

Neil G. Westesen  
Uriah J. Price  
Griffin B. Stevens  
CROWLEY FLECK PLLP  
P.O. Box 10969  
Bozeman, MT 59719-0969  
Telephone: (406) 556-1430  
Fax: (406) 556-1433  
Email: nwestesen@crowleyfleck.com  
uprice@crowleyfleck.com  
gstevens@crowleyfleck.com

*Attorneys for Plaintiffs*

**IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF  
MONTANA, GREAT FALLS DIVISION**

---

EAGLE BEAR, INC.,

Plaintiff,

vs.

THE BLACKFEET INDIAN NATION  
and DARRYL LaCOUNTE,  
DIRECTOR OF THE BUREAU OF  
INDIAN AFFAIRS,

Defendants.

Cause No. 4:22-cv-00093-BMM

**PLAINTIFF'S BRIEF OPPOSING  
THE BIA'S MOTION FOR  
SUMMARY JUDGMENT  
(DOC. 24)**

---

## TABLE OF CONTENTS

TABLE OF AUTHORITIES .....	3
EXHIBIT INDEX .....	4
INTRODUCTION .....	5
1. Under the Administrative Procedure Act, the BIA is subject to Eagle Bear’s claims because they are non-monetary claims seeking review of and a declaration regarding the BIA’s actions. ....	8
2. Under 11 U.S.C. § 106, the BIA is subject to Eagle Bear’s claims because the continued effect of the Lease and lack of any cancellation by the BIA are issues arising under portions of the bankruptcy code for which sovereign immunity has been waived. ....	12
CONCLUSION.....	17
CERTIFICATE OF COMPLIANCE.....	18
CERTIFICATE OF SERVICE .....	19

## TABLE OF AUTHORITIES

### Cases

<i>Delano Farms Co. v. Cal. Table Grape Comm’n</i> , 655 F.3d 1337 (Fed. Cir. 2011).....	9
<i>In re GWI PCS I Inc.</i> , 230 F.3d 788 (5th Cir. 2000).....	13
<i>In re Straight</i> , 143 F.3d 1387 (10th Cir. 1998).....	13
<i>In re Wilshire Courtyard</i> , 729 F.3d 1279, 1285 (9th Cir. 2013) .....	14
<i>Navajo Nation v. Dep’t of Interior</i> , 876 F.3d 1144 (9th Cir. 2017) .....	9, 10, 11
<i>Pistor v. Garcia</i> , 791 F.3d 1104 (9th Cir. 2015) .....	8
<i>Presbyterian Church (U.S.A.) v. U.S.</i> , 870 F.2d 518 (9th Cir. 1989).....	9, 10, 11

### Statutes

11 U.S.C. § 106.....	passim
11 U.S.C. § 1141.....	12, 13, 14, 15
11 U.S.C. § 1142.....	12, 13, 14, 15
11 U.S.C. § 363.....	12, 14, 15
11 U.S.C. § 365.....	passim
11 U.S.C. § 502.....	12, 13, 14, 15
11 U.S.C. § 541.....	12, 13, 15
11 U.S.C. § 542.....	12, 14, 15
11 U.S.C. § 543.....	12, 13, 14, 15
28 U.S.C. § 1334.....	15
28 U.S.C. §157.....	15
5 U.S.C. § 702.....	5, 9, 10

## EXHIBIT INDEX

### Exhibits Attached to this Brief

None

### Exhibits Referenced in this Brief and the Associated Statement of Disputed Facts

<u>ECF DOC</u>	<u>Description</u>
29-1	Lease
29-2	Dep. of Dawn Gray as 30(b)(6) Designee of Nation
29-10	Dep. of Thedis Crowe
29-16	Dep. of Thedis Crowe
29-17	BIA Ledger of Eagle Bear Payments from 1997-2014
29-20	Dep. of Tracy Tatsey
31-3	Dep. of Stephen Pollock
31-4	Dep. of Cliff Hall
31-16	Letter from Pollock to Eagle Bear (Jan. 17, 2012)
31-17	Letter from Brooke to Pollock (Jan. 26, 2012)
31-18	Letter from Pollock to Eagle Bear (Feb. 7, 2012)
31-19	Letter from Brooke to Pollock (Aug. 8, 2012)
31-20	Email from Tatsey to Brooke (Dec. 1, 2015)
31-21	Email from Messerly to Kline (Sept. 9, 2022)

Plaintiff Eagle Bear, Inc. (“Eagle Bear”) submits this brief opposing the Bureau of Indian Affairs’ (“BIA”) Motion for Summary Judgment (Doc. 24) (“Motion”).

## **INTRODUCTION**

Pursuant to 5 U.S.C. § 702 and 11 U.S.C. § 106, the Bureau of Indian Affairs (“BIA”) is not immune from suit in this matter. To the contrary, the BIA is a necessary and proper party. This dispute concerns a lease approved and administered by the BIA and the nature and effect of the BIA’s actions related to that lease. Ultimately, as an adversary proceeding connected with Eagle Bear’s bankruptcy petition, this dispute concerns whether the lease is a part of Eagle Bear’s bankruptcy estate or whether, as a result of the BIA’s actions, the lease was effectively, finally, and forever cancelled in 2008. Considering that this dispute involves review and interpretation of the BIA’s actions and determinations that will significantly affect Eagle Bear’s bankruptcy estate, the BIA is subject to suit on Eagle Bear’s claims.

## **BACKGROUND**

The background facts giving rise to this dispute have been recited in detail in Eagle Bear’s Brief in Support of Motion for Summary Judgment (Doc. 23). That discussion is incorporated herein by reference. In summary:

Eagle Bear operates a campground (“Campground”) on tribal trust land located on the Blackfeet Indian Reservation. (Eagle Bear’s Statement of Disputed Facts Regarding BIA’s Motion for Summary Judgment ¶ 1 (hereinafter “EB-SDF”). Eagle Bear operates the Campground pursuant to a lease (“Lease”) with the Blackfeet Indian Nation (“Blackfeet Nation”). (EB-SDF ¶¶ 1-2). That Lease is administered by the BIA. (Eagle Bear’s Statement of Undisputed Facts in Support of Motion for Summary Judgment at ¶ 4 (“EB-SUF”).

Since July 2021, the Blackfeet Nation has been arguing that the BIA cancelled the Lease in 2008. (EB-SDF ¶ 4; EB-SUF ¶ 41). Most recently, in May 2022, the Blackfeet Nation relied on its argument that the Lease was cancelled in 2008 as justification for self-help. (EB-SUF ¶¶ 44-45). Ignoring its pending request that the Blackfeet Tribal Court decide the Lease was cancelled in 2008, its pending request that the Interior Board of Indian Appeals (“IBIA”) decide the Lease was cancelled in 2008, and the BIA’s consideration of the issue at the IBIA’s request, the Blackfeet Nation unilaterally concluded that the Lease had been cancelled. (EB-SUF ¶¶ 41-45). Tribal police officers locked Eagle Bear out of the Campground and prevented Eagle Bear from conducting its business. (EB-SUF ¶¶ 45-46).

Eagle Bear was forced into bankruptcy as a result. (EB-SUF ¶¶ 45-46). This bankruptcy temporarily disrupted the pending proceedings involving the 2008

Lease cancellation question. The BIA, for example, stopped considering whether the Lease was cancelled in 2008 as a result of the bankruptcy. (EB-SUF ¶ 109; Doc. 31-21, Email from Messerly to Kline (Sept. 9, 2022)).

Ultimately, however, the bankruptcy allowed Eagle Bear to bring all of the proper parties into a single forum and to properly present the 2008 lease cancellation allegations for the first time. As a result of the bankruptcy process, Eagle Bear was able to present the 2008 lease cancellation question to a federal court that could resolve the question and that could exercise jurisdiction over the Blackfeet Nation, the Bureau of Indian Affairs, and Eagle Bear simultaneously. (*See* Doc. 4, Second Amended Complaint).

Initially, Eagle Bear asked the bankruptcy court to resolve the 2008 Lease cancellation question in this adversary proceeding. (*Id.*) The question of whether the Lease was cancelled in 2008 is now before this Court as a result of the Court's decision to withdraw reference of the adversary proceeding to the bankruptcy court. (Doc. 1, Order).

After years of dispute, this action is the first and best opportunity for the 2008 Lease cancellation argument to be put to rest. Unlike previous proceedings before the BIA, IBIA, and Blackfeet Tribal Court, this proceeding will allow the Court to issue an order that is binding on the parties to the Lease—Eagle Bear and the Blackfeet Nation—and on the party responsible for administering the Lease—

the BIA. The BIA, however, would prefer not to take part in this action or in the resolution of the 2008 Lease cancellation question. It stopped considering the question after bankruptcy was filed, it asserts a lack of knowledge regarding many of the issues relevant to the alleged 2008 Lease cancellation, and it now asks to be dismissed from this case. (EB-SUF ¶¶ 109, 111; Doc. 29-16, BIA’s Responses to Eagle Bear’s First Discovery Requests at 18-19 (Requests for Admission Nos. 1 & 2)). Although the primary issue in this matter involves assessment of the BIA’s actions in 2008, and although the BIA was the only entity able to cancel the Lease, the BIA argues that it is not a party to the Lease, that no relief is sought from the BIA in this case, and that it is immune from suit. (Doc. 25).

### STANDARD OF LAW

Sovereign immunity affects the Court’s jurisdiction. *Pistor v. Garcia*, 791 F.3d 1104, 1110-11 (9th Cir. 2015). “[T]he party asserting subject matter jurisdiction has the burden of proving its existence, i.e. that immunity does not bar the suit.” *Pistor*, 791 F.3d at 1111.

### DISCUSSION

**1. Under the Administrative Procedure Act, the BIA is subject to Eagle Bear’s claims because they are non-monetary claims seeking review of and a declaration regarding the BIA’s actions.**

Section 10(a) of the Administrative Procedure Act (“APA”) contains a waiver of sovereign immunity:



A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof. An action in a court of the United States seeking relief other than money damages and stating a claim that an agency or an officer or employee thereof acted or failed to act in an official capacity or under color of legal authority shall not be dismissed nor relief therein be denied on the ground that it is against the United States . . . .

5 U.S.C. § 702. The BIA’s Motion is predicated on the mistaken assumption that this waiver of sovereign immunity is limited only to actions involving review of final agency actions. (Doc. 25 at 5-6). In truth, the APA’s waiver of sovereign immunity is not so narrow.

Contrary to the BIA’s arguments, the APA’s waiver of sovereign immunity is “broader” than the APA’s provisions regarding judicial review of agency actions and is not limited to claims brought under the APA. *Navajo Nation v. Dep’t of Interior*, 876 F.3d 1144, 1168, 1170 (9th Cir. 2017) (resolving split in earlier decisions by clarifying that APA’s waiver of sovereign immunity is not limited to review of final agency actions or to actions brought under the APA); *Delano Farms Co. v. Cal. Table Grape Comm’n*, 655 F.3d 1337, 1345 (Fed. Cir. 2011); *see also Presbyterian Church (U.S.A.) v. U.S.*, 870 F.2d 518, 525 (9th Cir. 1989). For example, although the APA limits judicial review of agency decisions to “final agency action,” the waiver of sovereign immunity “was meant to be broader than that.” *Delano Farms Co.*, 655 F.3d at 1345. It was meant to “clear up a morass” of “illogical,” “injust[],” and “inconsistent[]” “federal sovereign immunity

jurisprudence” by allowing a “broad waiver of ‘any’ and ‘all’ immunity for non-monetary claims.” *Navajo Nation*, 876 F.3d at 1168, 1172. Thus, the waiver of sovereign immunity applies to “*all* equitable actions for specific relief against a Federal agency or officer acting in an official capacity,” including both actions brought “under the APA” and “[c]laims not grounded in the APA.” *Presbyterian Church*, 870 F.2d at 525 (quoting H.Rep. No. 1656, 94th Cong., 2d Sess. 9) (emphasis in original); *Navajo Nation*, 876 F.3d at 1170. Section 10(a) of the APA, “is an unqualified waiver of sovereign immunity in actions seeking nonmonetary relief against legal wrongs for which governmental agencies are accountable.” *Presbyterian Church*, 870 F.2d at 525; *see also Navajo Nation*, 876 F.3d at 1171 (“§ 702 waives whatever sovereign immunity the United States enjoyed from prospective relief with respect to any action for injunctive relief.”)

Thus, regardless of whether this matter involves review of a “final agency action” under the meaning of the APA or something else, the BIA is subject to suit.<sup>1</sup> Eagle Bear does not seek monetary relief in this matter. (Doc. 4 at pp. 7-8). Instead, Eagle Bear seeks a judicial determination about the meaning of the BIA’s

---

<sup>1</sup> As Eagle Bear explained in its Brief in Support of Motion for Summary Judgment (Doc. 23), this is not a typical administrative review proceeding. The primary question before the Court is not whether the BIA’s decision was correct, but instead, what decision the BIA reached. (Doc. 23 at 8, 22).

actions since 2008 and a declaration that the BIA's actions since 2008 did not cancel a Lease that the BIA proceeded to administer for the next dozen years. (*Id.*)

In particular, the Blackfeet Nation claims that the BIA's June 2008 letter and Eagle Bear's 2009 conditional withdrawal of its appeal effectively cancelled the Lease. (Doc. 28 at 21-22). The BIA disagrees, noting that it has "not taken final action on the 2008 lease cancellation" or on Eagle Bear's appeal from the BIA's June 10, 2008 cancellation letter. (Doc. 25 at 3, 5-6; SDF ¶ 7). Likewise, Eagle Bear also disagrees that the Lease was cancelled. Eagle Bear argues, among other things, that the BIA did not ultimately cancel the Lease and that the June 10, 2008 letter was insufficient to cancel the Lease because the letter was not given with sufficient notice, never took effect because it was timely appealed, and was rendered ineffective once Eagle Bear made its past-due payment and cured its alleged defaults. (*E.g.*, Doc. 4 at ¶¶ 31-35). Eagle Bear asks the Court to resolve this dispute between Eagle Bear, the Blackfeet Nation, and the BIA about the effect and meaning of the BIA's actions.

Because this request is for "nonmonetary relief" related to actions of a "governmental agency," namely the BIA, the BIA's sovereign immunity has been waived. *Presbyterian Church*, 870 F.2d at 525; *Navajo Nation*, 876 F.3d at 1171. The BIA—as the party responsible for administering the Lease, the party whose actions are at issue, and a party with a position contrary to the Blackfeet

Nation's—has an interest in, is a necessary party to, and is not immune from suit on this “equitable action.” *Presbyterian Church*, 870 F.2d at 525; *Navajo Nation*, 876 F.3d at 1171.

**2. Under 11 U.S.C. § 106, the BIA is subject to Eagle Bear’s claims because the continued effect of the Lease and lack of any cancellation by the BIA are issues arising under portions of the bankruptcy code for which sovereign immunity has been waived.**

11 U.S.C. § 106 waives “sovereign immunity” and allows the Court to “hear and determine any issue arising with respect to the application of [various sections of the bankruptcy code] to governmental units.” 11 U.S.C. § 106(a)(1) & (2).

Some of the sections to which this waiver applies are:

- 11 U.S.C. § 363, which concerns the trustee’s use, sale, and lease of property of the bankruptcy estate;
- 11 U.S.C. § 365, which concerns the trustee’s assumption of unexpired leases;
- 11 U.S.C. § 502, which concerns handling of creditors’ claims;
- 11 U.S.C. § 541, which concerns what is property of the bankruptcy estate;
- 11 U.S.C. §§ 542 and 543, which concern the trustee’s possession of estate property; and
- 11 U.S.C. §§ 1141 and 1142, which concerns disposition of estate property upon confirmation of a bankruptcy plan.

Because this adversary proceeding, which arose in the bankruptcy court and has been withdrawn to this Court, concerns application of the foregoing sections of the bankruptcy code to the Lease and to the BIA, the federal agency charged by federal statute and regulation with administering the Lease, the BIA is not immune from suit in the adversary proceeding.

Again, this adversary proceeding is about confirming that, contrary to the Blackfeet Nation's arguments, the BIA never effectively and forever cancelled the Lease and the Lease remains in effect. (Doc. 4 at pp. 7-8). With respect to the overall bankruptcy proceeding, it is about establishing that the valid and existing Lease is part of Eagle Bear's bankruptcy estate. *See* 11 U.S.C. §§ 541(a)(1) & (b)(2); *see In re Straight*, 143 F.3d 1387, 1391 (10th Cir. 1998). This adversary proceeding arises under and relates to 11 U.S.C. §§ 363, 365, 502, 541, 542, and 543 because it will establish whether the bankruptcy trustee may exercise Eagle Bear's rights under the unexpired Lease or, alternatively, whether the BIA cancelled the Lease or the Lease has otherwise been terminated. Likewise, this adversary proceeding arises under and relates to 11 U.S.C. §§ 1141 and 1142 because it will "further the reorganization plan" by identifying and preserving the property in the bankruptcy estate. *See In re GWI PCS I Inc.*, 230 F.3d 788, 804 n. 29 (5th Cir. 2000).

This withdrawn adversary proceeding asks this Court to “hear and determine . . . issue[s] arising with respect to the application of [11 U.S.C. §§ 363, 365, 502, 542, 543, 1141, and 1142] to [a] governmental unit[],” namely the BIA. 11 U.S.C. § 106(a)(2). This Court is acting within its “arising under” jurisdiction with respect to this adversary proceeding because the issues of this adversary proceeding “involve causes of action created or determined by a statutory provision of” title 11. *In re Wilshire Courtyard*, 729 F.3d 1279, 1285 (9th Cir. 2013). The BIA’s sovereign immunity is, therefore, “abrogated” and waived for purposes of this adversary proceeding. 11 U.S.C. § 106(a).

The BIA offers two arguments to the contrary. First, the BIA argues that this matter is no longer a bankruptcy proceeding to which the waiver of sovereign immunity in 11 U.S.C. § 106 applies. (Doc. 25 at 6). The BIA is incorrect. Although this matter is no longer being heard by the bankruptcy court, the matter remains an adversary proceeding subject to and arising under the bankruptcy laws.

As the Court’s order withdrawing the reference makes clear, this Court’s withdrawal did not change the nature of the matter. Pursuant to Montana Federal District Court Standing Order No. DLC-43, this Court refers bankruptcy matters to the bankruptcy court by default. (Doc. 1 at 5). However, this Court retains original jurisdiction over the bankruptcy matters and can hear matters filed in bankruptcy court itself by deciding to withdraw that reference. (*Id.* (citing 28

U.S.C. §§ 157(a), 157(d), & 1334(b)). Doing so does not substantively alter the parties' rights or the nature of the action. (*See* Doc. 1 at 5-6, 12-13). It merely changes the court hearing the dispute. (*See id.*; 28 U.S.C. § 157(d) (“The district court may withdraw, in whole or in part, any case or proceeding referred under this section . . . . The district court shall on timely motion of a party, so withdraw a proceeding if the court determines that resolution of the proceeding requires consideration of both title 11 and other laws of the United States.” (Emphasis added))). Thus, the BIA's argument that withdrawal of the reference alters the waivers of sovereign immunity on which Eagle Bear relies is incorrect. This action remains a case arising out of bankruptcy and remains important to determining the extent of Eagle Bear's bankruptcy estate. (Doc. 4, Second Amended Complaint). Under 11 U.S.C. § 106, any immunity the BIA could otherwise claim has been waived.

Second, the BIA argues that 11 U.S.C. § 106 does not waive the BIA's sovereign immunity because the BIA “is not a party to the lease.” As an initial matter, this argument relates to 11 U.S.C. § 365 and the related waiver of sovereign immunity under 11 U.S.C. § 106. Notably, however, the argument that the BIA is not a party to the Lease does nothing to affect the application of 11 U.S.C. §§ 363, 365, 502, 541, 542, 543, 1141, and 1142 to this adversary

proceeding or the related waiver of sovereign immunity under 11 U.S.C. § 106, as discussed above.

More critically, the BIA's particular status with respect to the Lease—whether as a party, administrator, signatory, or something else—is immaterial to its waiver of sovereign immunity under 11 U.S.C. § 106. Neither 11 U.S.C. § 106 nor § 365 limit the waiver of sovereign immunity to “parties” to unexpired leases. Rather, 11 U.S.C. § 106 waives sovereign immunity to the extent necessary for a court to “hear and determine any issue arising with respect to the application of” 11 U.S.C. § 365 to the BIA. 11 U.S.C. § 106(a)(2) (emphasis added). The adversary proceeding is related to an “issue arising with respect to application of” 11 U.S.C. § 365 because it concerns whether the Lease is an unexpired lease and an asset of the bankruptcy estate under § 541, and whether the trustee may assume or reject the Lease under 11 U.S.C. § 365. Before the trustee can determine whether to assume or reject the Lease under 11 U.S.C. § 365, the Court must first determine whether the Lease is an asset of the bankruptcy estate or, as the Blackfeet Nation argues, that the BIA cancelled the Lease in 2008 and the last twelve years of performance have been of no effect.

The BIA has an interest in that determination. Eagle Bear agrees that the BIA is not a party to the Lease, but the BIA had a significant role in the administration and performance of the Lease. The BIA was a signatory to the



Lease. (EB-SUF ¶ 4; Doc. 29-1, Lease). The BIA was required to approve the Lease, and the Lease was subject to the BIA’s administration. (EB-SUF ¶ 4; Doc. 29-1, Lease). The BIA was responsible for collecting and distributing rent payments and resolving certain disputes between the parties. (EB-SUF ¶ 4; Doc. 29-1, Lease). Critically, the BIA was the *only* party that could terminate the Lease. (EB-SUF ¶ 4; Doc. 29-1, Lease at 19).

Regardless of whether it was a “party” to the Lease, the BIA’s actions are at issue here, the BIA is a necessary and proper party to this matter, and this matter concerns an issue related to application of 11 U.S.C. § 365. The BIA is not immune from suit in this adversary proceeding pursuant to 11 U.S.C. § 106.

### CONCLUSION

For the foregoing reasons, the BIA is not immune from suit in this matter and the Court should deny the BIA’s motion.

Dated this 14th day of December, 2022.

CROWLEY FLECK PLLP

By /s/ Neil G. Westesen  
Neil G. Westesen  
Uriah J. Price  
Griffin B. Stevens  
P.O. Box 10969  
Bozeman, MT 59719-0969

Attorneys for Plaintiffs

## CERTIFICATE OF COMPLIANCE

Pursuant to L.R. 7.1(d)(2)(E), I certify that this brief is printed with proportionately spaced Times New Roman text typeface of 14 points; is double-spaced; and the word count, calculated by Microsoft Office Word, is 3,019 words long, excluding the Caption, the Certificates of Service and Compliance, Tables of Contents and Authorities, and Exhibit Index.

Dated this 14th day of December, 2022.

CROWLEY FLECK PLLP

By /s/ Neil G. Westesen  
Neil G. Westesen

## CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of December, 2022, a true and correct copy of the foregoing was delivered by the following means to the following:

U.S. Mail                    Joseph J. McKay  
 FedEx                         P.O. Box 1803  
 Hand-Delivery             Browning, MT 59417  
 E-Mail                         [powerbuffalo@yahoo.com](mailto:powerbuffalo@yahoo.com)  
 ECF

Derek E. Kline  
P.O. Box 1577  
Center Harbor, NH 03226  
[derekekline@gmail.com](mailto:derekekline@gmail.com)  
*Attorney for Defendant Blackfeet Indian Nation*

U.S. Mail                    Lynsey Ross  
 FedEx                         Assistant U.S. Attorney  
 Hand-Delivery             U.S. Attorney's Office  
 E-Mail                         2601 Second Avenue N, Suite 3200  
 ECF                             Billings, MT 59101  
[lynsey.ross@usdoj.gov](mailto:lynsey.ross@usdoj.gov)

John M. Newman  
Assistant U.S. Attorney  
U.S. Attorney's Office  
101 E Front Street, Suite 401  
P.O. Box 8329  
Missoula MT 59801  
[John.newman@usdoj.gov](mailto:John.newman@usdoj.gov)  
*Attorneys for Darryl LaCounte, Director of the Bureau of Indian Affairs*

U.S. Mail                      Charles E. Hansberry  
 FedEx                              Jenny M. Jourdonnais  
 Hand-Delivery                  HANSBERRY & JOURDONNAIS, PLLC  
 E-Mail                              2315 McDonald Avenue, Suite 210  
 ECF                                  Missoula, MT 59801  
   [Chuck@HJBusinessLaw.com](mailto:Chuck@HJBusinessLaw.com)  
   [Jenny@HJBusinessLaw.com](mailto:Jenny@HJBusinessLaw.com)  
   *Attorneys for Independence Bank*

/s/ Neil G. Westesen  
Neil G. Westesen