



The Seneca Nation of Indians

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CLERK - Barbara Hemlock, RR #1 Box 270, Lawtons, N.Y. 14091
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September 4, 1990

City Of Salamanca B.P.U.
225 Wildwood Avenue
Salamanca, New York 14779

Dear Lessee,

You have probably heard that the Seneca Nation of Indians and the City of Salamanca have entered into an Agreement to settle the longstanding controversy about lease renewals of property the Nation owns in the City. Section II.B.1. of this Agreement provides that new leases shall be tendered to any person holding a lease with the Seneca Nation which either (1) expires on February 19, 1991, or (2) is among the leases listed in Document 1 of the Technical Documents to the Agreement. (Document 1 mostly lists fifty year leases which the Nation concluded in the 1970's.) The City has informed the Nation that you presently claim an interest in a lease which is within one of these two categories.

The Nation offers you the new lease enclosed with this letter, conditioned on your showing you hold a lease covered in one of the two categories described above. If a single parcel on which your home or business is located is held under more than

one former lease, these former leases will be consolidated into a single lease.

The terms of the new lease have been agreed to between the Nation and the City of Salamanca. They will not be altered.

To prove that you hold a lease in one of the covered categories you must present for review by the Nation documents which show that you are the present holder of such a lease (such as a title opinion or conveyance to you in a chain of title). The Nation is requiring that this same information be provided for each new lease to insure that each lessee now holding a former lease receives a new lease for property subject to his or her former lease. This is for the protection of both the lessee and the Nation.

The new leases are part of a comprehensive settlement of the lease controversy, which will require approval and action by both Congress and the State of New York, as described more fully in the Agreement. Accordingly, the tender of the new lease enclosed with this letter is made expressly subject to the terms of the Agreement, which provides that the new leases shall not be binding on the Nation until the steps set forth in Section VI.D of the Agreement have been accomplished.

The Nation and the City are taking several measures to assist lessees in the process of securing a new lease. the City is establishing an information telephone line through which it

will handle questions about the leasing procedure. The line will operate from September 10 through September 29, 1990. The hours will be 3 p.m. to 5 p.m. Monday to Friday and Saturday from 9 a.m. to 12 noon. The number is 716-945-4164.

The City will also hold meetings with individual lessees in order to review their lease documents and assist in resolving individual questions and problems. The consultations with the City will be held from October 1 through November 16, 1990 at the City building at 225 Wildwood Avenue, Salamanca. The hours will be 11 a.m. to 3 p.m. and 4 p.m. to 8 p.m. Monday through Friday, excluding holidays, and Saturday from 9 a.m. to 12 noon. Lessees are encouraged to bring all documents they have that pertain to their leases, including if available, their lease(s), most recent deed(s), and abstract of title and other title documents.

The City will then transmit the information provided by each individual lessee to the Nation so that the Nation may review this information and prepare to execute the new lease(s). The Nation will then contact each lessee to schedule a date and time for execution of the new lease.

Some lessees do not live within reasonable driving distance from Salamanca. These individuals may send their documents to the City Assessor, City of Salamanca, 225 Wildwood Avenue, Salamanca, New York 14779.

If you have any questions, please contact the information line described above.

Sincerely,

/s/ DENNIS M. LAY
Dennis M. Lay, President
THE SENECA NATION OF INDIANS

{ATTACH ADDITIONAL PAGE IF NECESSARY}

LEASE NO.: _____

ACCOUNT NO. _____

FORMER LEASE NO(S). _____

PROPERTY ADDRESS/LOCATION:

THIS LEASE, made and entered into between the Seneca Nation of Indians, a sovereign nation, party of the first part, hereinafter designated as the Lessor, and _____, party of the second part, hereinafter designated as the Lessee,

W I T N E S S E T H:

1. DESCRIPTION OF PROPERTY. For and in consideration of the payment of the rental hereinafter specified and the performance and fulfillment of the terms and conditions herein by the Lessee, Lessor hereby leases to the Lessee the property situated on the Allegany Reservation as particularly described below ("lease premises" or "leased property"), excepting therefrom all timber, and all oil, gas and other minerals, including sand and gravel. The execution of this Lease, the surrender of the former Lease pursuant to attachment A hereof, and the exercise of the option to renew this Lease, all as provided for under Sections 1, 2, and 3 of this Lease, shall be subject to the full reservation of all legal rights by both parties contained in Section 28 infra. The Lease premises are described as follows: All that tract or parcel of land, situated in the City of Salamanca, County of Cattaraugus and State of New York, bounded and described as follows:

The description of the Lease premises provided above is based upon the best efforts of Lessor and Lessee to Lease the lands covered by the former Lease No(s). _____, and it is the intent of the parties to Lease those lands and only those lands. To effectuate that intent, Lessor and Lessee agree that: (1) the above description is subject to modification (i) for mutual mistake of fact by written agreement executed by Lessor and Lessee; (ii) to reflect alterations provided for in Section 11, or (iii) pursuant to a survey agreed upon in writing by both parties and by the City of Salamanca, such survey to be performed by persons expert in the field of surveying; and (2) Lessor shall not be liable in any way whatsoever to Lessee in the event that another Lessee shall claim an interest in all or any portion of the Lease premises.

2. **TERM.** The initial term of this Lease shall be for forty (40) years, commencing on the 20th day of February, 1991, and ending on the 19th day of February, 2031, provided that Lessee understands and agrees that this Lease shall not be binding on the Nation until the steps set forth in Section VI. D. of the Agreement between the Seneca Nation of Indians and City of Salamanca, executed by the City on July 12, 1990, and by the Nation on July 13, 1990, ("Agreement") have been accomplished, and shall remain effective subject to the terms of such Section, and provided further that ineffectiveness of this Lease pursuant to such Section, should that occur, shall not be an event of default under Section 22 infra.

3. **OPTION TO RENEW.** (a) Lessor grants to Lessee, subject to the conditions set forth below, the right and option to renew this Lease for one period of forty (40) years, beginning on the 20th day of February, 2031, and expiring on the 19th day of February, 2071, at a rental determined as provided below, and otherwise subject to and on all of the terms and conditions contained herein. This option must be exercised by the giving to Lessor, between February 20 and November 21, 2030, a written notice of the exercise thereof by Lessee, but Lessee shall in no event be entitled to renew the term hereof if Lessee is in default in the performance of any obligation hereunder as of the date of the expiration of the initial term hereof. Lessor shall give Lessee and the City written notice of all defaults on or before November 20, 2030, and either Lessee or the City may cure the defaults on or before February 19, 2031, and thereby preserve the right to renew, provided, however, that if on February 19, 2031, Lessee has given Lessor notice that a default exists which could not be cured by the date of the expiration of the initial term, but which Lessee has made every good faith effort to cure before that date, Lessor and Lessee shall mutually agree on an extension of not more than 180 days to complete Lessee's cure of the default.

(b) Upon written request of Lessee, the City, or the mortgagee at any time between February 20 and November 21, 2030, Lessor shall within seven (7) days of receiving the request advise Lessee in writing of any default by Lessee known to Lessor at that time which has not been cured, or of any investigation at that time by Lessor of any possible default by Lessee.

4. **RENT.**

4.1 **Basic Rent.** (a) In consideration of the leasing of the above-described premises, Lessee covenants and agrees to make an

advance annual rental payment on or before February 20 of each year that this Lease or any renewal thereof pursuant to Section 3 of this Lease is in effect. The annual rental payment for the lease premises shall be eight percent (8%) of the land value of property leased for residential purposes and ten percent (10%) of land value of property leased for non-residential purposes. "Residential" means one, two, three, and four family residences, except cooperatives and condominiums. Non-residential means all types of property except that which is residential. Land value means the value of the land, exclusive of improvements, provided that the use of the term "land value" shall not in any way affect the Nation's claim that it owns improvements on the leased lands, which claim is preserved under Section 28 infra. The land value of the leased property shall be as determined by the procedures provide for under Section 4.1(b) and (c), provided that until the reappraisal to be completed by the end of the fifth year of the initial forty year term of this Lease has been completed as provided for under Section 4.1(b), the land value for the leased property shall be determined by the Equalization Rate applied to the assessed land value for each parcel.

(b) Lessee's annual rental payment shall be adjusted annually by the same percentage at which the full value of property in the City changes, as shown by the Equalization Rate. If the Equalization Rate (or a successor or substitute index similarly adjusted) is not available, Lessee agrees that the Lessor and the City of Salamanca will agree upon the use of a different methodology for determining the rate of change in property values in the City which shall thereafter be used to make the annual adjustment in Lessee's annual rental payment. Lessor and Lessee further agree that the property in the City will be the subject of an objective reappraisal to determine the land value of the leased property, to be completed by the end of the fifth year of the initial forty year term of this Lease. The reappraisal of the land value of the leased property shall be conducted by an appraiser retained specifically for this purpose, who is acceptable to both the Lessor and the City of Salamanca, shall be conducted on terms acceptable to both the Lessor and the City, and shall be without cost to the Lessee. The land value as determined by the objective reappraisal conducted under this Section shall become the land value for the purpose of calculating the Lessee's annual rental payment, and shall thereafter be subject to annual adjustment pursuant to this Subsection.

(c) Lessee further understands and agrees that Lessor may, at its option at any other five year anniversary date of this Lease (the first such date being February 20, 2001). (1) initiate, upon satisfactory demonstration to the Seneca Nation - City of Salamanca Joint Leasing Commission ("Joint Leasing Commission") that the values used are not representative of market values, an objective reappraisal to determine the land value of the leased property, to be conducted in accordance with subsection (b) above, or (2) test the methodology used to determine the Equalization Rate through the use of a random sample selection of parcels in accordance with the procedures set forth by the State Board of Equalization and Assessment for such testing. The land value as determined by objective reappraisals conducted under this subsection shall become the land values for purposes of calculating the Lessee's annual rental payment, and shall thereafter be subject to annual adjustment pursuant to Subsection (b) of this

Section. The Equalization Rate as determined by the testing procedures set forth under this subsection shall become the Equalization Rate used for that year for purposes of determining the annual adjustment in the Lessee's annual rental payment as provided for under this Section.

4.2 City of Salamanca payment of rent. Lessee understands that the City of Salamanca has agreed to make full payment of all amounts described in Section 4.1 to Lessor. Nothing in this Section shall relieve Lessee of the obligation to make the rental payments to Lessor required in Section 4.1 as adjusted from time to time if the City shall not honor its agreement to make such full payment.

4.3 Late payments.

(a) Lessee also shall pay, from time to time as provided in this Lease or on demand of Lessor, as "additional rent": (1) interest at the rate of 2.0 percent per month on all overdue installments of basic rent, such interest to accrue from the due date thereof until payment; (2) a late charge of ten percent (10%) of the annual rental payment for each past due payment to cover the extra expense involved in handling such delinquency; (3) reasonable attorneys' fees and expenses occasioned by any default by Lessee under this Lease.

(b) If the City of Salamanca discharges its obligation to tender full payment to Lessor for Lessee's share of the annual payment of basic rent on or before February 20 of each year this Lease is in effect, then any interest payments and the late charges owed by Lessee under Subsection (a) because of a default in payment of basic rent shall be paid to the City of Salamanca. If the City fails to discharge its obligation to Lessee to tender full payment, then Lessee shall pay such interest payments and late charges to Lessor.

(c) In the event of any failure on the part of Lessee to pay any additional rent owed to Lessor, Lessor shall have all the rights, powers and remedies provided for in this Lease or at law or in equity or otherwise as in the case of non-payment of basic rent.

5. NO COUNTERCLAIM, ABATEMENT, ETC. Except as otherwise specifically provided in Section 17, rent payable hereunder shall be paid without notice, demand, counterclaim, setoff, deduction, or defense and without abatement, suspension, deferment, diminution or reduction. The intention of the parties (and this Lease shall be interpreted in accordance with this intent) is that the rent shall be absolutely net to Lessor so that this Lease shall yield to Lessor the full amount of the installments of rent (as adjusted) throughout the term of this Lease, and that all costs, expenses, impositions and obligations of every kind and nature whatever relating to the lease premises shall be paid by Lessee. Except as expressly provided herein, Lessee waives all rights now or hereafter conferred by statute or otherwise, without the consent of the Lessor, to quit, terminate or surrender this Lease or the lease premises or any part thereof, or to any abatement, suspension, deferment, diminution, or reduction of basic rent, additional rent, or any other sum payable to Lessor hereunder.

6. COVENANT OF QUIET ENJOYMENT. Except as otherwise specifically provided in Section 1, Lessor covenants that Lessee shall have the quiet and peaceable possession and enjoyment of the lease

premises as regards Lessor and anyone acting on Lessor's behalf or under Lessor's direction. This covenant shall extend only to Lessor and shall not extend, however, to the acts of other Lessees, owners, or users of adjacent property or property in the vicinity, or to the acts of third parties or other strangers.

7. **DESTRUCTION OF IMPROVEMENTS.** If any improvements on the leased property are destroyed or partly destroyed by fire or other causes during the Lease term, Lessee at Lessee's own expense, shall either clear the remaining structure from the site or replace (renovate) the structure within the succeeding twelve (12) months following the incident of destruction.

8. **MAINTENANCE AND REPAIRS.** Lessee, at Lessee's own expense, shall keep the leased property and the adjoining curbs and ways, if any, in good and clean order and condition and, subject to the provisions of Section 7 and 21.3, will promptly make all necessary repairs, replacements and renewals thereof, ordinary or extraordinary, foreseen or unforeseen. All repairs, replacements, renovations and renewals shall be equal in quality and class to the original work. Lessor shall not be obligated to make any repairs, replacements, renovations, or renewals of any kind.

9. **WASTE AND NUISANCE, ILLEGAL USE.** Lessee shall not do or permit any act or thing on the leased property which is contrary to law or any legal requirement, which constitutes a public or private nuisance or waste, or which, excepting normal wear and tear, would cause a reduction in property value or would impair the usefulness of the leased property.

10. **HARVESTING.** Lessee shall not harvest from the leased property any natural resources, including without limitation timber, natural plants, topsoil, sand, gravel, rock, oil and other petroleum products, natural gas and other minerals. Permitted uses include landscaping, gardening for home use, the use of the soil to grow agricultural crops, flowers, bushes and Christmas trees planted by Lessee, pasture cattle, and grow lawns, and the removal of weeds.

11. **SUBDIVIDING.** Lessee shall not subdivide the leased property or any part thereof without the express written approval of Lessor, provided that Lessee may without consent of Lessor assign to an adjacent Lessee the Lessee's interest in that portion of the lease premises as originally described in Section 1 which is contained within an area not to exceed ten (10) feet from any boundary line of the lease premises, with the consent of said adjacent Lessee, provided that the Lessee shall provide Lessor with notice of any such assignment within (15) days of the making of such assignment, and the description of the lease premises shall be altered in accordance with Section 1 to reflect such an assignment. Written request for subdivision approval must be submitted to Lessor at least 120 days prior to the proposed subdivision date, and Lessor's response shall be provided within 90 days of receipt of said request.

12. **ASSEMBLING PARCELS.** Lessee shall not assemble the leased property or any part thereof with any adjoining or contiguous parcel(s) or land for the purpose of creating a change in use and/or a change in the general characteristics of the neighborhood without approval of Lessor and all appropriate regulatory agencies now or hereafter affecting or governing property use within the City of

Salamanca. Written request for Lessor's approval must be submitted to Lessor at least ninety (90) days prior to the desired date of the proposed change in use which impacts upon the leased property.

13. **LIABILITY FOR CONDITION OF PROPERTY.** Lessee acknowledges that he has examined the leased property prior to the making of this Lease, and knows the condition thereof, and that no representations as to the condition or state of repairs thereof have been made by Lessor or his agents which are not herein expressed and Lessee hereby accepts the leased property in its present condition at the date of the execution of this Lease. Lessor shall not be liable for any patent or latent defect in the leased property. As for damage which may in the future affect the condition of the leased property or persons thereon, Lessee agrees to hold Lessor harmless for acts of God or nature and act of third parties, including, without limitation, acts of theft, burglary and vandalism and all acts of other Lessees on adjacent or nearby property.

Nothing herein shall preclude Lessee from bringing any action necessary to obtain damages from either Lessees of adjacent or nearby property, or other third parties, if damages are incurred by Lessee as a result of their actions.

14. **INDEMNIFICATION BY LESSEE.** Lessee will protect, indemnify and save harmless Lessor from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including, without limitation, attorneys' fees and expenses) imposed upon or incurred by or asserted against Lessor by reason of (a) ownership of the leased property or any interest therein, or receipt of rent or other sums therefrom, where such claim arises out of an act or omission of Lessee, (b) any accident, injury to or death of persons or loss of or damages to property occurring on or about the demised premises or any part thereof or the adjoining sidewalks; (c) any failure on the part of the Lessee to perform or comply with the terms of this Lease; or (d) performance of any labor or services or the furnishing of any materials or other property in respect of the leased property or any part thereof. In case any action, suit or proceeding is brought against Lessor by reason of such occurrence, Lessee, upon Lessor's request, will, at Lessee's expense, resist and defend such action, suit or proceeding, or cause the same to be resisted and defended by counsel designated by Lessee and approved by Lessor, which approval will not be unreasonably withheld, and Lessor agrees that it will not waive its sovereign immunity, to any claim brought against it that is subject to indemnification under this Section. Such obligations of Lessee under this Section as shall have accrued at the time of any termination of this Lease shall survive any such termination.

15. **HAZARDOUS OR TOXIC WASTE.** Lessee represents to Lessor that prior to the execution of this Lease, Lessee disclosed to Lessor any information Lessee had regarding the existence of any hazardous or toxic waste areas within the leased property and Lessee further agrees to promptly inform Lessor of any such hazardous or toxic waste areas of which it may subsequently learn. Lessee agrees to indemnify, defend and save harmless Lessor from and against any and all claims, fines and actions arising out of the existence of any such hazardous or toxic waste areas or the obligations which may now or hereafter

arise to remove therefrom, or otherwise neutralize or contain any such toxic or hazardous substances, unless such condition shall be caused solely by Lessor. Lessor agrees that it will not waive its sovereign immunity to any claim brought against it that is subject to indemnification under this Section. Nothing herein shall preclude Lessee from bringing any action necessary to obtain damages from either Lessees of adjacent or nearby property, or other third parties, if the actions of such persons have caused or contributed to hazardous or toxic waste on the leased premises.

16. **ARBITRATION.** Whenever any issue shall arise concerning any party's compliance with or obligations under any of the terms of this Lease, such issue shall be settled and determined by the Seneca Nation - City of Salamanca Joint Leasing Commission ("Commission"), provided that the legal positions reserved under Section 28 infra shall not be subject to presentation to or resolution by the Commission. Lessor, Lessee, and the City of Salamanca shall all have the right to initiate arbitration by filing a complaint with the Commission and, subject to their right to appeal, Lessor, Lessee, and the City of Salamanca agree to be bound by the decision of the Commission.

17. **NOTICE OF RENT DUE.**

The parties agree that the City of Salamanca under procedures approved by the Seneca Nation - City of Salamanca Joint Leasing Commission shall mail to Lessee or to the person or persons succeeding to his interest as shown by the records of the Clerk of the Seneca Nation, between January 1 and January 31 of each year, a notice setting forth the amount of the rent to become due on this Lease on February 20, to be tendered to the City by February 15, provided that the failure to mail such notice shall not in any respect relieve Lessee or his successors or the City of the obligation to pay rent in accordance with the terms of this Lease.

18. **LESSOR'S ACCESS TO PROPERTY.** The parties agree that Lessor may at any time during the term of this Lease enter upon the Lease premises (but not improvements) for the purpose of: (i) investigating compliance with the terms of this Lease, provided that reasonable cause to investigate compliance exists for such entry if done more frequently than annually; (ii) for the removal of merchantable timber, and (iii) for the exploration, development and removal of gas, oil and other minerals, including sand and gravel; provided, that Lessee shall be fully compensated for all damages resulting from such entrances; that Lessor shall provide Lessee with reasonable prior notice of its intent to enter; that the entry shall be during reasonable business hours and shall be made by officials or employees of Lessor and provided further that no shade trees or ornamental trees shall be removed by Lessor from any improved premises and no timber shall be considered merchantable unless suitable for sawing into lumber.

19. **TRANSFER OF LESSEE'S INTEREST.**

19.1 Lessee's Right to Sublet or Assign. Lessee shall have the right at any time to sublet the leased property or to assign this Lease; provided that (1) Lessee shall provide Lessor with notice of the subletting or assignment at least thirty (30) days prior to the effective date of said subletting or assignment; (2) the subletting or assignment shall be by an instrument in writing bearing the

endorsement of the sublessee or assignee expressly assuming all the obligations of Lessee under this Lease; and (3) copies of the instrument required by part (2) of this Subsection shall be filed by Lessee with the Lessor, the City of Salamanca, the Seneca Nation - City of Salamanca Joint Leasing Commission, and the Cattaraugus County Clerk's Office.

Where the subletting is for a term of three years or less, the requirements of Section 19.1(1)-(3) shall not apply.

19.2 Lessee's Liability After Subletting or Assigning. Any sublease entered into by Lessee shall not relieve Lessee of any of its obligations, express or implied, under this Lease, including without limitation its obligation to pay rent, and Lessee shall remain liable for full payment of the rent and other required payments according to the terms of this Lease. Any assignment of the lease premises shall relieve Lessee of all liability for rent after all the filings required by Section 19.1 have been completed.

19.3 Transfer Upon Death of Lessee. This Lease shall pass by will and by the laws of the State of New York; provided however, that the rights of any Indian Lessee in this Lease shall descend as provided by the laws of the Seneca Nation. When the Lease or any part of it is transferred by will or by inheritance without a will, an instrument in writing showing the succession and expressly assuming all obligations of the Lessee shall be filed by the person succeeding to Lessee's interest with the Lessor, the City of Salamanca, the Seneca Nation - City of Salamanca Joint Leasing Commission, and the Clerk of Cattaraugus County. Where the City of Salamanca receives notice of a transfer due to the death of the Lessee, it shall notify the successor of the obligation to file an instrument under this Section, and shall send a copy of such notice to the Lessor and the Joint Leasing Commission. All such instruments shall be filed within one year of the Lessee's death. The Joint Leasing Commission shall develop any procedures for transferring this Lease or, at the Commission's option, other documentation of transfer of the Lessee's interest upon Lessee's death. *

20. ENCUMBRANCES.

20.1 Pre-existing Encumbrances. Lessee agrees and accepts that Lessee's estate as hereby created shall be subject to such legal liens and encumbrances which heretofore attached to or affected the prior Lease of the property described in Section 1 (which prior Lease is No(s). _____), in the same order of priority in which they attached to or affected the prior Lease, except that nothing herein contained shall be deemed to re-establish or recreate any lien or encumbrance which has been legally or validly terminated.

20.2 Liens. Lessee shall keep the fee estate of the leased premises free and clear from all mechanics' and materialmen's and other liens for work or labor done, services performed, materials, appliances, teams or power contributed, used or furnished or to be used in or about the lease premises for or in connection with any operations of Lessee, or any alternations, improvements, repairs, or additions which Lessee may make or permit or cause to be made, or any work or construction by, for, or permitted by Lessee on or about the leased property.

20.3 Leasehold Mortgage. Lessee shall have the right

without the Lessor's consent to encumber Lessee's interest in this Lease under a mortgage and to assign this Lease as collateral security thereof; provided however, that at the time of making such mortgage there is no existing and unremedied default on the part of Lessee under any of the agreements, terms, covenants and conditions of this Lease; and provided that the Lessor and the Joint Leasing Commission shall certify to the mortgagee whether: (1) there is any known default of the Lease; (2) Lessee has received notice of a default; and (3) there is any pending investigation of a default by either Lessor or the Joint Leasing Commission within fifteen (15) days of a written request by the mortgagee unless Lessor shall request a ten (10) day extension of time to make such certification; provided further, that if no certification is made by Lessor in accordance with this Section, no further certification need be made and no existing default or pending investigation shall be deemed to exist at that time; and provided further, that no mortgage shall extend to or affect the reversionary interest and estate of Lessor in the lease premises, or in any manner attach to or affect the lease premises from and after any expiration or termination of this Lease and of the term hereof; and provided further, that no mortgage shall be binding upon Lessor to constrain in any way the enforcement of Lessor's rights and remedies unless and until a fully executed counterpart thereof, in recordable form, or a duly certified copy of any such recorded mortgage shall be delivered to Lessor and Lessor shall not be bound by or be deemed to have any notice of any mortgage unless and until the same shall have been delivered as aforesaid, notwithstanding any other form of notice, actual or constructive, which may occur or be claimed to have occurred. A copy of any executed mortgage shall also be provided to the Lessor and the Joint Leasing Commission. Mortgagee on behalf of Lessee-mortgagee shall have the right and option to renew this Lease in accordance with Section 3 hereof.

21. RIGHT TO PERFORM LESSEE'S COVENANTS.

21.1 Notice. Lessor shall give to the City of Salamanca and to the mortgagees of any mortgage which conforms to the provisions of Section 20.3, a copy of any notice or other communication given by Lessor to Lessee hereunder at the same time that the notice is given to Lessee. Lessor shall not exercise any right, power or remedy with respect to any default hereunder and no notice to Lessee of any such default and no termination of this Lease in connection therewith shall be effective, unless Lessor shall have given to the mortgagee and the City of Salamanca written notice or a copy of its notice to Lessee of such default or any such termination, as the case may be.

21.2 Forbearance by Lessor of Remedies Upon Default. Lessor shall not exercise any right, power or remedy with respect to any default or breach as set forth in Section 22 until 30 days after the date on which the Lessor gives to the mortgagee and the City of Salamanca written notice of such default or a copy of its notice to Lessee of such default. Subject to Section 22(a), Lessor will not exercise any right, power or remedy with respect to any default hereunder if (a) the mortgagee or the City of Salamanca within such thirty (30) day period shall give to Lessor written notice that the mortgagee or the City intends to undertake the correction of such

default or to cause the same to be corrected, and (b) the mortgagee or the City of Salamanca shall thereafter prosecute diligently the correction of such default, whether by exercise on behalf of Lessee of its obligations hereunder, entry on the leased property, foreclosure, or otherwise. Unless the Lessor and the City of Salamanca or the mortgagee, as the case may be, agree in writing to a different period, the time to cure the default shall be sixty days from the date of the notice referred to in Subsection 21.2(a), provided that as set forth in Section 22(a), where the Lessee fails to tender the rent to the Lessor when the rent is due and payable, the time to cure shall be thirty days from the written notice of default, and provided further that where the default consists of an action that can be ceased immediately upon receipt of notice of the default, the time to cure shall be seven days from receipt of the notice, and provided further, that where the default creates a significant danger to the health or safety of the surrounding community, the actions necessary to cure the default shall commence within forty eight hours of receipt of the notice by the City or the mortgagee, as the case may be, and the time to cure shall be the shortest feasible period, not to exceed ninety days unless otherwise agreed in writing by the Lessor and the City of Salamanca or the mortgagee.

21.3 Performance on Behalf of Lessee. Lessor, the mortgagee or the City of Salamanca may make any payment or perform any action required hereunder to be made or performed by Lessee with the same effect as if made or performed by Lessee. The City of Salamanca or the mortgagee, as the case may be, shall provide written notice to Lessor of its intent to perform the Lessee's obligations. (No entry by Lessor, the mortgagee or the City of Salamanca upon the lease premises for such purpose shall constitute or be deemed to be an eviction of Lessee. Such payment, performance, or action shall not waive or release Lessee from any obligation or default hereunder except that obligation or default which shall have been fully performed or corrected by such payment or performance by the mortgagee or the City of Salamanca. Lessee shall be liable for and shall pay to Lessor all sums so paid by Lessor and all costs and expenses incurred by Lessor in connection with the performance of any such act, and such sums shall constitute additional rent payable by Lessee hereunder. Where the City of Salamanca performs Lessee's obligations the Lessee shall be liable to the City for such sums, costs, and expenses.

22. DEFAULT OR BREACH. Each of the following events shall constitute a default or breach of this Lease by Lessee:

- (a) (If Lessee shall fail to tender to the City of Salamanca the annual payment of basic rent when the payment is due and payable) and if the City of Salamanca shall fail to forward Lessee's payment to the Nation when the payment is due, and payable notwithstanding its obligation to insure Lessee's payment and if neither Lessee nor the City of Salamanca shall make the payment within thirty (30) days after written notice thereof by Lessor to Lessee and the City of Salamanca.
- (b) If Lessee shall fail to perform or comply with any other term of this Lease and such failure shall continue for more than thirty (30) days after written notice thereof from Lessor to Lessee and Lessee shall not within such period commence with due diligence and dispatch and curing of such default or if Lessee shall, within

such period, commence with due diligence and dispatch to cure such default and shall thereafter fail or neglect to prosecute and complete with due diligence and dispatch the curing of such default. Unless the Lessee and the Lessor agree in writing to a different period, the time to cure the default shall be ninety days from the date of the written notice to the Lessee of the default, provided that where the default consists of an action that can be ceased immediately upon receipt of notice of the default, the time to cure shall be forty-eight hours from receipt of the notice, and provided further, that where the default creates a significant danger to the health or safety of the surrounding community, the actions necessary to cure the default shall commence within forty-eight hours of receipt of the notice by the Lessee, and the time to cure shall be the shortest feasible period, not to exceed ninety days unless otherwise agreed in writing by the Lessor and the Lessee.

(c) If Lessee shall abandon the lease premises.

(d) If Lessee shall use or permit the use of the leased premises for any unlawful purpose of an ongoing or continuous nature and/or which creates dangerous, hazardous or otherwise highly undesirable conditions in the surrounding community. If the Lease premises had been sublet and the original Lessee did not know or have reason to know of the unlawful use, the Lessee may cure the default as provided in Section 22(b) by ending the unlawful use and reoccupying the premises or subletting to a suitable subtenant.

23. LESSOR'S REMEDIES ON DEFAULT. In the event of any default hereunder, in addition to the remedies as set forth in Section 22, the rights of Lessor shall be as follows:

(a) Lessor shall have the right to cancel and terminate this Lease, as well as all of the right, title, and interest of Lessee hereunder, by giving to Lessee not less than 30 days' notice of the cancellation and termination. Such notice shall follow expiration of the thirty day notice of default and any time to cure under Section 21.2 and 22 (a) and (b). On expiration of the time fixed in the notice, this Lease and the right, title, and interest of Lessee hereunder, shall terminate except as to Lessee's liability.

(b) Lessor may elect, but shall not be obligated, to make any payment required of Lessee herein or comply with any agreement, term, or condition required hereby to be performed by Lessee, and Lessor shall have the right to enter the leased property for the purpose of correcting or remedying any such default and to remain until the default has been corrected or remedied, but any expenditure for the correction by Lessor shall not be deemed to waive or release the default of Lessee or the right of Lessor to take any action as may be otherwise permissible hereunder in the case of any default.

(c) Lessor may re-enter the property immediately and remove the Lessee and any of the property and personnel of Lessee, and store the property in a public warehouse or at a place selected by Lessor, at the expense of Lessee. After re-entry Lessor may terminate the Lease on giving 30 days' written notice of termination to Lessee. Without the notice, re-entry will not terminate the Lease. On termination Lessor may recover from Lessee all damages proximately resulting from the breach, including the cost of recovering the property, and the worth of the balance of this Lease over the

reasonable rental value of the premises for the remainder of the Lease term, which sum shall be immediately due Lessor from Lessee.

(d) After re-entry, Lessor may relet the property or any part thereof for any term without terminating the Lease, at the rent and on the terms as Lessor may choose. Lessor may make alterations and repairs to the property. The duties and liabilities of the parties if the property is relet as provided herein shall be as follows:

(1) In addition to Lessee's liability to Lessor for breach of the Lease, Lessee shall be liable for all expenses of the reletting, for the alterations and repairs made, and for the difference between the rent received by Lessor under the new Lease agreement and the rent installments that are due for the same period under this Lease.

(2) Lessor shall apply the rent received from reletting the premises (i) to reduce the indebtedness of Lessee to Lessor under the Lease, not including indebtedness for rent; (ii) to expenses of the reletting and alterations, replacements, renovations, and repairs made; (iii) to rent due under this Lease, or (iv) to payment of future rent under this Lease as it becomes due.

(3) If the Lessee pays all rent and other charges due, with any set-off for rent received by Lessor from reletting the premises, the Lessee shall be permitted to reoccupy the premises and termination proceedings, if commenced, shall be dismissed.

If the new Lessee does not pay a rent installment promptly to Lessor, and the rent installment has been credited in advance of payment to the indebtedness of Lessee other than rent, or if rentals of the new Lessee have been otherwise applied by Lessor as provided for herein and during any rent installation period are less than the rent payable for the corresponding installment period under this Lease, Lessee shall pay Lessor the deficiency, separately for each rent installment deficiency period, and before the end of that period. Lessor may at any time after a reletting terminate the Lease for the breach on which Lessor had based the re-entry and subsequent relet of the property.

(e) Should Lessor elect to re-enter and repossess the demised property, Lessor may do so by force, summary proceedings, ejectment or otherwise and may remove Lessee and all other persons and property therefrom. Lessor shall be under no liability for or by reason of any such entry, repossession or removal.

24. FURTHER REMEDIES. In addition to the right to terminate this Lease and/or repossess the property, Lessor, in the event of default by Lessee, shall have the right to collect from Lessee all rent and other charges which shall have accrued, shall have the right to sue for other damages or injunctive relief, as appropriate, and, further, shall have the right to exercise all other rights, powers, and remedies now or hereafter existing at law or in equity or by statute or otherwise. Lessor may exercise any or all of these rights even if Lessor elects not to terminate the Lease and/or repossess the lease premises.

25. REMEDIES CUMULATIVE. Each right, power, and remedy of Lessor provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall be cumulative and

concurrent and shall be in addition to every other right, power or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by Lessor of any one or more of the rights, powers or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by Lessor of any or all such other rights, powers or remedies to the fullest extent permitted by law.

26. **NO WAIVER BY LESSOR.** No failure by Lessor to insist upon the strict performance of any term hereof or to exercise any right, power or remedy consequent upon a breach thereof, and no acceptance of full or partial rent during the continuance of any such breach, shall constitute a waiver of any such breach or of any such term. No waiver of any breach shall affect or alter this Lease, which shall continue in full force and effect, or the rights of Lessor with respect to any other then existing or subsequent breach. The right to cure defaults as set forth in Sections 21 and 22 shall not be affected by this Section.

27. **LESSEE'S WAIVER OF STATUTORY RIGHTS.** In the event of any termination of this Lease or repossession of the lease premises pursuant to Section 23, Lessee, so far as permitted by law, waives any right of redemption, re-entry or repossession and the benefits of any law now or hereafter in force exempting property from liability for rent or for debt. In the event Lessee should be legally discharged in bankruptcy from further obligations under the Lease, the City of Salamanca shall thereafter make all payments required hereunder to Lessor as required by Article II. B. of its Agreement with the Lessor.

28. **LEGAL POSITIONS.** The parties agree that this Lease, including its execution and implementation (1) shall not foreclose either party from making any contention with respect to the interpretation of the 1875 and 1890 Acts or any claim of being or not being a Lessee under these Acts; and (2) shall not be deemed an admission by either party with respect to the interpretation of these Acts, now or in the future, provided, however, that questions of the interpretation of the 1875 or 1890 Acts shall not be presented to the Joint Leasing Commission or otherwise subject to arbitration.

29. **PARTIES BOUND.** The covenants and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators, and assigns of all of the parties hereto; and, except as otherwise provided, all of the parties hereto shall be jointly and severally liable hereunder.

30. **TIME OF THE ESSENCE.** Time is of the essence of this Lease, and of each and every covenant, term, condition, and provision hereof.

31. **SECTION CAPTIONS.** The captions appearing after the Section number designations of this Lease are for convenience only and are not a part of this Lease and do not in any way limit or amplify the provisions of this Lease.

32. **NOTICES.** All notices, filings, and other communications hereunder shall be in writing and shall be deemed to have been given when delivered or mailed by first class, registered or certified mail, postage prepaid, addressed (a) if to Lessee: _____, or at such other address as Lessee shall have furnished to Lessor; (b) if to Lessor: Clerk of the Seneca Nation, P.O. Box 231, Salamanca, New

York 14779, or at such other address as Lessor shall have furnished to Lessee; (c) if to a mortgagee, at such address as the mortgagee shall have furnished to Lessor and Lessee; (d) if to the City of Salamanca: 225 Wildwood Avenue, Salamanca, N.Y. 14779, Attention: City Comptroller, or at such other address as the City shall have furnished to Lessor and Lessee, or (e) if to the Seneca Nation - City of Salamanca Joint Leasing Commission, at such address as the Commission hereafter designate. Notices and filings shall be in such form as approved by the Joint Leasing Commission.

33. LEASE MODIFICATION. The terms and provisions of this Lease shall not be waived, modified, or changed without written consent of the Lessor.

IN WITNESS WHEREOF, the Lessor has caused this Lease to be executed in duplicate by its duly authorized officer, and its seal to be hereunto affixed this _____ day of _____, 19____, and the Lessee has hereunto set his hand and seal this _____ day of _____, 19____.

SENECA NATION OF INDIANS

By: _____

President

LESSEE:

MAILING ADDRESS:

ATTEST:

Clerk, Seneca Nation of Indians

STATE OF NEW YORK }
 } ss.
COUNTY OF CATTARAUGUS }

On this _____ day of _____, 19____, before me personally appeared _____ known to me to be the individual who executed the foregoing Lease, and acknowledged the same to be _____ act and deed.

{ S E A L }

Notary Public

STATE OF NEW YORK }
 } ss.
COUNTY OF CATTARAUGUS}

On this _____ day of _____, 19 _____, before me personally appeared _____ known to me known, who being by me duly sworn, did depose and say that he is the President of the Seneca Nation of Indians, the Lessor described in and who authorized the execution of this lease; that he knows the seal of the Nation; that the seal affixed to this lease is the seal of the Nation; that it was so affixed by order of the duly elected and authorized Tribal Council of the Nation; and that by like order he signed his name to this lease as President. And on the same day and year before me personally appeared _____ to me known, who being by me duly sworn, did depose and say that she is the Clerk of the Seneca Nation of Indians; that she knows the seal of the Nation; that she affixed the seal of the Nation to this lease; that it was so affixed by order of the duly elected and authorized Tribal Council of the Nation; and by like order she attested the same as Clerk.

{ S E A L }

Notary Public

Surrender

LEASE NO. _____

Former Lease No(s). _____

_____, hereinafter designated as Lessee, hereby surrenders to the Seneca Nation of Indians, hereinafter designated as Lessor, Former Lease No(s). _____.

Lessee's surrender of former Lease No(s). _____ is made expressly subject to the terms of Lease No. _____ and shall be subject to the full reservation of all legal rights by both parties contained in Section 28 of Lease No. _____.

Lessee: _____

STATE OF NEW YORK :

SS

COUNTY OF CATTARAUGUS:

On the _____ Day of _____, 19____, before me personally appeared _____, known to be the individual who executed the foregoing surrender, and acknowledged the same to be _____ act and deed.

(S E A L)

Notary Public