandatory Mediation. As a condition precedent to commencing any proceedings, suit, action, or arbitration relating to this Agreement or the subject matter hereof (collectively referred to as "Proceedings"), each Party shall first submit the claim or controversy to mandatory mediation for a period of ninety (90) days following appointment of a mediator; provided, that the Parties need not pursue mediation to obtain immediate injunctive relief to prevent irreparable harm. The Parties agree to cooperate in good faith to appoint the mediator and to attempt to resolve all matters in dispute with the assistance of the mediator. If the Parties are unable to agree upon the appointment of the mediator, then they shall jointly seek appointment of a mediator by the Chief Judge of the United States District Court for the District of Idaho. If the Chief Judge refuses, or fails, to act within twenty (20) days, the mediator shall be selected by The Center for Public Resources. Lessee and Lessor agree to share equally the mediator's fees and expenses. Otherwise, Lessor and Lessee shall bear their own fees, costs and expenses in the mediation, unless otherwise agreed in the mediation.

19.3.2 Jurisdiction and Venue. The Parties agree that any disputes concerning, relating to or arising out of this Agreement present a federal question. With respect to any Proceeding each Party irrevocably submits to the exclusive jurisdiction of the United States District Court for the District of Idaho. Each Party hereby irrevocably waives any objection which it may have at any time to the venue of any Proceedings brought in the United States District Court for the District of Idaho, waives any claim that such Proceedings have been brought in an inconvenient forum and further waives the right to object, with respect to such Proceedings, that such court should not exercise its jurisdiction or should defer to some other judicial or administrative tribunal, whether federal, state or tribal. Lessee's entry into this Agreement shall not be deemed to give rise to a "consensual relationship" as that term would be used for the purpose of alleging Lessor's jurisdiction over this Agreement.

19.3.3 Determination by Arbitration if No U.S. District Court Jurisdiction. In the event the United States District Court for the District of Idaho determines that the subject matter of the Proceeding does not fall within its statutory jurisdiction or for any reason both declines to exercise jurisdiction over the Proceeding, then the Parties shall submit the Proceeding to arbitration in Spokane, Washington, under the auspices and rules of the Center for Public Resources. The Parties agree that any such Proceeding shall be submitted to three arbitrators selected by the Center for Public Resources from its panel of arbitrators. The arbitrator shall not have authority to award exemplary, punitive, or speculative damages, or damages based on or measured by tort or other non-contractual principles but shall have the authority to order specific performance and other injunctive relief. The Parties further agree that they will faithfully observe this Agreement and the rules, that they will abide by and perform any award rendered by the arbitrators and that a judgment of a court having jurisdiction may be entered upon the award; provided, however, the award may be challenged and modified in whole or part or denied enforcement in whole or part, but only on the basis that the award exceeded the scope of the arbitrators' authority under this Agreement or the Federal Arbitration Act.

19.3.4 Enforcement of Arbitration Award. Arbitration awards under Section 19.3.3 above shall be enforced in tribal court by Judge Earl L. McGeoghegan. In the event Judge

McGeoghegan is unable to serve for any reason, a tribal court judge pro tempore shall hear all enforcement matters arising under Section 19.3.3 of this Agreement. The tribal court judge pro tempore shall be a Native American lawyer who is a sitting or retired tribal court judge or senior or retired Federal District Court or Court of Appeals judge and shall be selected as follows, under the auspices of the CPR Institute for Dispute Resolution, 366 Madison Ave., New York, NY ("CPR"). Each party shall submit a list of five (5) qualified candidates to CPR within ten (10) days after the parties are notified that the judge designated above is unavailable, and CPR shall select a judge pro tempore, taking into consideration the names provided on such lists. If CPR is unable or unwilling to select such judge, then the selection shall be made by the American Arbitration Association, again taking into consideration the names provided on such lists provided by the parties, or, if the American Arbitration Association is unwilling to act, by another alternative dispute resolution service agreeable to the parties. Judges proposed or selected shall provide to both parties statements of applicable experience and any relationships with either party. Any judge selected shall be impartial and shall not have disqualifying relationships with any party.

19.4 Representations and Warranties of Lessor

19.4.1 **Tribal Existence.** Lessor is a federally recognized Indian tribe duly and validly organized under a constitution and bylaws ratified by the members of the Tribe. Lessor exercises corporate powers over the Leased Assets. Lessor has heretofore made available to Lessee complete and correct copies of their articles of incorporation and bylaws (or other comparable charter documents), as currently in effect.

19.4.2 **Authority.** Lessor has full power and authority to enter into this Agreement, to perform its obligations hereunder, and to consummate the transactions contemplated hereby. The execution and delivery by Lessor of this Agreement and the performance by Lessor of its obligations hereunder have been duly and validly authorized by the Tribal Council of the Tribe, and the United States, as may be required by tribal and federal law, and no other tribal action on the part of, or for the benefit of, the Tribe is necessary. This Agreement and all other agreements or documents executed or to be executed by Lessor which are specifically referred to herein or attached hereto (collectively "Lessor's Agreements") have been duly and validly executed and delivered by Lessor and constitute legal, valid and binding obligations of Lessor enforceable against Lessor in accordance with their terms, as the same may be limited by bankruptcy, insolvency, reorganization, arrangement, moratorium or other similar laws relating to or affecting the rights of creditors generally, or by general equitable principles.

19.4.3 **No Conflicts.** The execution and delivery by Lessor of Lessor's Agreements, the performance by Lessor of its obligations under Lessor's Agreements and the consummation of the transactions contemplated hereby will not:

- (i) conflict with or result in a violation or breach of any of the terms, conditions or provisions of the articles of incorporation, as amended, or bylaws (or other comparable corporate charter documents) of Lessor;
- (ii) except as set forth in Section 39, require any consent, approval, authorization or permit, or filing with or notification to any governmental or regulatory authority;

(iii) result in a default (or give rise to any right of termination, cancellation or acceleration or require any consent or approval) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, license, agreement or other instrument or obligation to which Lessor is a party by which Lessor may be bound, except for such defaults (or rights of termination, cancellation or acceleration or any consent or approval) as to which requisite waivers or consents have been obtained; or

(iv) conflict with or result in any violation or breach of any term or provision of any law or order applicable to Lessor, including but not limited to laws or regulations promulgated by Lessor.

19.5 Representations and Warranties of Lessor as to the Leased Assets, Trust Status and Other Matters.

As a material inducement to Lessee's entering into this Agreement, Lessor hereby represents and warrants to Lessee as follows:

19.5.1 Leased Assets. The Leased Assets are: (i) owned in fee simple by Lessor; (ii) not held in trust by the United States for the benefit of Lessor; (iii) not subject to any trust responsibility or fiduciary obligation of the United States; (iv) not subject to any restriction on alienation except as outlined in this Agreement; and (v) except as set forth in the Agreement to be entered into among Lessor, Lessee and the EDA under Section 39.9 below ("the EDA Agreement"), not subject to any other right-of-way, easement, lease, contract for sale, contract encumbrance, any other written or oral agreement, or environmental, land use planning, zoning or other similar regulation or ordinance that is inconsistent with the rights granted Lessee under this Lease.

19.5.2 No Conveyance Into Trust Status or Imposition of Restrictions on Alienation. Lessor represents, warrants and agrees that it will maintain the current title of the Leased Assets and will not seek to convey the Leased Assets to the United States in trust for or for the benefit of the Tribe or into any form of trust status. Further, Lessor represents, warrants and agrees that it will not seek the imposition of any restriction on alienation as to any of the Leased Assets.

(a) Notwithstanding the foregoing, Lessor shall have the right to place the Log Yard and Alternate Log Yard Site in trust, subject to first receiving Lessee's written consent, which shall not be unreasonably withheld, conditioned or delayed. Lessor shall be obligated to provide Lessee the assurance that transfer into trust will not jeopardize or change any of Lessee's rights under or interests in Lessor's Agreements.

19.5.3 Legal Proceedings.

(i) There are no actions or proceedings pending or, to the knowledge of Lessor or the United States, threatened against, relating to or affecting Lessor or the Leased Assets which could reasonably be expected to result in the issuance of an order restraining,

enjoining or otherwise prohibiting or making illegal the consummation of any of the transactions contemplated by this Agreement; and

(ii) The Leased Assets are not subject to any existing or threatened adverse claims that are inconsistent with the rights granted Lessee under this Lease.

19.5.4 Proposed Use of Premises Acceptable. The use of the Leased Assets; the Log Yard, and the City Property pursuant to this Lease; the execution and delivery by Lessor of Lessor's Agreements; the performance by Lessor of its obligations under Lessor's Agreement and the consummation of the transactions contemplated hereby and thereby:

(i) Are consistent with all Lessor's land use and development plans; and

(ii) Will not interfere or be inconsistent with the purpose for which the Tribe's reservation was created or acquired.

19.6 Additional Covenants of Lessor.

Lessor covenants and agrees with Lessee that, at all times from and after the Commencement Date and continuing throughout the Term and Renewal Terms of this Lease, Lessor will comply with all covenants and provisions of this paragraph 19.6, except to the extent Lessee may otherwise consent in writing, in its sole and absolute discretion.

19.6.1 Regulatory and Other Approvals. Lessor will (i) take all reasonable steps necessary or desirable, and proceed diligently and in good faith and use all reasonable efforts, as promptly as practicable to obtain all consents, approvals or actions of, to make all findings with and to give all notices to governmental or regulatory authorities required of Lessor to consummate the transactions contemplated hereby, (ii) provide such other information and communications to such governmental or regulatory authorities or other persons as such governmental or regulatory authorities or other persons may reasonably request in connection therewith, and (iii) provide reasonable cooperation to Lessee in obtaining consents, approval or actions of, making all filings with and giving all notices to governmental or regulatory authorities or other persons required of Lessee to consummate the transactions contemplated hereby. Prior to making any filings with a governmental or regulatory authority pursuant to this Section 19.6.1, Lessor agrees to provide copies of such filings to Lessee. Nothing in this Agreement shall require Lessor to institute litigation or to pay or agree to pay any sum of money or make financial accommodations (other than the payment or incurrence of customary expenses and filing or other fees) in order to obtain any necessary consent, approval or authorization. Lessor will provide prompt notification to Lessee when any such consent, approval, action, filing or notice referred to above is obtained, taken, made or given, as applicable, and will advise Lessee of any communications (and, unless precluded by law or order, provide copies of any such communications that are in writing) with any governmental or regulatory authority or other person regarding any of the transactions contemplated by this Agreement.

19.6.2 Compensation to Lessor. Except to the extent set forth in the December 22, 1999, T.E.R.O. agreement entered into under Section 39.7.1, if any, Lessor hereby covenants not to impose any taxes, fees, or assessments against Lessee or seek any other compensation or consideration from Lessee, and waives any and all rights it may have to seek, or in any way to obtain compensation from Lessee or its affiliates, for Lessee's activities contemplated by this Agreement, beyond the compensation provided to Lessor pursuant to paragraphs 4 and 5 of this Agreement.

19.6.3 Regulations and Ordinances. Lessor hereby covenants not to unfairly enforce any environmental, land use planning, zoning or other similar regulations or ordinances that would conflict with reasonable use of the Leased Assets or Log Yard pursuant to this Lease and related activities or materially impair the value of the premises for their intended uses. Lessor's regulation of Lessee's operations shall be limited to matters involving air and water quality unless new material hazards are discovered on the Premises which require regulation to protect the health and safety of the Reservation Community. In other areas, Lessor shall not impose standards effecting Lessee's operations which exceed applicable federal standards.

19.6.4 Legal Proceedings. Lessor covenants that it will not initiate, prosecute or accept the benefit of any Proceeding in any court, including tribal court, if the purpose or effect of the action would be to invalidate this Agreement or any portion of Lessor's Agreements, and that for as long as this Agreement shall remain in effect according to its terms, Lessor will not take any action in any tribal court if a purpose or effect of that action would be to establish or assert jurisdiction of that court over Lessee with respect to this Agreement.

19.7 No Indirect Compensation.

Except as agreed in the TERO agreement entered into between the parties under Section 39.7.1 below, Lessor agrees that Lessor shall not impose or assess any fees, assessments or taxes (including, without limitation, income, sales, use gross receipts, privilege, business or other taxes) on any contractor, consultant, materialman, laborer or supplier involved in the planning, design, permitting, construction, operation or maintenance of Lessee's facility or any person purchasing or transporting timber products produced on the Premises or Log Yard.

19.8 Credits if Additional Taxes or Fees Paid.

To the extent any portion of this Agreement is found to be invalid because it is inconsistent with, or prohibited by, federal or tribal law and Lessor imposes taxes or fees which are prohibited by the terms of this Agreement, if Lessee elects to pay such taxes or fees, Lessor covenants and agrees that any and all such amounts paid shall be automatically treated as credits against and shall offset any amounts owed or to be owed by Lessee pursuant to this Agreement. Lessee shall be entitled to apply such credits against any and all obligations it may have to Lessor until such credits have been fully utilized.

20. LESSOR'S ADDITIONAL WARRANTIES AND REPRESENTATIONS.

To the best of Lessor's knowledge, after having made diligent investigation of the Leased Assets and the Log Yard, its own files, and all other matters deemed by Lessor relevant hereto, Lessor hereby warrants and represents to Lessee the following:

20.1 Conformity of The Leased Assets.

All the Leased Assets, the City Property and the Log Yard and the condition, operation and intended use thereof, conform and comply to and with all applicable ordinances, regulations, building, zoning, hazardous and toxic waste, and other laws, and no notice from any governmental agency to the contrary has been received by Lessor.

20.2 No Greater Obligations to Lessor's Members.

Excepting the requirements of the TERO Agreement entered into between the parties under Section 39.7.1 below, Lessee shall have no obligation to employ any member of Lessor in any capacity, including but not limited to direct employee, consultant, contractor or subcontractor. Lessor has no obligation to any employee or member of Lessor whose employment involved the Leased Assets and the Log Yard which will remain unsatisfied as of the time of execution of this Lease.

20.3 Governmental Claims.

To the best of Lessor's knowledge and belief, after diligent inquiry, Lessor, the City Property, and the Leased Assets and the Log Yard are in compliance with applicable federal, tribal, state, and local statutes, laws, regulations, and other governmental directives relating to or affecting the condition or operation of the Leased Assets, the City Property and the Log Yard, and Lessor is not liable for any payment or penalty for failure to comply with any statute, law, regulation, or governmental directive.

20.4 Litigation.

There is no litigation or administrative proceeding pending to which Lessor is a party, nor does Lessor have any knowledge of any threatened litigation or proceeding or asserted or unasserted claim against or relating to Lessor or the Leased Assets, the City Property or the Log Yard; nor does Lessor know or have reasonable grounds for any basis for any such action, or of any governmental investigation relating to Lessor, the City Property or the Leased Assets or the Log Yard which would have an adverse effect on Lessee, the City Property or the Leased Assets or the Log Yard.

20.5 Lessor's Documents.

Lessor's Documents and such additional documents, records, files, permits, evidences and materials provided to Lessee pursuant to Section 14.2(h) hereof represent all of Lessor's files pertaining to the Leased Assets. Lessor has furnished Lessee all New Information of which Lessor is aware.

20.6 General Representations.

20.6.1 No representation or warranty by Lessor in this Agreement, nor covenant, written statement, or certificate furnished or to be furnished to the other party pursuant to this Agreement or in connection with the transaction contemplated by this Agreement, contains or will contain any untrue statement of material fact, or omits or will omit to state a material fact necessary to make the statements contained therein not misleading.

20.6.2 The execution and delivery of this Agreement and the consummation of the transaction contemplated hereby will not result in a breach of the terms or conditions of any agreement to which Lessor is a party or by which it is bound or by which it or any of the Leased Assets, the City Property or the Log Yard may be affected; nor shall such acts constitute grounds for modification of the terms of any obligation or performance under any such agreement; or shall such acts constitute a violation of any order, writ, injunction, or decree of any court, administrative agency, or governmental body.

20.6.3 There are no material adverse factors affecting the Leased Assets, the City Property or the Log Yard which are not disclosed in this Agreement.

20.7 Purchase and Sale Agreement

There exists no breach or default by Rayonier, Inc. ("Seller") or by Lessor, as Purchaser, under that certain Purchase and Sale Agreement dated March 8, 1999, which agreement has been amended by First Amendment to Purchase and Sale Agreement dated March, 1999, and by Second Amendment to Purchase and Sale Agreement dated June 14, 1999 and by Third Amendment to Purchase and Sale Agreement dated July 15, 1999 (which agreement, as the same has been and may be further amended, is herein referred to as the "Sale Agreement"). There exist no facts or circumstances which will with the passage of time or provision of notice ripen into a default or breach of the Sale Agreement.

20.8 EDA Award No. 07-01-03948

20.8.1 This Lease is made between Lessor and Lessee with the express acknowledgement and understanding that certain portions of the Leased Assets are subject to continuing obligations on the part of Lessor under the Award, a copy of which is attached hereto as Exhibit 20.8.1.

20.8.2 Lessor represents and warrants that, to its knowledge and belief, after diligent inquiry, this Lease is consistent with, authorized under, and permitted by the terms of the Award, as provided in the Award and in 13 C.F.R. § 314.3(c). Lessor has sought and obtained all necessary approvals, if any, from the U.S. Secretary of Commerce and/or the Economic Development Administration, which may be required to enter into and perform this Lease.

20.8.3 Lessor represents and warrants that this Lease is supported by "adequate consideration" as defined in 13 C.F.R. § 314.3(c), considering all circumstances of this Lease.

20.8.4 Lessor represents and warrants that, to its knowledge and belief, after diligent inquiry, Lessor has not undertaken, and shall not undertake, any action that might lead to a breach of any provision of the Award, or take any other action that would cause harm to or otherwise affect Lessee's rights under this Lease. Lessor shall perform all of its obligations under the Award in a diligent, lawful and consistent manner, so as to maintain and preserve all rights and conditions of the Award and this Lease.

20.8.5 Lessor further represents and warrants that, in the absence of an Event of Default under this Lease by Lessee, neither the EDA nor any other party may terminate the Lease or seek to reclaim or repossess the Leased Assets or collect the Federal share.

21. HOLDOVER.

If Lessee should occupy the Premises with the consent of Lessor after the expiration of this Agreement, and rent is accepted from Lessee, such occupancy and payment shall be construed as an extension of this Agreement for a month-to-month tenancy from the date of expiration, unless other terms of such extension are endorsed in writing and signed by the parties hereto; provided, Lessee's entry on the Premises for the purpose of removing Lessee's Property pursuant to paragraph 9.2 above shall not be deemed a holdover occupancy.

22. NONWAIVER OF BREACH.

Failure of Lessor to insist upon strict performance of any of the covenants and agreements of this Agreement, or to exercise any option herein conferred in any one or more instances, shall not be construed to be a waiver or relinquishment of any of Lessor's rights or options.

23. COSTS AND ATTORNEY FEES.

In the event of suit, action, or arbitration by either of the parties hereto to enforce or interpret any of the terms of any of Lessor's Agreements, the losing party agrees to pay to the prevailing party a reasonable attorney fee in said suit, action, or arbitration or appeal thereof or review therein, in addition to costs and disbursements allowed by law.

24. CONDITION OF TITLE.

24.1 The Premises.

Lessor warrants and represents that on the date of execution hereof, Lessor owns fee title to the Premises and the Log Yard, and leasehold title to the Leases, all of which properties are free and clear of all liens and encumbrances, excepting those set forth in Exhibit 1.1 hereto; and that except for those created or suffered by Lessee, Lessor will keep said title free and clear of additional liens and encumbrances throughout the Lease Term, and any Renewal Terms. Lessor further warrants and represents that no encroachments effect the Premises or the Log Yard and that no party has obtained adverse possession of any portion of the Premises or the Log Yard.

24.2 Personal Property.

Lessor warrants and represents that, on the date of execution hereof, Lessor owns the Equipment described in Exhibit 1.2 free and clear of all liens and encumbrances, excepting those set forth in Exhibit 1.2 hereto; and that except for those created or suffered by Lessee, Lessor will keep said titles free and clear of additional liens and encumbrances throughout the Lease Term and any Renewal Terms.

25. INDEMNIFICATION AND SURVIVAL.

25.1 Lessor's Indemnification.

(a) Lessor agrees to indemnify, defend, and hold Lessee, its successors and assigns, harmless from and against any and all claims, losses, liabilities, and obligations of every kind and description, contingent or otherwise ("Damages"), arising out of or related to the condition or operation of the Leased Assets, the Log Yard and the City Property prior to the Commencement Date, and from and against any and all liability, damage, or deficiency resulting from any misrepresentation, breach of warranty or covenant on the part of Lessor under this Agreement.

(b) Lessor shall further defend, indemnify and hold Lessee and its successors and assigns harmless from all Damages relating to any cancellation or termination of this Lease, or collection of the Federal Share, which arises under or results from Lessor's actions or omissions under the Award or the Lease, or Lessor's failure to perform its obligations under the Award or the Lease.

(c) In the event that Lessor fails to fulfill all of its obligations under the Award, and such failure leads to a breach of the Award, Lessee may take any necessary steps to remedy or avoid the breach, including without limitation making any required payments, and shall be entitled to offset such the cost of such remedy or avoidance against Lessee's lease payments due Lessor hereunder. Lessee shall further be entitled to recover from Lessor any additional amount by which Federal Share exceeds unpaid rent. Reasonable present-value calculations shall be applied to Lessee's remedies set forth above.

25.2 Lessee's Indemnification.

Lessee agrees to indemnify, defend, and hold Lessor, its successors and assigns, harmless from and against (i) any and all Damages arising out of or related to the condition or operation of the Leased Assets, the Log Yard and the City Property (but only if they arise directly as a result of the acts and omissions of Lessee, its employees, agents, contractors and invitees), occurring after the Lessee's physical occupancy of this real property under this Agreement, and (ii) from and against any and all liability, damage, or deficiency resulting from any misrepresentation, breach of warranty or covenant on the part of Lessee under this Agreement.

25.3 Survival of Representations, Warranties and Indemnifications.

All representations, warranties and indemnifications made in this Agreement shall survive the termination of this Agreement, and shall survive the acquisition of the Leased Assets and the Property by Lessee.

26. ENVIRONMENTAL MATTERS.

26.1 Pre-Occupancy Liability.

Lessee shall not be responsible for any environmental contamination on the Premises, the Log Yard and the City Property that occurred before Lessee's actual, physical occupancy of the Premises and Log Yard under this Agreement and the City Property under the lease(s) with the City of Plummer ("Pre-Occupancy Liability"). (Lessor has the right to pursue claims against all third parties which may have caused the contamination.) Lessor agrees to indemnify, defend, and hold Lessee and its directors, officers, employees, contractors, assigns and successors harmless from and against any and all claims, demands, damages, losses, liens, liabilities, penalties, fines, remediation expenses, lawsuits, orders, and other proceedings and costs and expenses (including expert, consultant, engineering, and attorney fees and costs) arising from Pre-Occupancy Liability or the condition of any other properties to which environmental contamination migrated from the Premises, the Log Yard or the City Property at any time which is not attributable to Lessee's Activities, as defined below. Lessor's responsibility and indemnity shall include without limitation all matters raised in all environmental reports, studies and assessments of the Premises, the City Property and Log Yard undertaken as of the Commencement Date hereof.

26.2 Post-Occupancy Liability.

Subject to paragraph 26.3, Lessee will be responsible for all costs and expenses related to the investigation and remediation of the environmental contamination of the Premises, the Log Yard, the City Property or at any other properties to which such contamination has migrated, arising directly as a result of the acts and omissions of Lessee, its employees, agents, contractors and invitees after Lessee's actual, physical occupancy of the Premises and the Log Yard under this Agreement and the City Property under the lease(s) with the City of Plummer ("Lessee's Activities").

26.3 Disclaimer.

Lessee shall have no responsibility or liability for investigation or remediation for hazardous substances on the Premises, the Log Yard, the City Property or any release not caused by Lessee, its employees, agents, contractors and invitees, whether before or after the Commencement Date or occupancy date, whether or not known to Lessee at the time it entered into this Agreement ("Non-Lessee Environmental Liability"). Lessee accepts no responsibility or liability for environmental contamination disclosed to or known by Lessee at the time it entered into this Agreement, it being understood that Lessor has accepted the entire risk thereof, including without limitation all matters raised in said environmental reports, studies and assessments.

26.4 Definition.

Environmental contamination, as that term is used in this paragraph, shall include the releasing, spilling, leaking, dumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing, or dumping into the environment, of any substance or material defined or designated as a hazardous or toxic waste, material, or substance, or other similar term, by any federal, state, tribal or local environmental statute, regulation, or ordinance presently in effect or subsequently enacted.

27. INUREMENT.

The covenants and agreements of this agreement shall be binding upon and inure to the benefit of the parties hereto and their heirs, legal representatives, successors, and assigns of the parties hereto.

28. QUIET ENJOYMENT.

Lessor covenants and warrants that if and as long as Lessee pays the rent reserved herein and performs the covenants and agreements hereunder on its part to be performed, Lessor will secure to Lessee the quiet possession of the Leased Assets and Log Yard during the Lease Term and any Renewal Term against all persons claiming the same, subject to the terms of this Agreement. Lessor agrees to indemnify, defend and hold harmless Lessee from any damage and expense Lessee may suffer by reason of the breach of said warranty and covenant. Lessor further covenants and warrants that at the time of the execution of this agreement, it has good right to enter into the same, and Lessor is rightfully seized of the Leased Assets and Log Yard and has good title thereto.

29. LESSEE'S IMPROVEMENTS AND OPERATIONS.

29.1 Lessee agrees to commence the installation of sawmill improvements during the Lease Term, and shall commence operations within twenty-four (24) months after the Commencement Date or Extended Commencement Date under Section 46.2, as the case may be. Once operational, Lessee shall not cease mill operations for a continuous period exceeding fourteen (14) months.

29.2 Lessee agrees to burn only wood materials in the Boiler unless Lessee receives a permit for burning alternative fuel sources.

29.3 If Lessee does not have a use for the hogged fuel storage building within sixty (60) days after the Commencement Date, Lessee will negotiate with Pacific Northwest Fiber regarding a one-year lease for this building.

30. INTEGRATION.

The Lessor's Agreements embody the entire agreement of the parties hereto with respect to the subject hereof. There are no promises, terms, conditions, or obligations other than those contained in the Lessor's Agreements. They supersede all prior communications, representations,

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or agreements (verbal or written), between the parties hereto and shall not be amended except in writing subscribed to by the parties hereto.

31. CASUALTY LOSS.

31.1 Notice of Loss of The Leased Assets.

In the event all or a portion of the Leased Assets are destroyed or damaged by fire, or other insured casualty, Lessee shall give Lessor immediate notice thereof. Within thirty (30) days after the occurrence of said casualty, Lessee shall make one of the following elections in writing to Lessor, which election shall, except as conditioned hereafter, bind Lessor:

(a) To the extent of insurance proceeds available for such purpose, cause Lessor to rebuild or replace the damaged Leased Assets to their condition prior to such casualty, which rebuilding must be commenced by Lessor within ninety (90) days of such casualty. Lessor shall have no obligation to replace or restore any of the Lessee's Property damaged or destroyed without fault of Lessor.

(b) Lessee shall have the right to terminate this Agreement effective the date of said casualty, if a material portion of the Leased Assets are affected by such casualty. In this event Lessor shall retain insurance proceeds arising from the Leased Assets.

(c) Lessee shall have the right to exercise the Options under Section 14.1 above, and at Closing to be paid the insurance proceeds arising from the Leased Assets purchased by Lessee.

(d) The rights of Lessor and Lessee under this Section 31 may be subject to the rights of the EDA under documents securing the EDA Lien Amount. Any insurance proceeds retained by the EDA shall be deemed a prepayment of rent from Lessee to Lessor hereunder. If insurance proceeds retained by the EDA exceed the sum of (i) \$900,000 minus (ii) the amount of rental paid by Lessee hereunder prior to the payment of insurance proceeds to the EDA ("the Excess"), Lessor shall immediately pay the Excess to Lessee. The Excess shall accrue interest at the Default Rate from the date of payment of insurance proceeds to the EDA until it is paid to Lessee.

31.2 Abatement of Proportional Rent.

Should there be a material interference with the operation of Lessee's business due to said casualty, a just and proportionate part of the Rent, based upon the extent of interference with Lessee's business, as determined by Lessor and Lessee, in their reasonable discretion, shall be abated during the period of repair or reconstruction.

31.3 No Delays and Lessee's Risk of Loss.

If Lessor rebuilds or repairs the Leased Assets, Lessor shall prosecute the work of such rebuilding or repairing without unnecessary delay. Risk of loss of Lessee's personal property upon the Premises shall be borne by Lessee.

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32. CASUALTY INSURANCE.

32.1 Insured Loss.

During the term hereof, Lessee shall insure the Leased Assets against loss due to fire, windstorm, water damage, and other casualties (including extended coverage) to the extent of one hundred percent (100%) of the full replacement cost of the Leased Assets, without co-insurance or depreciation, which insurance policy shall be written in a manner to provide that the insurance company waives all right of subrogation against Lessor or Lessee. Said policy shall provide that it may not be canceled except upon thirty (30) days advance written notice to Lessor and Lessee. Lessee agrees to endorse Lessor as a named insured on Lessee's policy, as its interest shall appear.

32.2 Amount of Insurance.

The Leased Assets shall be insured for at least Two Million Five Hundred Thousand Dollars (\$2,500,000) (which the parties agree is the full replacement cost thereof).

32.3 Boiler Insurance.

Notwithstanding any other provision of this Agreement, Lessee shall insure the Boiler for such amount as it may determine, and shall be entitled to retain all insurance proceeds arising from damage to the Boiler.

33. LANDLORD LIEN WAIVER.

Lessee intends to lease or purchase additional equipment (not included in the Equipment leased from Lessor hereunder) from one or more third party equipment Lessors or vendors ("Additional Equipment"), and to inventory logs, lumber, wood chips and hogged fuel ("Inventory") on the Premises. Lessor and EDA shall execute all documents required by Lessee's lenders which waive all landlord's and secured parties' liens in the Additional Equipment and the Inventory. Such documents shall include, without limitation, a lien waiver and consent for the lenders to enter upon and occupy the Premises and realize upon their collateral in form and content acceptable to Lessee. Lessor and EDA agree to execute such additional documents as may reasonably be requested by Lessee to effectuate the provisions of this section.

34. PERMITS AND JURISDICTION.

34.1 Lessor's Warranty and Representations.

Lessor, after having made diligent investigation of the Leased Assets, its own files, and all other matters deemed by Lessor relevant hereto, hereby warrants and represents to Lessee that (a) the existing permits, licenses and authorizations (collectively, the "Permits") scheduled on Exhibit 34.1 hereto will be acquired by Lessor from Rayonier, Inc., prior to the Commencement Date; (b) to the best of Lessor's knowledge, all of the Permits are current, valid and in full force and effect; and (c) to the best of Lessor's knowledge, there exist no facts or circumstances which constitute a violation of any of the Permits, or would with the passage of time or provision of

notice ripen into a violation of any of the Permits, or would render any of the warranties or representations in this paragraph untrue in any respect. Lessor, with full cooperation from Lessee, shall make its best efforts to cure any defects in such existing Permits acquired from Rayonier.

34.2 Transfer of Permits.

Exhibit 34.2 attached hereto and made a part hereof lists those permits which Lessor warrants are transferable, and will be transferred to Lessee, on or before the Commencement Date hereof with or without the necessity of third party or governmental approval or consent, as the case may be. All other Permits not listed on Exhibit 34.1 are, unless specifically noted otherwise, not transferable to Lessee unless Lessee exercises the Option and acquires title to the Leased Premises. Lessor warrants (a) that it will cause such Permits to be transferred to Lessee on the Closing Date of the Option and (b) Lessee can operate its business under the non-transferable permits which remain in Lessor's name.

34.3 Lessor Permits.

Lessor hereby warrants and represents that Lessee is not required to obtain any Tribal permits or consents from Lessor for the operation of its mill facilities, the Leased Assets, the Log Yard or the Boiler. Lessor makes no representations as to non-Tribal permits or consents required for the operation of the mill facilities, the Leased Assets, the Log Yard or the Boiler.

34.4 Lessee Permits.

Lessee does not make any representation or warranty to Lessor regarding permits or consents required to operate the mill facilities, the Leased Assets, the Log Yard or the Boiler.

34.5 New Permits.

Lessor agrees to fully cooperate with Lessee in applying for new or renewal permits or consents required for the operation of the mill facilities, the Leased Assets, the Log Yard and the Boiler.

35. DELETED.

36. NON-COMPETITION COVENANT.

During the Lease Term or any Renewal Term, and within a radius of one hundred (100) miles from the Premises in any direction, Lessor agrees not to (x) construct, acquire or operate a sawmill or lumber remanufacturing facility, or (y) otherwise compete with Lessee, directly or indirectly, in the sawmill or remanufacturing businesses. Lessee shall have the right to enforce this covenant by a suit for injunction against Lessor or other appropriate remedies at law or in equity, and to recover its attorney's fees and court costs, at trial and on appeal.

37. SALE AGREEMENT COVENANTS.

Subject to Section 46 below, Lessor covenants to Lessee to pay to Seller under the Sale Agreement, on or before the Commencement Date, all remaining balances (including principal and interest) of the Purchase Price, as that term is defined in the Sale Agreement (herein referred to as the "Final Payment"). Lessor shall notify Lessee in writing immediately upon payment to Seller of the Final Payment, which notification shall disclose the amount of the Final Payment made and the date on which it was paid to Seller. Lessor covenants to Lessee that Lessor, as Purchaser under the Sale Agreement, shall diligently keep and promptly perform all of Lessor's promises and obligations under the Sale Agreement. Lessor shall immediately notify Lessee in writing of any notification to or from Seller under the Sale Agreement, including without limitation any notices or claims of default on the part of either party to the Sale Agreement. In the event of any default or alleged default on the part of Lessor as Purchaser under the Sale Agreement, Lessee shall have the right, but not the obligation, to deal directly with Seller to cure such default and acquire, if necessary, all of the rights of Lessor thereunder, without waiving any of Lessee's rights hereunder against Lessor, and without becoming obligated to further perform under the Sale Agreement. This Purchase Price shall be adjusted downward to reflect any such payments made by Lessee to Seller.

38. LEASE OF LOG YARD.

38.1 Contemporaneous with the Commencement Date of this Lease, Lessor shall lease to Lessee the log yard depicted on Exhibit 38(A) attached hereto and incorporated herein ("Log Yard") on the same terms and conditions as set forth in this Lease, except (a) no additional rent shall be payable with respect to the Log Yard; (b) Lessee's right to exclusive possession of the Log Yard shall terminate upon termination of this Lease; and (c) neither the Log and Timber Output Contract set forth in Section 43 below nor the Option shall apply to the Log Yard. Lessor warrants and represents to Lessee that the Log Yard is free and clear of all liens or encumbrances, and is free of Environmental Contamination, as that term is defined in paragraph 26 above. In the event Lessee gives the Exercise Notice for the Option, Lessor will execute and deliver to Lessee a 30-year lease of the Log Yard ("Log Yard Lease"), to be effective as of the Closing Date for the Option, which Log Yard Lease shall be for no additional rent or consideration and shall be in the form attached hereto as Exhibit 38(B). The Log Yard Lease shall also grant to Lessee a 30-year renewal option. In the event Lessor determines to make the Log Yard an industrial park, then Lessor shall lease to Lessee the alternate log yard site as depicted on Exhibit 38 hereto, ("Alternate Log Yard Site") on the same terms and conditions set forth above, including the Log Yard Lease. Lessee shall not be required to accept the Alternate Log Yard Site (and Lessee shall be permitted to remain in the Log Yard) unless the Alternate Log Yard Site is (a) fully functional and usable in Lessee's judgment for Lessee's purposes; (b) meets usual and customary industry standards for log yards; (c) is environmentally acceptable to Lessee and free from environmental contamination, as that term is defined in paragraph 26 above; and (d) is free and clear of liens and encumbrances. Lessor shall at its sole cost and expense cause the Log Yard or, if applicable, the Alternate Log Yard Site, to at all times conform to Lessor's warranties, representations and covenants contained in this paragraph. Lessor shall reimburse Lessee for the cost of improvements and additions made to the Log Yard at the time Lessee moves its operation to the Alternate Log Yard Site.

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38.2 If Lessee's sawmill is removed, damaged or destroyed and Lessee does not commence restoring it to an operating condition within fourteen months thereafter, Lessee's rights to use the Log Yard shall continue to accommodate Lessee's timber sale and log purchase contracts. Lessor and Lessee will work together in good faith to designate adequate portions of the Log Yard for such continued use, which shall extend for a reasonable period, not to exceed three years from the date of removal, damage or destruction.

39. CONDITIONS PRECEDENT TO EFFECTIVENESS OF THIS AGREEMENT.

Subject to the provisions of Section 46 hereof, notwithstanding any other provision of this Agreement to the contrary, and regardless of any execution of this Agreement by either or both parties hereto, Lessee shall have no obligations under this Agreement, unless and until each of the following conditions precedent to the effectiveness of this Agreement are either (a) satisfied by Lessor, or (b) expressly waived in writing by Lessee. If neither (a) nor (b) occur on or prior to June 1, 2000, Lessee shall have no obligations under this Agreement, and it shall be of no further force or effect.

39.1 City of Plummer.

The City of Plummer shall have issued new leases, or consented to subleases, effective as of the Commencement Date, in accordance with paragraph 1.1 above, which leases or subleases shall be in form and content satisfactory to Lessee in its sole and absolute discretion.

Lessee acknowledges that Lessor has satisfied its obligations under this Section 39.1.

39.2 Title Commitment.

Lessee has been provided with a current Title Commitment (defined above) of the City Property, Premises and the Log Yard, showing them to be free and clear of all liens and encumbrances which have not been accepted in writing by Lessee. No approval of any encumbrance for the purposes of this Lease shall constitute a waiver of Lessee's right to object to the state of title under paragraph 14.2 after tender of the Exercise Notice, or under any other provision of this Agreement.

39.3 Environmental Condition.

39.3.1 Lessor shall have provided Lessee the results of its Phase I and any Phase II Environmental Assessment of the City Property, Premises and Log Yard, and all reports, studies and data developed in connection therewith (collectively, the "Environmental Assessment"), and such Environmental Assessment shall show them to be free of environmental contamination as that term is defined in paragraph 26 above. In the event the Environmental Assessment reveals environmental contamination on any portion thereof, Lessee may (i) elect in writing not to proceed with this Agreement, in which event this Agreement shall be null and void and neither party shall have any liability to the other; or (ii) require that Lessor execute and deliver to Lessee a separate environmental indemnity in form and content acceptable to Lessee in its sole and absolute discretion, together with Lessor's written undertaking, to be performed at Lessor's sole cost and expense, to clean up and remediate such environmental contamination in a manner

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satisfactory to Lessee in its sole and absolute discretion, and consistent with the requirements of all federal, tribal, state and local laws, rules, regulations and ordinances.

39.3.2 Lessee hereby acknowledges that Lessor has satisfied its obligations under Section 39.3.1 above.

39.4 Permits.

Lessee shall have been provided evidence satisfactory to Lessee in its sole and absolute discretion that Lessee can acquire all permits and consents required for the operation of the Sawmill Facility, Boiler and the Log Yard on reasonable terms and conditions.

39.5 Legal Opinion.

Lessee shall have been provided with a legal opinion in form and content satisfactory to Lessee confirming the validity and enforceability of all of Lessor's warranties, representations, covenants and obligations under this Agreement. Lessee shall upon request of Lessor provide Lessor on or before the Commencement Date with a legal opinion regarding the validity and enforceability of Lessee's warranties, representations, covenants and obligations under this Agreement.

39.6 Final Payment to Rayonier.

Except as provided in Section 39.11 below, Lessor shall have made the Final Payment as provided in paragraph 37 and title to the Leased Assets shall have vested in Lessor.

39.7 Additional Agreements.

The parties shall have entered into a written agreement, acceptable in form and content to their governing bodies and legal counsel, covering the following issues:

39.7.1 Lessee's responsibility, if any, under Lessor's Tribal Employment Rights Ordinance ("TERO"). Lessee hereby acknowledges that this condition precedent has been satisfied.

39.7.2 Lessee's route(s) and rights of access to the Leased Assets and Log Yard and sources of water and water rights for Lessee's operations.

39.8 Resolutions.

Lessee shall have been provided with one or more Resolutions of Lessor's Tribal Council, in form and substance acceptable to Lessee in its sole and absolute discretion, authorizing Lessor to enter into this Agreement and all other agreements referenced for Lessor to enter into herein, and waiving Lessor's sovereign immunity.

39.9 Deleted.

39.10 Representations, Warranties and Covenants of Lessor.

All representations and warranties made in this Agreement by Lessor will be true as of May 1, 2000 or the Extended Commencement Date under Section 46.2 below, if applicable, as fully as though such representations and warranties had been made on and as of May 1, 2000, or the Extended Commencement Date, if applicable, as of such applicable date, and Lessor must not have violated or failed to perform in accordance with any covenant contained in this Agreement.

If all Conditions Precedent set forth in this Section 39 excepting the Final Payment to Rayonier under Section 39.6 have been satisfied or waived in writing by Lessee on or before May 1, 2000, the terms of Section 46 shall become operative.

39.11 Final Payment to Rayonier Inc.

If applicable, Lessor, Lessee and Seller shall have entered into an agreement in form and content satisfactory to Lessee covering the contingency set forth in Section 46.3 below. This agreement shall set forth the procedures for Lessee receiving notice from Seller that Lessor has not made the Final Payment as required herein, Lessee's payment of the remaining balance of the Final Payment to Seller, and the release of Seller's security interest in the Leased Assets.

40. REPRESENTATION.

Both parties have been represented by counsel and have negotiated this Agreement on equal footing. This Agreement shall be construed evenhandedly and without favor or predisposition to either party.

41. BOILER

41.1 Boiler Part of Leased Assets.

The boiler presently located on the Premises and all facilities, piping, machinery and equipment necessary for its operation ("Boiler") are included in the definition of "Leased Assets" under this Agreement. Likewise, in the event the Option to purchase the Leased Assets is exercised by Lessee, the Boiler is included in the sale as part of the Leased Assets sold to Lessee at no additional cost or adjustment to the Purchase Price.

41.2 Power Contracts.

For a period of five (5) years after the Commencement Date, Lessor shall have the right to work jointly with Lessee to bring or introduce to Lessee opportunities to sell electrical power from the Boiler to a third party or parties willing to enter into a contract with Lessee for the purchase of power. In the event Lessee, after negotiation of the terms and conditions of an agreement with such potential third party purchaser has elected in its sole discretion to enter into such agreement ("Power Contract"), Lessor shall have the right to a fee from Lessee as a result of the consummation of the Power Contract between Lessee and the third party purchaser of power ("Power Purchaser") if Lessor had a meaningful role in introducing Lessee to the third party purchaser and assisting Lessee in consummating the Power Contract, as follows: Lessee

shall pay to Lessor within thirty (30) days after receipt the sum of 25 percent of the profit ("Contract Overage") received by Lessee. The Contract Overage shall be calculated in accordance with generally accepted accounting principles. In the event the Power Contract rate is equal to or lower than the Market Rate, then Lessor shall be entitled to no share. Lessor shall have no right to a percentage of the Contract Overage if (x) Lessor had no meaningful responsibility or participation in the acquisition of the Power Purchaser (y) the Power Contract or such sharing is prohibited in whole or in part by any applicable law or (z) the Power Contract or such sharing would expose Lessee to liability as an unregulated public utility, or would otherwise necessitate Lessee's acquisition of a license, certificate, or registration as a public utility before it could lawfully enter into the Power Contract or participate with Lessor in the sharing of any Contract Overage.

41.3 Definition of Market Rate.

If the parties cannot agree as to Market Rate, it shall be determined by Les Bryan of Tacoma, Washington. If Mr. Bryan is not available to serve, and the parties cannot agree as to his replacement, his replacement shall be determined under the Arbitration procedures set forth in Section 19.3.3 hereof. The parties shall equally pay all expenses incurred under this Section.

42. MEMORANDUM OF AGREEMENT.

Lessee shall prepare and both Parties shall execute a recordable memorandum of this Agreement in form and content acceptable to Lessee. Lessee may record at its expense such memorandum in the official records of Benewah County, Idaho in the chain of title to the Premises and Log Yard, in order to provide public notice of the terms of this Agreement.

43. LOG AND TIMBER OUTPUT CONTRACT.

Not later than October 1, 2000, Lessor will form a Tribal Forest Enterprise under 25 CFR Sec. 163.13 ("TFE") and obtain all required consents (including without limitation a consent from the Secretary of the Interior) for the formation of the TFE and the operation of the Output Contract contained in this Section 43. Lessor shall sell and Lessee shall purchase all standing Tribal timber and logs ("Timber") to be conveyed by Lessor from its timberlands for a period of ten (10) years from the Commencement Date, and until the Output Contract is terminated by written notice from either party given not less than one year prior to the termination date specified in the notice. In no event shall the term of the Output Contract be less than ten (10) years. The Lessee shall pay the Lessor fair market value for the Timber. If the parties cannot agree upon the appraisal mechanism for the determination of fair market value, appraisal procedures used by the Lessor for the Tensed Block Logging Unit shall apply. Payment and performance terms shall be in accordance with BIA regulations and any special provisions as stated in timber sale contracts, which special provisions shall in all respects be reasonable and fairly applied to Lessee. Allotments of individual Tribal members are not subject to this Output Contract.

44. DELETED

45. DELETED

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46. FAILURE OF LESSOR TO MAKE FINAL PAYMENT.

If Lessor has not made the Final Payment on or before June 1, 2000, the following shall control:

46.1 On or before June 1, 2000, Lessor shall have paid all of the Final Payment except \$130,000.

46.2 Lessor shall not later than the due date set forth in the Sale Agreement (September 30, 2000) satisfy the Condition Precedent set forth in Section 39.6 ("the Final Payment Condition"). Lessor shall give notice to Lessee immediately upon the satisfaction of the Final Payment Condition.

46.3 If Lessor fails to timely satisfy the Final Payment Condition, Lessee shall have the right (but not the obligation) to make this payment to Seller. This payment shall bear interest at the Default Rate from the date made by Lessee until it has been recovered by Lessee as provided below. Lessee shall have the right to set off or recoup this payment and interest thereon against rental and other items due Lessor hereunder. Interest shall accrue on the declining balance.

47. DELETED.

48. REIMBURSEMENT OF \$25,000 TO LESSEE.

If on or before June 1, 2000, all of the Conditions Precedent set forth in Section 39 above are not satisfied, or the condition set forth in Section 46.1 above is not satisfied, on or before June 15, 2000 Lessor shall pay Lessee the sum of TWENTY FIVE THOUSAND DOLLARS (\$25,000) in reimbursement of the \$25,000 advance previously made by Lessee to Lessor.

49. UNITED STATES DEPARTMENT OF COMMERCE CONSENT. The EDA hereby consents to Lessor's entering into this Lease and represents as follows:

49.1 Upon the earlier of the termination of the respective useful lives of the Encumbered Assets under Section 14 above or upon the exercise of Options to purchase all or specified components of the Encumbered Assets and the payment by Lessee of the applicable portion of the Federal Share to the EDA (which shall not in total exceed \$1,612,000), it will release its security interest in the subject Encumbered Assets.

49.2 If there is a casualty to the Encumbered Assets resulting in insurance proceeds under Section 31 above, it will not unreasonably withhold, condition or delay consent to a request by Lessee that insurance proceeds be used to repair or replace damaged Encumbered Assets.

49.3 The methodology of the calculation of the Federal Share set forth in Exhibit 14 hereto is complete and correct.

49.4 The terms and conditions of this Lease comply with the Award and 13 CFR Section 314.

49.5 If an Event of Default does not occur hereunder due to Lessee's act or omission, no collection of the Federal Share or other actions initiated by the EDA will have an impact on the Encumbered Assets.

49.6 Lessor has received adequate consideration from Lessee supporting this Lease.

49.7 If Lessee requests consent to assignment under Section 18 above, EDA will not unreasonably withhold, condition or delay its consent.

49.8 Neither Lessor nor Lessee is obligated to provide the EDA with an insured interest in the Encumbered Assets and Lessee naming Lessor as an additional insured is adequate.

50. NONDISCRIMINATION.

Lessee agrees not to unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, mental condition, marital status, age or sex. This provision shall be read in harmony with the TERO agreement entered into between the parties under Section 39.7.1 above, and all applicable federal laws and regulations.

51. SURVEY.

Lessor agrees to have a licensed surveyor complete a survey of the Lessor's real property described in Exhibit 1.1 hereto and the City Property not later than October 1, 2000. In the event the survey reveals errors in the legal descriptions attached hereto, the parties shall promptly correct such legal descriptions by a modification to this Lease, which shall be recorded in the real property records of Benewah County, Idaho,

52. SEVERABILITY.

If any provision of this Agreement is found by a court of competent jurisdiction to be invalid or unenforceable as written, then the parties intend and desire that (a) such provision be enforceable to the full extent permitted by law, and (b) the invalidity or unenforceability of such provision shall not affect the validity and enforceability of the remainder of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Lease and Option to Purchase Agreement the day and year first written above.

**UNITED STATES DEPARTMENT OF
COMMERCE, ECONOMIC
DEVELOPMENT ADMINISTRATION**

By: _____
Its: _____

LESSOR:

THE COEUR D'ALENE TRIBE,
a federally recognized Indian tribe

By: Ernest L. Stenger
Its: Chairman

LESSEE:

TOBD, INC., an Idaho corporation

T. S. Brinkmeier
By: Todd Brinkmeier
Its: President