Land Lease Agreement

This Land Lease Agreement (the "Lease") is entered into this 21st day of February, 2011, by and between the White Mountain Apache Tribe ("Tribe"), and Navajo County Community College District, an Arizona community college district, doing business as Northland Pioneer College ("Lessee").

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The Tribe owns the parcels of land (the "Property") the legal descriptions of which are:

**McKay's Peak**
500 Sq. feet on McKay's Peak located at the intersection of Latitude 33° 58' 30" and Longitude 109° 47' 15".

**Whiteriver Ridge**
1000 Sq. feet on Whiteriver Ridge located at the intersection of Latitude 33° 25' 30" and Longitude 109° 47' 52".

Now, therefore, for good and valuable consideration and the mutual covenants contained herein, the parties agree as follows:

AGREEMENT

1. **Lease Property.** Pursuant to the terms and conditions provided herein, the Tribe leases to Lessee the Property for the purpose of constructing and maintaining microwave towers.

2. **Term.** The initial term of this Lease shall be for seven (7) years, commencing on February 1, 2011 and ending on February 1, 2018. Provided that Lessee is not in default under this Lease during the original term, Lessee shall have the option to extend this Lease for one additional term of five (5) years by providing written notice to the Tribe not less than one hundred twenty (120) days prior to the expiration of the initial term. The extended term shall be on the same terms and conditions of this Lease and shall end on February 1, 2024.

3. **Payment.** Lessee shall pay to Lessor an annual rental payment ("Rent") in the amount of Seven Thousand Two Hundred Dollars ($7,200.00) per year for the two sites commencing the first year (2011), and shall escalate in the amount of 2.5% for each year thereafter. Rent and the date due are described more fully in Attachment A. The Rent during an additional term will be calculated on the same terms and conditions. The annual rental payment shall be due, without prior notice or demand, in advance on or before March 1 of each calendar year, and shall be paid to the Lessor at the address provided in Section 9 herein. If delivery is by mail, delivery shall be deemed complete when deposited in the United States Post Office, postage prepaid. No bond shall be required to guarantee payment of Rent.
The Office of the Treasurer is hereby designated as Lessor's agent for the administration of this lease and for the receipt and collection of all proceeds due the Lessor pursuant to the terms of this lease, and for the receipt of all documents, certifications and correspondence arising out of or relating to this lease.

4. **Use.** Lessee may use the Property for the purposes of using, operating, maintaining, repairing, removing or inspecting the existing microwave and wireless communication site. Lessee may make reasonable improvements to the microwave and wireless communication equipment and facilities on the Property, including but not limited to adding propane, diesel or wind generators and such supporting structures as may be needed for improvements that are made.

5. **Sublease and Assignment.** Lessee may not sublease or assign this lease.

6. **Utilities.** During the term of this Lease, lessee shall be responsible for payment of all utilities consumed by Lessee or any renter of Lessee's improvements in the use of the Property.

7. **Improvements.**

   A. **Addition of shelters.** Lessee may, at no expense to Lessor, erect, install and maintain one or more telecommunications shelters on the Property within a 100 foot radius of the existing towers. Such shelters shall comply with all applicable building, environmental, and space requirements, regulations and codes for such shelters. Lessee shall not, nor shall Lessee allow any sublessee or assignee to, construct any other improvements, except as noted herein, on the Property without Lessor's prior written consent.

   B. **Insurance.** Lessee shall, at its own expense, maintain a policy or policies of comprehensive general liability insurance (Public Liability and Property Damage Insurance), insuring against all liability of Lessee and its authorized representatives arising out of or in connection with Lessee's use or occupancy of the premises. Lessee shall be responsible, at Lessee's expense, for fire and extended coverage insurance, with vandalism and malicious mischief endorsements, on all of its personal property and trade fixtures in, on, or about the Property. Lessor shall not be responsible for any loss or damage to the Property or any improvements placed thereon, unless such damage is a result of Lessor's gross negligence or willful misconduct.

   C. **Taxes.** Lessee shall be responsible for payment of any personal property and other taxes incurred by reason of the placement or use of improvements on the Property, and shall, upon demand from Lessor, provide in a timely manner documentation of such payments timely made.

   D. **Repair and Maintenance.** Lessee shall be responsible for all repair and maintenance of any improvements and personal property placed upon the Property. Lessor shall be responsible for maintaining roadways that allow access and egress to the Property.

   E. **Ownership on Termination.** Upon termination of this Lease for any reason, Lessee shall have ninety (90) days following termination of the Lease within which to remove any improvements that Lessee has placed on the Property. Any improvements not removed by Lessee within the ninety-day period shall become the property of Lessor.

8. **Indemnification.** Lessee shall indemnify and hold Lessor harmless for all claims arising out of personal injury and property damage relating to the use, operation, maintenance, repair, or
inspection of the microwave and communications tower site except for those claims arising out of Lessee's gross negligence or willful misconduct. Lessor shall also indemnify and hold Lessee harmless for all claims arising out of personal injury and property damage relating to access to the microwave and communications tower site, except for those claims arising out of Lessor's gross negligence or willful misconduct. Notwithstanding the foregoing, any agreement by Lessee to indemnify Lessor shall be limited to and payable only from the Lessee's available insurance or self-insurance program providing for liability assumed by contract, if any.

9. Force Majeure. Neither party shall be liable to the other nor deemed in default of this Lease if and to the extent that such party's performance under this Lease is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and occurs without the party's fault or negligence. Without limiting the foregoing, force majeure includes acts of nature; acts of the public enemy, war, riots, strikes, mobilization, labor disputes, civil disorders, fire, flood, lock outs, injections-intervention acts, failures or refusals to act by government authority, and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence. If either party is unable to perform due to force majeure, that party shall notify the other party in writing as soon as practicable and shall specify the cause.

In the event of partial or total destruction of the improvements Lessee has placed on the Property, Lessee may, in its discretion, terminate this Lease or repair the damage, provided such repairs can be made under the laws and regulations of tribal, federal, state, county and municipal authorities. If Lessee terminates this Lease under the terms of this Section this Lease shall terminate immediately upon Lessee notifying Lessor of such termination, Lessor shall not be deemed to be in default, and Lessee shall owe no more Rent payments under this Lease. Lessee shall be responsible for removal of the debris from the damaged improvements within 15 days of notice of termination. Lessor shall refund prepaid Rent, pro-rated for the number of days Lessee leased the property, within 10 days of Lessee removing the debris.

10. Notice. Any notice required or allowed hereunder shall be given in writing by serving the same upon the person to whom the notice is addressed either personally, by US mail, or by private delivery service at the following addresses or such other addresses as may be furnished in writing by any party to the other.

To Lessor:

White Mountain Apache Tribe
Office of the Treasurer
P.O. Box 700
Whiteriver, AZ 85941

To Lessee:

Dr. Jeanne Swarthout, President
Northland Pioneer College
P.O. Box 610
Holbrook, AZ 86025-0610

11. Ingress and Egress. Lessor shall grant Lessee the rights of ingress and egress to the Property along the currently existing roadways, and Lessee shall not make any improvements upon such easement that interfere with free access. If the roadways should be moved or damaged for any
reason, the rights of ingress and egress along the roadways shall cease, and the Lessor shall grant
the Lessee such rights along a new roadway with equal or greater capacity. Lessee shall have
access to the Property at all times. In the event that Lessor closes any existing roadways to the
Property for the winter, Lessee shall still have the right to have access to the Property by suitable
winter transportation for purposes of maintenance and repair.

12. Default by Lessee

A. Events of Default. The occurrence of anyone or more of the following events shall
constitute a default and breach of this Lease by Lessee:

(i) The failure by Lessee to deliver Rent within 15 days following the due date of
such Rent.

(ii) The failure of Lessee to observe or perform any of the covenants, conditions or
provisions of this Lease to be overseen or performed by the Lessee.

(iii) The making by Lessee of any general assignment or general arrangement for the
benefit of creditors or the filing by or against Lessee of a petition to have Lessee adjudged
bankrupt, or a petition or reorganization or arrangement under any law relating to bankruptcy
unless, in the case of the petition filed against Lessee, the same is dismissed within 60 days; of
the appointment of a trustee or a receiver to take, possession of substantially all of the Lessee's
assets located at the Property or of Lessee's interest in this Lease, where possession is not restored
to Lessee within 30 days; or the attachment, execution or other judicial seizure of substantially all
of the Lessee's assets located at the Property or of Lessee's interest in this Lease, where such
seizure is not discharged within 30 days.

(iv) The failure of Lessee to comply with all laws, orders, ordinances and other public
requirements now or hereafter pertaining to Lessee's use of the Property.

B. Cure. In the event of any such default by Lessee, Lessor shall give written notice to
Lessee of such default and Lessee shall have 30 days following receipt of such notice in which to
cure the default; provided, however, that if the nature of Lessee's default is such that more than 30
days are reasonably required for its cure, then Lessee shall not be deemed to be in default if
Lessee commences such cure within 30 days and thereafter diligently completes the cure.

C. Remedy. In the event of any such default or breach by Lessee, following notice by
Lessor to Lessee of such default, Lessor may, in its sole discretion, and without limiting Lessor in
the exercise of a right or remedy which Lessor may have by reason of such default or breach avail
itself of one of the following remedies:

(i) Terminate Lessee's right to possession of the property by any lawful means, in
which case this Lease shall terminate and Lessee shall immediately surrender possession of the
Property to the Lessor; or

(ii) Maintain Lessee's rights to possession, in which case this Lease shall continue in
effect, and Lessor shall be entitled to enforce all of Lessor's rights and remedies under this Lease;
or

(iii) any other remedy now or hereafter available to Lessor under the federal, tribal or
state law.
Additionally, should Lessor be deemed the prevailing party, Lessor shall recover all attorneys’ fees and costs incurred by reason of Lessee’s breach.


A. Events of Default. The occurrence of any one or more of the following events shall constitute a default and reach of this Lease by Lessor:

(i) The failure of Lessor to provide ingress and egress to the Property as provided elsewhere in this Lease.

(ii) The failure of Lessor to ensure Lessee’s quiet enjoyment of the Property during the time Lessee is not in default under the terms of this Lease.

(iii) The failure of Lessor to comply with all laws, orders, ordinances and other public requirements now or hereafter affecting the Property.

(iv) The failure of Lessor to observe or perform any of the covenants, conditions or provisions of this Lease to be overseen or performed by the Lessor.

B. Cure. In the event of any such default by Lessor, Lessee shall give written notice to Lessor of such default and Lessor shall have 30 days following receipt of such notice in which to cure the default; provided, however, that if the nature of Lessor’s default is such that more than 30 days are reasonably required for its cure, then Lessor shall not be deemed to be in default of Lessor commences such cure within 30 days and thereafter diligently completes the cure.

C. Remedy. In the event of any such default or breach by Lessor, following notice by Lessee to Lessor of such default, Lessee may, in its sole discretion, and without limiting Lessee in the exercise of a right or remedy which Lessee may have by reason of such default or breach terminate this Lease by notifying Lessor of intent to terminate, and such termination shall be effective upon the last day of the month following the month in which notice of intent to terminate is delivered to Lessor, and Lessee shall owe no further Rent payments. Lessor shall refund prepaid Rent, pro-rated for the number of days Lessee leased the Property, within 10 days of notice of termination. Lessee shall be entitled to recover from Lessor all damages incurred by Lessee by reason of Lessor’s default including, but not limited to, damages owed by Lessor to its Sublessees; and reasonable attorneys’ fees.

14. Waiver. Failure of either party to pursue any right hereunder shall not be deemed to constitute a waiver of any rights hereunder. Any waiver, permit, or approval of any breach or default must be in writing.

15. Headings. The headings used in this lease are for convenience of the parties only and shall not be considered in interpreting the meaning of any provisions of this Lease.

16. Binding on Assigns. The provisions of this Lease shall extend to and be binding upon Lessor and Lessee and their respective legal representatives, Successors and assigns.

17. Revocation of Prior Leases. This Lease terminates and supersedes all prior understandings or agreements on the subject matter hereof. This Lease contains the entire agreement of the parties with respect to the matters covered before this Lease, and no other agreement, statement or
promise made by any party, or to any employee, officer or agent of any party, which is not contained in this Lease shall be binding or valid, such agreement, statement or promise being specifically waived.

19. **Governing Law.** This Lease shall be governed by the applicable laws of the White Mountain Apache Tribe and the United States.

20. **Disputes.** All disputes between Lessor and Lessee, whether arising in law or in equity, shall be negotiated by the parties, and, if the parties are unable to negotiate, the parties shall select a mediator to mediate the differences. The parties shall share the expense of the selected mediator, provided, however, that each party shall bear the cost of presenting its argument at mediation, including the cost of any attorney fees for representation at mediation, if so desired. If either party brings an action to enforce performance of any of the covenants or conditions of this Lease, then the prevailing party shall be entitled to costs and attorney fees as outlined in §§11 (e) and 12(C).

21. **Amendment.** This Lease may be modified or amended only in writing duly executed by both parties.

22. **Savings Clause.** Should any section of this Lease be deemed to be invalid or unenforceable, the remainder of this Lease shall remain valid and in full force and effect.

23. **Quiet Enjoyment.** Lessor covenants and warrants that upon performance by Lessee of its obligations hereunder, Lessor will keep and maintain Lessee in exclusive, quiet, peaceable and undisturbed and uninterrupted possession of the property during the term of this Lease.

24. **Entry.** Lessor shall have the right to enter upon the Property an reasonable hours to inspect the same, provided Lessor shall not thereby unreasonably interfere with Lessee’s business on the Property.

25. **Other Uses on the Land.** Lessor shall have the right to put the Property to good and reasonable use, so long as such uses do not unreasonably interfere with Lessee’s, Sublessee’s, or any Assigns’ rights of use and enjoyment as outlined above.

26. **Limited Waiver of Sovereign Immunity.**

A. The White Mountain Apache Tribe expressly and unequivocally waives its sovereign immunity to suit for the limited purpose of allowing Lessee, in the event of a breach by Lessor, to bring an action in the White Mountain Apache Tribal Court for declaratory and injunctive relief. The jurisdiction of the Court in any such action is limited to interpreting the terms of this Lease and issuing declaratory and injunctive relief requiring the parties to perform in accordance with such terms.

B. Except as specified in paragraph A above nothing in this agreement shall be construed to constitute a waiver of the sovereign immunity of the White Mountain Apache Tribe, its agents, employees, or attorneys, for any purpose whatsoever.

IN WITNESS WHEREOF, the parties have executed this Lease on the day and year so indicated.

WHITE MOUNTAIN APACHE TRIBE
# ATTACHMENT A

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Shaded area is for the Additional Term