

RESOLUTION OF THE
RESOURCES AND DEVELOPMENT COMMITTEE
24th Navajo Nation Council --- Second Year, 2020

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT COMMITTEE; APPROVING
AMENDMENTS TO THE KAYENTA TOWNSHIP BUSINESS SITE LEASING
ADMINISTRATIVE AND MANAGEMENT PLANS

BE IT ENACTED:

SECTION ONE. AUTHORITY

The Navajo Nation established the Resources and Development Committee as a standing committee of the Navajo Nation Council and empowered the Committee to give final approval for Business Site Leasing Administrative and Management Plans, including proposed amendments for, *inter alia*, the Kayenta Township, in accordance with the Navajo Nation Business Leasing Regulations of 2005. 2 N.N.C. §§ 500(A) and 501(B)(2)(f).

SECTION TWO. FINDINGS

- A. By Resolution No. CAU-47-03 (Aug. 29, 2003), the Kayenta Township ("Township") was permanently made a home rule municipality of the Navajo Nation and the Kayenta Township Commission ("Commission"), the Township's governing body, was given broad authority to perform all functions necessary for local self-government consistent with generally applicable laws of the Navajo Nation and federal government. See 2 N.N.C. §§ 4081 and 4084, as amended.
- B. By Resolution No. EDCJN-28-09 (June 3, 2009), attached as **Exhibit A**, the former Economic Development Committee approved the Kayenta Business Site Leasing Administrative and Management Plans for the Township as part of its delegation of approval authority to the Township for business site leases for lands within the jurisdiction of the Township, with the exception of those business site leases under the leasing authority of the Navajo Nation Shopping Centers Corporation.


- C. After the adoption of Resolution No. EDCJN-28-09, the Commission, based on advice from the Township's Business Site Leasing Committee ("BSL Committee"), determined that amendments to the Kayenta Business Site Leasing Administrative and Management Plans (the "Proposed Plan Amendments") would: (1) improve and elaborate on the appeals procedure for lease actions; (2) update and correct definitions, including Township Department names; (3) enumerate specific data to be used in appraisals or their equivalent; (4) clarify when subleasing will be permitted under business site leases, including where such subleasing would be done by a wholly owned entity of the Township; (5) clarify and enumerate the types of incentives available for attracting new businesses to the Township for purposes of economic development; and (6) make such other minor corrections and edits as are appropriate and needed, consistent with the Navajo Nation Business Leasing Regulations of 2005 and the 2008 Uniform Business Leasing Regulations.
- D. The Proposed Plan Amendments, attached as **Exhibits B and C**, have been reviewed and deemed sufficient by the Navajo Nation Department of Justice. See **Exhibit D**.
- E. Supporting resolutions of the Commission and the BSL Committee are attached as **Exhibit E**.

SECTION THREE. APPROVAL

- A. The Navajo Nation hereby approves the amendments to the Kayenta Business Site Leasing Administrative and Management Plans as set forth in **Exhibits B and C**.
- B. All business site leasing documents approved by the Commission and Township after the date this Resolution is adopted by the Resources and Development Committee shall comply with the Kayenta Business Site Leasing Administrative and Management Plans as amended here.
- C. This Resolution shall be identified by number and date in the appropriate places in Sections 1.3 of the amended Plans, respectively.
- D. Apart from the amendments to the Kayenta Business Site Leasing Administrative and Management Plans set forth in **Exhibits B and C**, Resolution No. EDCJN-28-09 shall remain in full force and effect.

CERTIFICATION

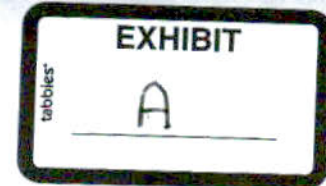
I, hereby, certify that the following resolution was duly considered by the Resources and Development Committee of the 24th Navajo Nation Council at a duly called meeting at the Navajo Nation Council Chambers, Window Rock, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 5 in favor, and 0 opposed, on this 22nd day of January 2020.



Rickie Nez, Chairperson
Resources and Development Committee
of the 24th Navajo Nation Council

Motion: Honorable Mark A. Freeland
Second: Honorable Wilson C. Stewart, Jr.

Chairperson Rickie Nez not voting.



EDCJN-28-09

**RESOLUTION OF THE
ECONOMIC DEVELOPMENT COMMITTEE
OF THE NAVAJO NATION COUNCIL**

21ST NAVAJO NATION COUNCIL – THIRD YEAR, 2009

AN ACTION

Relating to Economic Development; Authorizing the Delegation of Approval Authority for Business Site Leases to Kayenta Township and Approving the Kayenta Township Administrative and Business Site Leasing Management Plan and Part II, Standard Terms and Conditions for Kayenta Township Business Site Leases (Navajo Trust Land).

BE IT ENACTED:

1. The Navajo Nation pursuant to N.N.C. §724 (B)(2) and the Economic Development Committee Uniform Business Leasing Regulations of 2008, Chapter 200 §201, (1.3), hereby authorizes the delegation of approval authority for business site leases to Kayenta Township except for those business site leases under the leasing authority of the Navajo Nation Shopping Centers Corporation.
2. The Navajo Nation, pursuant to the Economic Development Committee Uniform Business Leasing Regulations of 2008, Chapter 200, §202, (2.2), hereby approves the Administrative and Business Site Leasing Management Plan for Kayenta Township, as found within Exhibit "A" at Tab "4" attached hereto.
3. The Navajo Nation, pursuant to the Economic Development Committee Uniform Business Leasing Regulations of 2008, Chapter 400, Business Site Lease Requirements, § 401, hereby approves Part II, Standard Terms and Conditions for Kayenta Township Chapter Business Site Leases (Navajo Nation Trust Land), as found attached at Tab "4" within Exhibit "A".
4. The Navajo Nation, pursuant to the Economic Development Committee Uniform Business Leasing Regulations of 2008, Chapter 400, Business Site Lease Requirements, § 408, hereby approves the Kayenta Township Modification of Lease, Kayenta Township Assignment of Lease, Kayenta Township Emergency Operating Agreement, Kayenta Township Mutual Termination of Business Site Lease and the Kayenta Township Security Deposit Agreement as found at Tab "4" within Exhibit "A".

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Economic Development Committee of the Navajo Nation Council at a duly called meeting held at Kayenta, Navajo Nation (Arizona), at which a quorum was present and that the same was passed by a vote of 4 in favor, 0 opposed, this 3rd day of **June, 2009**.



Lawrence R. Platero, Chairman
Economic Development Committee

Motion: Tom LaPahe
Second: Katherine Benally

Kayenta Township Business Site Lease Management Plan and Administrative Plan

APPROVED BY THE DIVISION OF ECONOMIC DEVELOPMENT:


Allan Begay, Division Director


5/27/09
Date

CONCURRENCE:


Jeanette Jones, Chairperson
Division of Economic Development Review Team

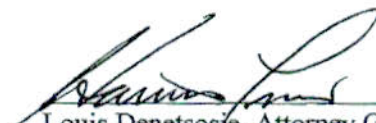
05/27/09
Date

REVIEWED AS TO LEGAL FORM AND CONTENT:


Kays N. Begay, Attorney
Navajo Nation Department of Justice

5/28/09
Date

CONCURRENCE:


Louis Denetsosie, Attorney General
Office of the Attorney General

5/28/09
Date

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KAYENTA TOWNSHIP

BUSINESS SITE LEASING MANAGEMENT PLAN

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1.0 EXECUTIVE SUMMARY.

- 1.1. This Management Plan ("Plan") provides the Kayenta Township ("Township") leasing staff with policy, direction and guidance in the management of business site leases and related documents within the boundaries of the Township.
- 1.2. Legal Framework: 25 U.S.C. § 415(e), as amended, Navajo Nation Business Site Leasing Act of 2000, 5 N.N.C. §§ 2301-2306 (2005), as amended, Navajo Nation Business Leasing Regulations of 2005, as amended, Economic Development Committee Uniform Business Leasing Regulations of 2008, as amended, Kayenta Township Business Site Leasing Ordinance, as amended, and Kayenta Township Business Site Leasing Regulations, as amended.
- 1.3. Administrative Framework: The Kayenta Township Commission ("KTC") has the authority and responsibility to govern for the welfare of the Township and its residents, including the enactment of such ordinances, rules, regulations, policies and procedures as it deems in the best interest of the Township. See ACN-181-86 (Nov. 13, 1986) (established boundaries for the Township); CJY-42-03 (July 25, 2003) and CAU-47-03 (Aug. 29, 2003) (established Home Rule).
- 1.4. Amendment of the Plan: The Business Site Leasing Committee may recommend amendments to this Plan subject to approval by the Economic Development Committee of the Navajo Nation Council ("EDC") in accordance with the laws and regulations of the Navajo Nation and Township.
- 1.5. The definitions of the Kayenta Township Business Site Leasing Administrative Plan ("Administrative Plan") will apply to this Plan.
- 1.6. Severability:
If a court of competent jurisdiction determines a provision in the Kayenta Township Business Site Leasing Management Plan is invalid, void or unenforceable, it shall be stricken and the remainder shall remain in full force and effect.

2.0 LEASE COMPLIANCE.

- 2.1. ED Department responsibilities:
Upon execution of a business site lease ("lease") by all parties:
 1. Collect the appropriate administrative fee. See Section 2.4. of the Administrative Plan.
 2. Ensure a number is assigned to the lease by RED. See Section 4.7.2. of the Administrative Plan and Section 6.3.6. of this Plan.
 3. Obtain a Security Deposit from the lessee to guarantee the annual rental of the lease. See Section 4.3.6. of the Administrative Plan.
 - a. The Security Deposit can be in the form of cash, letter of credit or certificate of deposit.
 - b. The Security Deposit may be waived or postponed under certain

circumstances, (see Section 4.3.6 of the Administrative Plan); such waiver or postponement must be incorporated into the lease terms and conditions.

- 1) If the Security Deposit is waived, no further action is necessary.
- 2) If the Security Deposit is postponed, the ED Department shall send written notice to the lessee within ninety (90) days before the date the Security Deposit is due, which shall include the following:
 - a) The actual due date of the Security Deposit;
 - b) That lessee must notify the ED Department within thirty (30) calendar days of the notice if lessee is unable to post the Security Deposit; and
 - c) That if lessee fails to post a Security Deposit within ninety (90) calendar days of the notice, the lease will be subject to termination. See Section 7.0. of this Plan.
- 3) If the Security Deposit is not waived or postponed, the ED Department shall send written notice to the lessee within thirty (30) calendar days from the signature of the President, which shall include the following:
 - a) The actual due date of the Security Deposit;
 - b) That lessee must notify the ED Department within thirty (30) calendar days of the notice if lessee is unable to obtain a Security Deposit; and
 - c) That if lessee fails to post a Security Deposit within forty-five (45) calendar days of the notice, the lease will be subject to termination. See Section 7.0. of this Plan.
- c. If lessee is unable to post the Security Deposit:
 - 1) The lease shall be subject to termination. See Section 7.0. of this Plan.
 - 2) Lessee shall notify the ED Department within thirty (30) days of the notice and explain why he is unable to post a Security Deposit.
 - 3) Upon lessee's notification, the ED Department may:
 - a) Allow lessee to deposit any other guarantee deemed acceptable for a minimum of one (1) year's rental fees;
 - b) Reduce the Security Deposit amount, but which shall not be less than 25% of one year's rental; or
 - c) Terminate the lease. See Section 7.0. of this Plan.
4. Obtain the required insurance within thirty (30) days of the execution of the lease. See Section 4.3.6.g. of the Administrative Plan.

2.2. Rental compliance.

The ED Department and Finance Department shall ensure that the rental payments are timely and lessee is not in default.

1. Late Charges:
 - a. Rental is due on the date specified in the lease.
 - b. If the rental payment is not received within ten (10) days following the due date, a late fee of 10% of the rental due for the month shall be charged.

- c. If the rental payment is not received within sixty (60) days following the due date, another late fee of 10% of the past due rental shall be charged.
 - d. If the rental payment is not received within ninety (90) days following the due date, another late fee of 10% of the past due rental shall be charged, and the lease will be subject to termination. See Section 7.0. of this Plan.
 - e. Any late rentals charged and paid may be prorated for the month.
 2. It is the lessee's responsibility to ensure that the rental payment is paid before 3:00 pm at the Finance Department on or before the due date of the rental.
 3. Failure of the Finance Department to send notices or invoices to the lessee does not relieve the lessee of his obligation to pay rent on a timely basis.
 4. Rental received shall be posted to the lessee's account and deposited in the bank as soon as possible.
- 2.3. Annual lease compliance.
- The ED Department shall conduct an on-site inspection of all leases on an annual basis, to ensure compliance with the lease terms and conditions.
1. A written Annual Lease Compliance Report ("Lease Compliance Report") shall be completed by July 1 of each year.
 2. The ED Department shall prepare and complete the Lease Compliance Report, a site status report ("Status Report") and a Property Inventory Form after completion of the on-site inspection.
 3. If the lessee is not in compliance with the terms and conditions of the lease, the ED Department shall initiate and implement the enforcement provisions under Section 8.0. of this Plan.
- 2.4. Property inventory form.
- The ED Department shall complete the Property Inventory Form during the on-site inspection.

3.0. ENVIRONMENTAL REVIEW.

- 3.1. The Navajo Nation Business Site Leasing Regulations of 2005 provide that if a NEPA type review was completed and "A Finding of No Significant Impact" ("FONSI") has been issued, the lessee may use such document to meet its environmental compliance determination obligations. See § 806. The Township has conducted an Environmental Assessment, dated April 1, 1999, for which the Bureau of Indian Affairs issued a FONSI on July 21, 1999. The Township also conducted several Archaeological Clearances dated July 17, 1987, September 8, 1987 and October 20, 1987. These reports cover all lands located within the boundaries of the Township and are on file with the RED. Thus, those documents will be used to determine whether any further action is necessary during the Environmental Review ("ER") process of all leases. Generally, the ER requirements of this Section 3.0. will not apply to a lease on lands for which: 1) an Environmental Assessment and Archaeological Clearance have been conducted; 2) will not involve hazardous substances, including but not limited to, underground or above ground storage tanks, asbestos, and discharge of emissions or effluents; or 3) will not impact, alter or disturb the biological or cultural resources.

3.2. New leases, renewals, options to renew, modifications, novations, subleases, assignments or collateral assignment of leases:

1. Subject to Section 3.1 of this Plan, an ER may not be required for any of the following:
 - a. A new lease that contains lands for which an Environmental Assessment and Archaeological Clearance have already been conducted and will not create any new disturbance.
 - b. A lease that involves a decrease in the acreage of the land leased or any other change that does not involve hazardous substances.
 - c. A lease that involves a decrease in the acreage of the land leased or any other change that will not impact, alter or disturb the biological or cultural resources.
 - d. Extending the term of the lease with no other changes.
 - e. Renewing or exercising an option to renew lease without any significant changes in the terms and conditions of the lease.
 - f. A modification, novation, assignment or transfer of a lease without any significant changes to the terms and conditions of the lease.
 - g. A collateral assignment of a lease.
 - h. Construction of improvements (buildings) on the leased premises for the permitted business purpose, without an increase in the acreage of land or without any changes in the terms or conditions of the lease.
 - i. Any increase in the value of improvements.
 - j. Any change in the rent or rental adjustments as permitted in the lease.
 - k. Any waiver, postponement or change in the Security Deposit, construction bond or insurances.
 - l. Any demolition or removal of a building that does not involve potential environmental contamination. (E.G., hazardous substances, including but not limited to, underground or above ground storage tanks and asbestos, and discharge of emissions or effluents.)

If the lease involves any of the above, proceed to Sections 3.3. of this Plan.

2. Subject to Section 3.1. of this Plan, an ER shall be required for any of the following:
 - a. Any lease for lands for which an Environmental Assessment and/or Archaeological Clearance have not been conducted.
 - b. Any Business Site Leasing Transaction that will involve hazardous substances, including but not limited to, underground or above ground storage tanks, asbestos, and discharge of emissions or effluents.
 - c. Any Business Site Leasing Transaction that will impact, alter or disturb the biological or cultural resources.
 - d. Any existing lease, for which an ER was not properly conducted or where not all impacts were addressed in the initial ER.
 - e. Any change in the purpose(s) of the lease that would dramatically transform the business (e.g., from an office building to a gas station).

- f. Any demolition or removal of any building or improvements that involves potential environmental contamination (e.g., hazardous substances, including but not limited to, underground or above ground storage tanks and asbestos, and discharge of emissions or effluents).

If the lease involves any of the above, proceed to Section 3.3. of this Plan.

3.3. ER process.

1. If the leasing activity falls under Section 3.2.1. above, the ED Department shall state the exception on the Environmental Summary form. There is no need to fill out the rest of the Environmental Summary form. The ED Department shall submit the Environmental Summary with all required documents to RED for review in accordance with RED's Environmental Policy and signature.
2. If the leasing activity falls under Section 3.2.2. above, the ED Department shall fill out the Environmental Summary form. The ED Department shall submit the Environmental Summary with all required documents to RED for review in accordance with RED's Environmental Policy and signature.

3.4. Public notice and review.

1. If RED determines that the proposed lease involves hazardous substances or critical impacts to the Nation's biological or cultural resources, it may publish a notice of such impact and of its intent to certify that the lessee has completed the ER process in a newspaper of general circulation.
2. The notice must provide an opportunity for public comments within a thirty (30) day period, and the notice must inform the public of the procedures for review and comment.
3. Any public comments received must be taken into consideration in the ER.

3.5. ER record.

1. RED shall maintain a record of the ER conducted for each Business Leasing Transaction pursuant to applicable laws and regulations.
2. The ER record must contain:
 - a. The compliance determination;
 - b. Any correspondences;
 - c. Any supporting documents;
 - d. Environmental Summary;
 - e. Public notice, if any; and
 - f. Public comments, if any.
3. The ER record and ER documents must be available for public review at all times during normal business hours.

4.0. APPRAISAL OR EQUIVALENT PROCEDURE.

4.1. Implementation.

1. The ED Department shall conduct an appraisal or an equivalent procedure for the purpose of determining the Lease Rental by:

- a. Contracting with Appraiser(s) to conduct appraisals or equivalent procedures;
 - b. Assisting all contracted Appraisers with data and information; and
 - c. Reviewing all appraisals or equivalent procedures reports.
 2. Appraisals shall be conducted for:
 - a. lands redesignated for business purposes, which were not included in the Kayenta Township Real Estate Market Study ("Market Study"); or
 - b. business sites involving unusual or extraordinary circumstances, for example, when no comparable data exists for a large business to be established.
 3. Equivalent procedures shall be used in all other cases not identified in Section 4.1.2.
- 4.2. Objectives.
- The objectives of the Township are to:
1. Provide uniform, equitable and credible services consistent with the standards of the appraisal profession to appraise or value all existing improvements and lands designated for business purposes by either an appraisal or equivalent procedure.
 2. Design a streamlined process to optimize and expedite the flow of appraisals or equivalent procedures.
 3. Comply with policies established by RED for the prompt and complete processing of appraisals or equivalent procedures.
- 4.3. Criteria for Appraisers.
1. All Appraisers who perform appraisals or equivalent procedures shall:
 - a. Complete the appraisal or equivalent procedure in compliance with the Uniform Standards of Professional Appraisal Practice ("USPAP").
 - b. Meet the requirements of Standards Rule 2-2(a) (i.e., the content of a self-contained Appraisal or equivalent procedure report must be consistent with the intended use of the appraisal) and comply with the Competency Rule, including geographic competency.
 - c. Be licensed and in good standing in the same state of the property to be appraised.
- 4.4. Appraisals or equivalent procedures reports.
1. The appraisal or equivalent procedure shall determine the fair annual lease value of the existing improvements and lands designated for business purposes utilizing generally accepted appraisal methodologies and the data required by this Section 4.0. For leases generating more than \$1,000,000.00 of revenues, the appraisal or equivalent procedure may also address percentage rents.
 2. The Township or the Navajo Nation shall have the right to promulgate supplemental standards and to change such standards as deemed necessary. The Appraiser must familiarize himself with any applicable supplemental standards and comply with them.
 3. The Appraiser shall:

- a. Certify that the appraisal or equivalent procedure report was prepared in compliance with the USPAP and any supplemental standards promulgated by the Township or Navajo Nation;
 - b. Include an acknowledgment in the appraisal or equivalent procedure report that it is subject to review by the Township and RED and the right of the Township and/or the Navajo Nation to either reject or require specific changes to the report;
 - c. Include a statement in the report agreeing to protect the confidentiality of all information obtained during the appraisal process relative to Navajo Nation trust lands and businesses;
 - d. Attach a log describing the appraisal or equivalent procedure;
 - e. Include a copy of his license in the appraisal report or equivalent procedure report; and
 - f. Comply with all applicable federal, state and Navajo Nation regulations.
4. The ED Department shall provide a copy of the appraisal to RED to ensure compliance with USPAP.

4.5. Kayenta Township Real Estate Market Study ("Market Study").

- 1. The Township shall contract with an independent Appraiser to conduct a Market Study (as an equivalent procedure) to:
 - a. Value all sites designated for business purposes; and
 - b. Recommend an optimal rental structure for such business sites.
- 2. The Appraiser shall:
 - a. Review the following information for each business site:
 - 1) improvement costs;
 - 2) replacement costs;
 - 3) earning capacities;
 - 4) sales; and
 - 5) lease data of comparable sites.
 - b. Generate a data base after analysis of the above five factors and consistent with the regulations and this Plan.
 - c. Recommend a rental structure for similar groups of businesses, which the ED Department shall utilize to negotiate rents to be charged for new businesses or existing businesses that novate or renew their leases.
- 3. The Market Study shall be updated every five years. A copy of the study shall be provided to RED for review to ensure compliance with USPAP.

5.0. FILE MANAGEMENT.

- 5.1. Lease files shall be maintained by the ED Department for each lessee in accordance with the Navajo Nation Privacy Act, 2 N.N.C. §§ 81-92 (2005). Files shall be kept for a minimum of five (5) years after the expiration or termination of the lease. Thereafter, all files shall be digitized and archived by the ED Department and the paper documents may be destroyed.

- 5.2. All files shall contain the following documents for all approved leases:

1. Legal opinions or reviews;
 2. All correspondence;
 3. Summary sheets of supporting documents;
 4. Lease application;
 5. Resolutions;
 6. Clearance documents;
 7. Other documents;
 8. Approved lease;
 9. Survey plat;
 10. All exhibits;
 11. Organizational documents (charter, bylaws, etc.);
 12. Security Deposits and insurance certificates;
 13. Receipts for fees;
 14. Appraisal report or equivalent procedure determination;
 15. Environmental review report;
 16. Archaeology inventory and cultural resources compliance forms;
 17. Financial and accounting information;
 18. Enforcement and compliance information; and
 19. Miscellaneous.
- 5.3. The ED Department shall scan all documents, to the extent practicable, and index all files, during the term of each lease.
- 6.0. FINANCIAL MANAGEMENT.**
- 6.1. Definitions for purposes of this Section.
1. *Billing* means the Invoice process.
 2. *Invoice* means a written and detailed record of rental and other charges due from the lessee with specific amounts for each item and sent to the lessee as a request for payment.
- 6.2. Accounting system.
1. The Finance Department shall utilize an automated accounting system tailored to the needs of municipalities.
 - a. The applications shall include an Accounts Payable, Accounts Receivable and Asset Management.
 - b. The accounting for leases shall be maintained under the Accounts Receivable component of the accounting system.
 2. The accounting system shall be capable of:
 - a. generating invoices in advance of the due date;
 - b. accounting for all payments; and
 - c. generating statements for the lessees upon request.
 3. The accounting information maintained for each lessee shall include the name, address and telephone numbers of the lessee, business site lease number, due dates for rental payments and applicable Township taxes, amounts due, payments made, late charges, collection efforts, cancellation efforts, balance due,

cumulative payments, cumulative balance due, and the dates when rate adjustments are scheduled to be made.

6.3. Accounting procedures.

1. The Finance Department shall generate invoices for lease rentals due for each month and transmit such invoices to the appropriate lessees by the 15th day of the month preceding the month for which the rental is due.
2. The lessee shall make payments on lease rentals by the first (1st) day, but no later than the tenth (10th) day, of the month for which the rental is due.
3. A lease established after the first day of any month shall have their charges prorated for the first month the lease is in effect, respectively,
4. All rental payments shall be made by business check, cashier's check or money order payable to the Kayenta Township and hand delivered to the Township Office or mailed to P. O. Box 1490, Kayenta, AZ 86033.
 - a. If a lessee's business check is returned at any time for insufficient funds or for any other reason, the lessee will no longer be permitted to pay its rental payments by business checks.
 - b. No cash or personal checks will be accepted.
5. The Township shall comply with the Navajo Business and Procurement Act in the administration of all leases. Thus, if a lessee, whether an individual, business, corporation, partnership or other organization, has an outstanding debt or delinquent accounts receivable owing to the Township or the Navajo Nation, the Finance Department may offset any such outstanding debt or delinquent accounts receivable against the amounts owed to the lessee, and forward any amounts due to the Township or Navajo Nation Office of the Controller, as the case may be.
6. All leases shall be assigned a lease number and recorded by RED.
7. A Status Report on each lease shall be prepared by July 1 of each year. The report shall indicate whether the lease is active or inactive, or whether the lessee is a holdover or deceased or has abandoned the leased premises. When a lessee is deceased or has abandoned or closed the business, the Finance Department shall cease billing the lessee.
8. Any "Settlement Agreement" reached between a lessee and the Township shall be filed in the lessee's file and the Finance Department shall cease billing the lessee after such agreement has been fully executed.
9. All lease information shall be kept confidential. The Township shall not disclose any such confidential information to third parties (except appropriate departments of the Navajo Nation) without the lessee's written permission.

6.4. Financial reports.

The Finance Department shall prepare an annual accounts receivable report by June 1 of each year, verify such report with the ED Department, and forward a copy of such report to RED.

6.5. Audits.

1. The Navajo Nation Office of the Auditor General and the Township shall be permitted to conduct random audits of the leases at any time.

2. If conducted by the Township, a copy of the completed audit report shall be provided to the Navajo Nation Office of the Auditor General.
3. If conducted by the Navajo Nation Office of the Auditor General, a copy of the completed audit report shall be provided to the Township.

7.0. TERMINATION.

7.1. If an Appeal is filed.

If at any time the lessee files an appeal with the Office of Hearings and Appeals or an Appeals Officer appointed by the BSL Committee, any steps to terminate the lease shall immediately cease. See Section 9.0. of this Plan.

7.2. Mutual termination.

Mutual termination of a lease shall occur when the lessee and ED Department both agree to terminate the lease. Any outstanding financial or environmental obligations of the lessee shall survive the termination of the lease. See Section 8.5.1. of this Plan.

7.3. Unilateral termination.

If lessee is in default of the terms and conditions of the lease, including but not limited to, the rental, purpose, unlawful use, accounting, improvements, non-development, security deposit, insurance, sublease, assignment, transfer, management agreement, encumbrance, lien, taxes, assessments, utility charges, sanitation, holdover, trespass and abandonment provisions, the ED Department may unilaterally terminate such lease. See Section 8.0. of this Plan.

7.4. Expiration/Option to Renew.

If the lessee has not notified the ED Department within a reasonable time to renew a lease, the lease shall be considered to have expired.

1. To avoid expiration of a lease, the lessee must notify the ED Department of its intent to renew or to exercise an option to renew the lease at least one (1) year prior to the expiration date of the lease.
2. If the lessee does not notify the ED Department of its intention to renew or exercise an option to renew the lease in a timely manner, the ED Department shall notify the lessee of the:
 - a. Date of expiration of the lease or the option to renew the lease.
 - b. Request that the lessee respond within ten (10) working days.
3. Response process:
 - a. If the lessee begins the process to renew the lease or exercise the option, the ED Department should proceed to Sections 5.0. or 6.0. of the Administrative Plan, whichever is applicable.
 - b. If the lessee does not respond within the ten (10) day time limit, the lease shall be considered expired and the ED Department may begin the process for a forcible detainer action and/or trespass against the lessee.

7.5. Property management.

The ED Department shall inspect and inventory all improvements located on the leased

premises within thirty (30) days after the expiration, termination or abandonment of a lease. A copy of the Inventory shall be submitted to the Navajo Nation Environmental Protection Agency and Navajo Nation Risk Management Program.

8.0. ENFORCEMENT, RELIEF AND REMEDIES.

8.1. The ED Department shall be responsible for enforcing the terms and conditions of the lease, including but not limited to, collections, obtaining insurance proceeds, and collecting the Security Deposit.

1. If at any time the lessee files a claim or appeal with the Office of Hearings and Appeals or an Appeals Officer appointed by the Township, any steps to terminate the lease shall immediately cease. See Section 9.0. of this Plan.
2. The ED Department shall consult with the Township's legal counsel for any legal advice or legal action that may be necessary.

8.2. Defaults.

1. Defaults shall include without limitation the following:
 - a. Failure to pay rent, late charges, payments under repayment plans, and other required charges;
 - b. Conducting business outside the leased premises;
 - c. Conducting business without a valid lease;
 - d. Conducting business not authorized by the lease;
 - e. Conducting unlawful business or conduct on the leased premises;
 - f. Unauthorized holding over;
 - g. Assigning, subleasing or transferring a lease without the approval of the BSL Committee pursuant to Sections 9.0., 10.0. and 11.0. of the Administrative Plan;
 - h. Failure to complete development within the permitted Development Period;
 - i. Failure to commence development on the leased premises within a reasonable period of time after commencement of the lease, in the discretion of the ED Department;
 - j. Unlawful construction or violation of any applicable building codes;
 - k. Failure to submit or to maintain any required Security Deposit throughout the term of the lease;
 - l. Failure to post or to maintain any construction bond required during the construction period;
 - m. Failure to submit or to maintain any required insurance throughout the term of the lease;
 - n. Violation of health codes and standards;
 - o. Commission of malpractice for professional offices;
 - p. Failure to remove any liens placed on the leased premises;
 - q. Failure to pay any required taxes;
 - r. Failure to pay any utility payments necessary for the health and safety of customers and employees;
 - s. Failure to comply with any required environmental laws, including but not

- limited to, those related to hazardous and regulated substances and underground or aboveground storage tanks;
 - t. Failure to comply with the Navajo Preference in Employment Act;
 - u. Failure to comply with any applicable federal, Navajo Nation or Township laws or regulations; and
 - v. Any other violation or breach of the terms and conditions of the lease.
2. If a default has occurred, the ED Department shall proceed to Section 8.3. of this Plan. If a default will cause death, injury or sickness to any person, then the ED Department shall proceed to Section 8.7. of this Plan.
- 8.3. Default process.
- 1. Once a default has occurred, the ED Department shall immediately send written notice to the lessee, which must include the following:
 - a. The date the default occurred;
 - b. A description or determination of the default;
 - c. The remedies available;
 - d. Applicable laws and regulations;
 - e. Possible termination of the lease and collections on the Security Deposit and/or insurance;
 - f. Inform the lessee of three options:
 - 1) Cure the default within the specified time;
 - 2) Request additional time to cure the default; or
 - 3) Dispute the determination of the default; and
 - g. The actual date by which the lessee must respond to the notice.
 - 2. The notice must be given by certified mail, return receipt requested.
 - 3. The lessee shall have ten (10) days from the date of the notice to respond.
- 8.4. Response process.
- 1. If the lessee cures the default on a timely basis, no further action is necessary.
 - 2. If the lessee requests additional time, the ED Department will proceed as follows:
 - a. Send notice to the lessee allowing the additional time for a response, in the ED Department's discretion.
 - b. If additional time is granted, it shall be no less than ten (10) days and no more than ninety (90) days, depending on the circumstances; however, the lessee should be encouraged to resolve the default as quickly as possible.
 - c. The ED Department shall consider whether the lessee is diligently pursuing the cure in granting the additional time.
 - d. If the default cannot be cured within the specified time, the lessee may request additional time and the ED Department in its discretion may grant a second extension.
 - e. If the default is not cured within the additional time granted, the ED Department may proceed to Section 8.5. of this Plan.
 - 3. If the lessee chooses to dispute the determination of the default, the lessee must provide a full explanation in writing to the ED Department by certified mail, return receipt requested or by personal delivery to the Township Office within ten (10) days of the date of the notice.

- a. The ED Department may request a legal opinion from legal counsel.
- b. If legal counsel determines that there is no default, no further action is necessary.
- c. If legal counsel determines that there is a default and if the lessee continues to dispute the default, the ED Department shall meet with the lessee to resolve the dispute.
- 4. If the lessee does not respond within the time allowed or refuses to cooperate to resolve the default, the ED Department shall proceed to Section 8.6. of this Plan.
- 5. If the lessee appeals, the ED Department shall proceed to Section 9.0. of this Plan.

8.5. Compromise.

- 1. If the lessee is not able to cure but is willing to cooperate with the Review Team to resolve the default, the lessee may compromise with the Review Team by agreeing to a mutual termination of the lease.
 - a. Mutual termination may be granted:
 - 1) During the Development Period without a penalty.
 - 2) At any other time with or without a penalty, in the discretion of the ED Department.
 - b. The lessee shall send notice to the ED Department requesting mutual termination of the lease.
 - c. The ED Department shall:
 - 1) Obtain written clearance from the appropriate authorities to verify the Applicant's compliance with the Navajo Business and Procurement Act.
 - 2) Obtain written clearance from the Navajo Environmental Protection Agency regarding any environmental matters.
 - 3) Obtain legal review of the termination documents.
 - 4) Present the termination to the BSL Committee for approval.
 - 5) Record and distribute the termination of lease in accordance with Section 4.7. of the Administrative Plan.
- 2. The Review Team may hear the dispute and negotiate a fair and reasonable solution.
 - a. If necessary, the Review Team, with the assistance of legal counsel, shall enter into a settlement agreement with the lessee. See Section 9.2. of this Plan.
- 3. If the default is still not cured and a compromise is not likely, the ED Department shall proceed to Section 8.6. of this Plan.

8.6. Remedies.

- 1. If the lessee does not cure or respond within the time allowed or refuses to cooperate to resolve the default, the ED Department may:
 - a. Terminate the lease. See Section 7.3. of this Plan.
 - b. Pursue any other remedy, including collecting on the Security Deposit and/or insurance proceeds; or
 - c. Pursue any combination of the remedies listed above.
- 2. If the ED Department decides to terminate the lease, it shall obtain written

clearance from the appropriate authorities to verify lessee's compliance with the Navajo Business and Procurement Act and other applicable Navajo Nation laws and regulations.

3. The ED Department shall send notice to the lessee informing him of the termination of the lease. Such notice shall be sent by certified mail, return receipt requested.
 4. The termination letter shall:
 - a. Explain the reasons for termination;
 - b. Provide a detailed invoice of any unpaid amounts of rents, interests, other charges and penalties due under the lease;
 - c. Include a demand for full payment, if applicable;
 - d. Inform the lessee of its right to appeal the termination; and
 - e. Order the lessee to vacate the leased premises within thirty (30) days of the date of the certified letter, if an appeal has not been timely filed.
 5. Termination of the lease shall become effective on the thirty-first (31st) day after the date of the certified letter.
 6. The filing of an appeal shall toll the effective date of the termination of the lease. Pending the outcome of the appeal, the lessee shall be responsible for continuing to make all required payments, as well as complying with the terms and conditions of the lease.
 7. After a lease has been terminated, the ED Department may:
 - a. Enter the premises and change the locks or place padlocks on the building(s) or other facilities;
 - b. Discontinue the utility services to the leased premises;
 - c. Assist the lessee in vacating the leased premises; and/or
 - d. Do anything else necessary to retake the leased premises, to the extent permitted by law.
- 8.7. Emergency cancellation.
If the conduct of the lessee or lessee's invitees or agents causes or threatens to cause immediate and significant harm to the leased premises or persons, including the business owner, or undertakes unlawful activity thereon, the ED Department may contact the Navajo Nation Police Department and immediately terminate the lease without notice to the lessee.
- 8.8. Eviction and court action.
Eviction through court action will be imposed on the lessee if he is unwilling to vacate the premises after termination of the lease. Upon issuance of a warrant of removal by the Navajo Nation courts, the ED Department shall secure the leased premises with the assistance of the Navajo Nation Police Department.
- 8.9 Holding Over.
1. Lessees holding over after termination of the lease for any defaults or non-compliance as provided herein:
 - a. Shall be charged the holdover rental specified in the lease; and
 - b. May be subject to eviction through a forcible detainer action as

determined by the ED Department.

2. Lessees holding over after expiration of the lease may be subject to the holdover rental specified in the lease unless due to:
 - a. Unforeseen circumstances;
 - b. Circumstance beyond the control of the Lessee; or
 - c. Any other circumstances justified in writing by the Lessee or determined reasonable at the discretion of the ED Department.
3. Holdover Lessees may be subject to eviction through a forcible detainer action if:
 - a. Lessee is not diligently pursuing renewal of a lease;
 - b. Lessee defaults or is in non compliance as provided herein; or
 - c. Any other circumstance determined reasonable at the discretion of the ED Department.

8.10. Trespass.

If the lessee or a person occupies the premises without a valid lease or remains in possession after the termination or expiration of a lease, the ED Department shall treat such occupation as a trespass and pursue appropriate remedies, including the filing of a trespass action to regain possession. The ED Department shall take action to recover possession and pursue additional remedies and may seek assistance from legal counsel to file any trespass or forcible detainer action in court.

9.0. APPEALS.

- 9.1. Any applicant, lessee or other affected party ("Interested Party") may appeal the decision of the Township, after the exhaustion of all tribal remedies, to the Secretary of the Interior ("Secretary").

9.2. Compromise.

1. The Interested Party may contact the ED Department and attempt to reach a compromise for a fair and reasonable solution to the dispute, as provided for in Section 8.0. of this Plan, prior to any suit or appeal.
2. If the Interested Party and ED Department cannot reach a compromise, the Interested Party may request an administrative hearing with the Review Team. The Review Team shall render a decision as soon as practicable, but no later than thirty (30) days after the date of the hearing.
3. The Interested Party may appeal the Review Team's decision to the BSL Committee. The Committee shall render a decision as soon as practicable, but no later than thirty (30) days after the date of the hearing.

9.3. Office of Hearing and Appeals or Appeals Officer.

1. The Interested Party may appeal the BSL Committee's decision with the Office of Hearing and Appeals ("OHA") of the Navajo Nation or with the Appeals Officer ("AO") hired by the Township.
2. The OHA or AO shall review the BSL Committee's decision to determine whether it is:
 - a. Arbitrary, capricious or an abuse of discretion.

- b. Not supported by substantial evidence.
- c. Not in accordance with the law.

9.4. Navajo Nation Supreme Court.

- 1. The Interested Party may appeal an OHA or AO decision to the Navajo Nation Supreme Court.
- 2. The review shall be limited to issues of law and the record.
- 3. The review shall not be *de novo*.

9.5. Secretary of the Interior.

- 1. The Interested Party may appeal to the Secretary after the Navajo Nation Supreme Court has rendered a decision.
- 2. The Secretary shall determine:
 - a. Any adverse effects on the Interested Party;
 - b. If the termination is in accordance with the Navajo Nation and Township rules and regulations; or
 - c. If the termination is discriminating to the Interested Party.

10.0. COLLECTIONS PROCEDURES.

10.1. Collections.

Lessees that are in arrears or otherwise not in compliance with the terms and conditions of the lease shall be considered for collections.

- 1. The ED Department shall keep detailed records of its collection efforts, correspondence and contacts with the lessee in accordance with its internal policies and procedures. (The lease file is a legal document and any entries made should be considered as potential evidence in court.)
- 2. The ED Department may charge the lessee a collection fee.
- 3. The lessee is responsible for keeping the ED Department and Finance Department informed of its current address and telephone numbers. The ED Department and Finance Department are only responsible for sending any correspondence to the last address provided by the lessee.
- 4. If an account must be collected through judicial action, the lessee shall not be considered for another lease until at least ten (10) years has elapsed.
- 5. All bankruptcy cases shall be subject to the federal bankruptcy laws and all other applicable laws to discharge a debt. However, the Township shall have the continued right to terminate the lease, and the leased premises shall be subject to all applicable Navajo Nation, federal and state laws in which the property is located.
- 6. In the event of death of a lessee, the ED Department shall contact the surviving spouse or administrator of the deceased's estate to ensure that the lease is probated in compliance with the Navajo Nation probate laws and regulations.
- 7. Any payments in arrears owed by lessees to the Township, Navajo Nation or entities of the Navajo Nation shall be pursued pursuant to the Navajo Business and Procurement Act, 12 N.N.C. § 1501 *et seq.* (2005).

10.2. Compromise with delinquent lessee(s).

When the lease rental is uncollectible and all collection efforts have been exhausted, the ED Department may settle the outstanding debt pursuant to a settlement agreement and/or promissory note.

1. The ED Department shall consider such factors as death, bankruptcy or other extenuating circumstances and the amount of debt on a case-by-case basis before entering into a settlement agreement and/or promissory note.
2. The ED Department may in its discretion negotiate with the Sublessee, Assignee, Permittee, Encumbrancer or any other person or entity ("Affected Party") as to the terms and conditions of the Settlement Agreement and/or Promissory Note.
3. After negotiations have been completed, the Township's legal counsel shall draft the settlement agreement and/or promissory note.
4. The settlement agreement and/or promissory note shall be reviewed by NNDOJ.
5. The settlement agreement and/or promissory note shall be signed by the Affected Party and concurred by the Town Manager.
6. The settlement agreement and/or promissory note shall be executed by the Navajo Nation Attorney General.
7. Upon execution of the settlement agreement and/or promissory note by all parties, the accrued rental and fees shall be taken off the books of the Township. The lease records shall indicate the accounts receivable have been settled or a repayment plan has been agreed to.
8. For any amounts not collected or not subject to a settlement agreement or promissory note, the Finance Department may forward such information to the credit bureaus for reporting or posting as bad credit.

11.0. APPENDIX – FORMS.

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2. Property Inventory
3. Site Status Report
4. Environmental Summary

PART II

STANDARD TERMS AND CONDITIONS FOR ECONOMIC DEVELOPMENT LEASES (Navajo Nation Trust Land)

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1.0 STANDARD TERMS AND CONDITIONS FOR KAYENTA TOWNSHIP BUSINESS SITE LEASES

1.1 DEFINITIONS.

- A. "Approved Encumbrance" means an encumbrance approved in writing by the Navajo Nation, Lessor, and sureties, if any, in accordance with the terms and conditions of this Lease.
- B. "Condemnation" means the taking of any real property right thereof, in condemnation proceeding, by right of eminent domain, or by conveyance in lieu of or in settlement of a condemnation or eminent domain proceeding brought by any governmental authority having jurisdiction and power over the property.
- C. "Encumbrancer" means the owner and holder of an Approved Encumbrance, including all successors and assigns.
- D. "Federal Laws" means all applicable federal laws, including:
 - (1) Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9601 *et seq.*, and
 - (2) Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6901, *et seq.*
- E. "Gross Receipts" means all income, including money and other things of value, received by or paid to Lessee or its affiliates, whether individuals, corporations, partnerships, or other legal entity, or received by or paid to others for Lessee's or its affiliates' use and benefit, derived from business done, sales made, or services rendered directly or indirectly on the leased premises or any portion thereof. All income accruing from credit transactions will be treated as "gross receipts" as of the date credit is extended. Gross Receipts will not include amounts collected and paid out for a sales and excise tax imposed by any duly constituted governmental authority where such tax is billed to the purchaser as a separate item. Any taxes paid by the Lessee as a part of the cost of merchandise purchased by the Lessee are not to be excluded or deducted. It shall not include credits for the exchange of goods or merchandise between stores, if any, of Lessee or its affiliates where such exchange is made solely for the convenient operation of business and not for the purpose of consummating a sale previously made directly from or on the leased premises. It shall not include the amount of any refund where the merchandise sold, or some part thereof is returned by the purchaser and accepted by Lessee or its affiliates. It shall not include income from the sale of fixtures, or good will, or the sale of improvements, including, but not limited to, corrals, buildings, livestock scales, and holding pens.
- F. "Lessor" means the Kayenta Township on behalf of the Navajo Nation who conveys property under a lease agreement.

G. "Navajo Nation" means the Navajo Nation government.

H. "Tribal Regulations" mean the Navajo Nation Business Leasing Regulations of 2005, Economic Development Committee Uniform Business Leasing Regulations of 2008, and Kayenta Township Business Site Leasing Regulations, and any amendments thereto, relative to business leases on restricted lands within the exterior boundaries of the Kayenta Township which by this reference is made a part hereto.

1.2 CONDITION OF LEASED PREMISES.

- A. Lessee has examined and knows the leased premises and improvements thereon and accepts the same as-is, where is. No representations as to the condition of the leased premises have been made by Lessor, the Navajo Nation or United States prior to or at the time of execution of this Lease. Lessee warrants that it has not relied on any warranty or representation made by or on behalf of the Lessor, the Navajo Nation or United States, but solely upon Lessee's independent investigation.
- B. The independent investigation, which shall be conducted prior to entering into the Lease, shall include an environmental review which provides the Lessee with knowledge of the environmental status of the leased premises, including the status of any storage tanks and/or other regulated substances.

1.3 ACCOUNTING.

- A. Lessee shall maintain full and adequate books of account and such other records as are necessary to reliably reflect the financial position and results of the operation in accordance with Generally Accepted Accounting Principles ("GAAP") or other comprehensive basis of accounting deemed acceptable by the Navajo Nation Office of Auditor General.
- B. The Navajo Nation Office of Auditor General and Lessor or any of their duly authorized representatives, shall, at any time up until the expiration or five (5) years after the expiration of this Lease, have access to and the right to examine any of Lessee's books of account, documents, papers, and records, including Federal and State income tax returns, and such documents of any affiliated companies of Lessee, in connection with any transaction related to this Lease. Lessee shall insert a similar provision in all subleases and shall make available to said representative, agent, or agents, all books and records of Lessee's tenants which may be requested or may be necessary for completion of a full audit of all business conducted on the leased premises.

1.4 UTILITY SERVICE LINE AGREEMENTS.

- A. Lessee will identify the rights-of-way necessary or appropriate for construction, operation and maintenance of any improvements. Lessee shall

obtain approval from any third parties, the Navajo Nation, Lessor and the Secretary as may be necessary or appropriate and as required by 25 C.F.R. §169 for such rights-of-way.

- B. Lessee is authorized to enter into appropriate service line agreements with utility companies for the provision of necessary or appropriate utility services to the leased premises, including gas, water, sewer, electricity, telephone, television, internet, and other utilities, without further consent by the Navajo Nation or Lessor on the condition that:

- (1) such agreements are for the sole purpose of supplying utility services to the leased premises; and
- (2) such agreements authorize utility service lines only within the leased premises; and
- (3) such agreements do not extend beyond the term of this Lease, including any extensions thereof; and
- (4) executed copies of such agreements, together with plats or diagrams showing with particularity the location, size and extent of such service lines are filed by the utility companies with Lessor within thirty (30) days of their execution; and
- (5) such agreements are in accordance with the provisions of 25 C.F.R. § 169.22, including any amendments or successors thereto.

- C. The Lessor reserves the right for their benefit or for the benefit of other land users, whether or not adjacent to the leased premises, to enter into service line agreements with utility companies for service lines across the leased premises, provided that, after consultation, the Lessor and Lessee determine such service lines do not unreasonably interfere with Lessee's use of the leased premises nor otherwise affect any property rights reserved to the Lessor.

1.5 SUBLEASE, ASSIGNMENT, MODIFICATION, TRANSFER.

- A. Lessee shall not sublease, assign, modify, or in any manner whatsoever transfer this Lease or any right to or interest in this Lease or any of the improvements on the leased premises, or sell, assign or transfer more than forty-nine percent (49%) of the corporate stock of any corporation named as Lessee without the written consent of Lessor as well as the sureties. Unless otherwise provided for in Part I, no such sublease, assignment, sale, modification or transfer shall be valid or binding without such approval and then only upon the condition that the Sublessee, Assignee or other successor in interest, excepting an approved encumbrancer(s), shall agree in writing to be bound by each and all of the covenants and conditions of this Lease. Should Lessee attempt to make any such sublease, assignment, sale, modification, or transfer, except as set forth herein, such action shall be deemed a breach of this Lease, excepting that an encumbrancer may enforce his rights in the manner hereinafter provided. Unless otherwise provided for in Part I, approval of one sublease, assignment, sale, modification or transfer shall not validate a

subsequent sublease, assignment, sale, modification or transfer, and the restrictions of this Section shall be severally binding upon each and every Sublessee, Assignee, Transferee and other successor in interest of the Lessee, excepting an encumbrancer.

- B. For purposes of this Section, the creation of a partnership, corporation, joint venture, management agreement or other arrangement under which any person or entity other than Lessee is entitled to share in profits derived directly or indirectly from the leased premises or activities carried out thereon, shall require the written consent of Lessor and Lessee, unless Lessee is the majority owner (i.e. majority shareholder, majority partner, etc) of the business that is reorganized, then only written notice will be required.

- C. Approval or disapproval of any sublease, assignment, modification or transfer for any purpose whatsoever by the Lessee shall be within the sole discretion of Lessor. Lessor reserves the right to adjust the rental provisions of this Lease upon any sublease, assignment, modification, or transfer.

1.6 ENCUMBRANCE.

- A. This Lease, or any right to or interest in this Lease or any of the improvements on the leased premises, may be encumbered for the purposes of securing a line of credit to develop and improve the leased premises.

- B. Any encumbrance will:

- (1) be limited to the leasehold interest of the Lessee or subleasehold interest of the Sublessee, as the case may be; and
- (2) not jeopardize in any way the Lessor's interest in the land; and
- (3) be subject to the written approval of the Lessor as well as the sureties, if any. The Lessor shall not unreasonably withhold its approval to an encumbrance.

- C. Lessee agrees to furnish as requested any financial statements or analysis pertinent to the encumbrance that the Lessor may deem necessary to justify the amount, purpose and terms of said encumbrance.

- D. Lessor shall give each encumbrancer notice of, and the right to cure within a reasonable time, a default by Lessee or Sublessee under this Lease or Sublease, whichever is applicable. The Lessor shall accept performance by the encumbrancer for covenants or other obligations under the Lease or Sublease, with the same force and effect as though performed by the Lessee or Sublessee.

- E. In the event of default by Sublessee, an encumbrancer of any Sublease may exercise any rights provided in such approved encumbrance, provided that before any sale of subleasehold, whether under power of sale or foreclosure, the encumbrancer shall give to the Lessor and Lessee notice of the same character and duration as is required to be given to the Sublessee by the encumbrancer. If notice of such sale is given and the

Lessee fails to act, the Lessor shall have the following rights which may be exercised at any time prior to the completion of sale proceedings.

- (1) To pay the encumbrancer the full unpaid principal amount of the approved encumbrance, plus unpaid interest accrued to the date of such payment, plus foreclosure or sale costs incurred to the date of such payment; and
- (2) To execute in favor of the encumbrancer a promissory note and a new encumbrance, which new encumbrance must be approved by the Lessor, for the full unpaid principal amount of the approved encumbrance, plus unpaid interest accrued to the date of such execution plus sale expenses incurred to the date of such execution, upon the same terms and conditions as originally provided by the approved encumbrance, and delivering to the encumbrancer a policy of title insurance in the face amount of such promissory note issued by a reputable title insurance company, and insuring that the new encumbrance is a first lien upon the subleasehold described in said sublease subject only to current taxes and to conditions, restrictions, and reservations of record at the time of recording the approved encumbrance.

F. Each encumbrancer must provide, if Lessee or Lessor exercises the foregoing rights, all of the right, title, and interest of the Sublessee in the Sublease shall automatically terminate on the same date the right is exercised, and the Lessee or Lessor, shall, on the same date, acquire the subleasehold interest; provided, however, the acquisition of the subleasehold by Lessee or Lessor under these circumstances shall not serve to extinguish the sublease by merger with the Lease or otherwise. As between the Lessor and Lessee, Lessee shall have the first right to exercise the right to pay the amounts due as described above and to obtain the subleasehold interest. The Sublease shall require that the Sublessee will have the duty to execute any documents and take any action needed to effectuate the termination and transfer of Sublessee's subleasehold interest.

G. In the event the Lessee or Lessor does not avail itself of the above rights and a sale occurs, whether by power of sale or foreclosure, the purchaser at such sale shall succeed to all of the rights, title, and interest of the Sublessee in the subleasehold covered by said encumbrance. It is further agreed that if the purchaser at such a sale is the encumbrancer, the encumbrancer may assign the subleasehold without any further approval, provided that the assignee shall agree in writing to be bound by all the terms and conditions of the Sublease. If the encumbrancer is the purchaser, it shall be required to perform the Sublease only so long as it retains title thereto. If a sale, of the subleasehold interest, under the approved encumbrance occurs and the purchaser is a party other than the encumbrancer, approval by the Lessor will be required and said purchaser, as successor in interest to the Sublessee, shall be bound by all the terms and conditions of the sublease and will assume in writing all the obligations thereunder.

H. In the event of default by the Lessee, the encumbrancer may exercise any rights provided for in such approved encumbrance, provided that before

any sale of the leasehold, whether under power of sale or foreclosure, the encumbrancer shall give to the Lessor notice of the same character and duration as is required to be given Lessee by such encumbrance and/or by applicable law. If notice of such sale be given, and the default of any of them upon which notice of sale is based shall then continue, the Lessor shall have the following rights which may be exercised at any time prior to the completion of sale proceedings:

- (1) To pay to the encumbrancer the full unpaid principal amount of the approved encumbrance plus unpaid interest accrued to the date of such payment, plus sale costs incurred to the date of such payment.
- (2) To execute in favor of the encumbrancer a promissory note and a new encumbrance, which new encumbrance must be approved by the Lessor, for the full unpaid principal amount of the approved encumbrance, plus unpaid interest accrued to the date of such execution, plus sale expenses incurred to the date of such execution, upon the same terms and conditions as originally provided by the approved encumbrance, and delivering to the encumbrancer a policy of title insurance in the face amount of such promissory note, issued by a reputable title insurance company, and insuring that the new encumbrance is a first lien upon the property described in this Lease subject only to current taxes and to conditions, restrictions and reservations of record at the time of recording the new encumbrance.

I. Each encumbrancer must provide, if the Lessor exercises the foregoing rights, all right, title and interest of Lessee in the Lease shall terminate and the Lessor shall acquire the Lease; provided, however, that such termination shall not relieve the Lessee from any obligation or liability which had accrued prior to the date of termination. Acquisition of the Lease by the Lessor under these circumstances shall not serve to extinguish the Lease by merger or otherwise. The Lessee shall have the duty to execute any documents and take any action necessary to effectuate the termination and transfer of the Lessee's leasehold interest.

J. In the event the Lessor does not avail itself of the rights set forth in this Section and any sale under the approved encumbrance occurs, whether by power of sale or foreclosure, the purchaser at such sale shall succeed to all of the rights, title, and interest of the Lessee in the leasehold estate covered by said approved encumbrance. It is further agreed that if the purchaser at such sale is the encumbrancer, the encumbrancer may assign the leasehold interest without any further approval, provided that the assignee shall agree in writing to be bound by all the terms and conditions of this Lease. If the encumbrancer is the purchaser, it shall be required to perform this Lease only so long as it retains title thereto. If a sale, of the subleasehold interest, under the approved encumbrance occurs and the purchaser is a party other than the encumbrancer, approval by the Lessor of any assignment will be required and said purchaser, as successor in interest to the Lessee, shall be bound by all the terms and

conditions of this Lease and will assume in writing all the obligations thereunder.

1.7 LIENS, TAXES, ASSESSMENTS, UTILITY CHARGES.

Lessee shall not permit to be enforced against the leased premises or any part thereof, any liens arising from any work performed, materials furnished, or obligations incurred by Lessee.

Lessee shall discharge all such liens before any action is brought to enforce same; further, Lessee shall pay before becoming delinquent, all taxes, assessments, licenses, fees, and other like charges levied during the term of this Lease upon or against the leased land and all interests therein and property thereon, for which either Lessee, the Lessor may become liable.

Upon request, Lessee shall furnish Lessor written evidence duly certified that any and all taxes required to be paid by Lessee have been paid, satisfied, or otherwise discharged. Lessee shall have the right to contest any claim, asserted tax, or assessment against the property, by posting bond to prevent enforcement of any lien resulting therefrom, and Lessee agrees to protect and hold harmless Lessor, the Navajo Nation, the United States and the leased premises and all interest therein and improvements thereon from any and all claims, taxes, assessments, and like charges and from any lien therefor, or sale or other proceedings to enforce payment thereof, and all costs in connection therewith. Lessor shall execute and file any appropriate documents with reference to real estate tax exemption of the land when requested by Lessee.

In addition to the rents, taxes and other charges herein described, Lessee shall pay charges for water, sewage, gas, electricity, telephone, trash, and other utility services as required for construction and/or operation and maintenance of any improvements or as necessary for said leased premises.

1.8 LESSOR'S AGENT PAYING CLAIMS.

Lessor shall have the option to pay any lien or charge payable by Lessee under this Lease, or settle any action therefor, if the Lessee after written notice from Lessor fails to pay or to post bond against enforcement. All costs and other expenses incurred by Lessor in so doing shall be paid to Lessor by Lessee on demand, with interest at the rate of eighteen percent (18%) per annum from the date payment by Lessor until repayment is made by Lessee. Failure to make such repayment on demand shall constitute a breach of this Lease.

1.9 SANITATION.

A. Lessee hereby agrees to comply with all applicable sanitation codes, requirements, or laws which may be related to the purpose(s) of this document as set forth in Part I. Such compliance shall specifically include, but not be limited to, the sanitary regulations of the U.S. Public Health Service. Lessee further agrees to at all times maintain the entire leased premises in a safe, sanitary condition, presenting a good appearance both inside and outside of all buildings operated on the leased premises. Non-compliance with this Section shall constitute a breach of this Lease.

B. Lessee further agrees to comply with applicable State, Navajo Nation and local laws, statutes, ordinances, regulations, court and administrative orders and decrees pertaining to all sanitation matters including but not limited to the storage and disposal of refuse, rubbish, non-hazardous trash and any regulated substances. Lessee further agrees that all solid waste, including but not limited to refuse, rubbish, non-hazardous trash and any regulated substance generated by the Lessee or by any Sublessee shall be disposed of only at a state or tribally certified public or private landfill, and Lessee or Sublessee, as applicable, shall maintain records to demonstrate compliance with this requirement.

C. Lessee agrees to maintain all records required by applicable law and regulations and to make such records available to appropriate officials of the Navajo Nation, Lessor and federal government.

1.10 REGULATED SUBSTANCES.

Lessee shall not cause or permit any regulated substance (as defined in by Part II, Section 2.1(A)) to be used, stored, generated or disposed of, on, or in the leased premises without first obtaining written consent from the Navajo Nation Environmental Protection Agency. If the Navajo Nation Environmental Protection Agency does not respond to a request for consent within thirty (30) days, such consent shall be deemed given.

If regulated substances are used, stored, generated or disposed of, on or in the leased premises, or if the leased premises become contaminated in any manner for which Lessee or a Sublessee is legally liable, Lessee shall indemnify and hold harmless Lessor, the Navajo Nation and United States from any and all claims, damages, fines, judgments, penalties, costs, liabilities or losses (including, without limitation, a decrease in value of the leased premises, damages due to loss or restriction of rentable or usable space, or any damages due to adverse impact on marketing of the space, and any and all sums paid for settlement of claims, attorneys' fees, consultant and expert fees) arising during or after the Lease term and arising as a result of such contamination by Lessee.

This indemnification includes, without limitation, any and all costs incurred due to any investigation of the site or any cleanup, removal, restoration or other costs of regulatory compliance mandated by the federal government or Navajo Nation. Without limitation of the foregoing, if Lessee causes or permits the presence of any regulated substance on the leased premises that results in any contamination of the leased premises or other property including, but not limited to the improvements, soil, surface water or groundwater, Lessee shall promptly, at its sole expense, take any and all necessary actions to return the leased premises to the condition existing prior to the contamination by any such regulated substance on the leased premises. Lessees will first obtain the Navajo Nation's approval for any such remedial action.

1.11 LIABILITY INSURANCE.

Unless otherwise provided, without limiting any liabilities or any other obligations of Lessee, Lessee will provide and maintain, from the date the lease is approved and continuing until the Lease is terminated or expired, the minimum insurance coverages listed below. Coverage will be provided with forms and insurers acceptable to

Lessor until all obligations under this Lease are satisfied. All insurers must be a Nationally Accredited Insurance Company with a financial strength rating of "A" or the equivalent, and authorized to do business in the State where the leased premises are located. These coverages are as follows:

- A. Workers' compensation insurance to cover obligations imposed by federal and state statutes of the entity having jurisdiction over the Lessee's employees working on the leasehold, and Employers' Liability insurance with a minimum amount as is required and regulated by the State in which the leased premises are located. In case of any contracted work on the leasehold, the Lessee will require the contractor, and all subcontractors, to provide the same as above.
- B. Commercial General Liability Insurance to cover:
 - (1) The minimum single amount, including a General Aggregate Limit, sufficient for each occurrence, as provided for in Part I of this Lease.
 - (2) This policy shall cover property business interruption, bodily injury, broad form property damage, personal injury, death, blanket contract, independent contractor, product, completed operations coverage. The policy shall contain a severability of interests provision.
 - (3) If the leased premises are undeveloped, the Lessee must obtain the appropriate insurance.
- C. Commercial automobile liability insurance with a combined single limit for bodily injury and property damage for each occurrence with respect to Lessee's owned, hired and non-owned vehicles assigned to or used in Lessee's business, which shall be based upon the minimum amount required and regulated under the State in which the leased premises are located.
- D. If the Lessee is engaged in a profession, the Lessee shall carry professional liability insurance in an amount as is required and regulated under the State or Association for which the professional is licensed.
- E. Lessee, at its cost, shall maintain insurance coverage for full replacement cost on all of Lessee's personal property, Lessee's alterations, Lessee's utility installations, and Lessee's trade fixtures in, or about the leased premises. The proceeds from any such insurance shall be used by Lessee for the replacement of Lessee's personal property, alterations, utility installations, or trade fixtures only if Lessor repairs or rebuilds the leased premises.
- F. The policies required by Sections B and C shall be endorsed to include Lessor, the Navajo Nation and United States, and their agents, representatives, officers, directors, officials and employees, as additional insureds, and shall require that the insurance provided by Lessee shall be primary insurance and that any insurance carried by Lessor or the Navajo Nation or their agents, officials or employees shall be excess and not contributory insurance to that provided by Lessee.

- G. An acceptable certificate of insurance shall be issued to Lessor by the Lessee, on the date the Lease is approved or unless granted a postponement, by Lessor or successors, as evidence that the required coverages are in full force and effect. The certificate shall indemnify this Lease and indicate the policies will not be canceled, terminated or materially altered unless at least thirty (30) days prior written notice is given to the Lessor.

Certificates of insurance shall be sent to:

Kayenta Township
P.O. Box 1490
Kayenta, Navajo Nation (Arizona) 86033

- H. Failure on the part of the Lessee to procure or maintain required insurance shall constitute a material breach of contract upon which Lessor may immediately terminate this Lease.
- I. Lessor reserves the right to request and receive certified copies of any or all of the above policies and/or endorsements.
- J. Lessee and its insurers providing the required coverages shall waive all rights of recovery against Lessor, the Navajo Nation and United States, and their agents, officials and employees.
- K. The insurance limits required under this Lease shall not limit the liability of the Lessee, nor relieve the Lessee of any obligation under this lease.
- L. The Lessee shall not do or commit to be done anything in or upon any portions of the leased premises or bring or keep anything there which would in any way conflict with the conditions of any insurance policy upon the leased premises or in any way increase the rate of insurance upon the leased premises or on property kept there.
- M. The Lessor will not be responsible for any omissions or inadequacies of insurance coverage and amounts in the event the insurance purchased by Lessee proves to be inadequate or otherwise insufficient for any reason whatsoever.

1.12 FIRE AND CASUALTY INSURANCE.

- A. Lessee shall carry from the date the Lease is approved, adequate and sufficient insurance coverages, unless granted a postponement, for either: (a) the receipt of all approvals to commence with construction of the improvements and/or (b) the first drawdown for financing is received. Lessee shall carry fire and casualty insurance with extended coverage endorsement, covering not less than full replacement value of all improvements on the leased premises. Said policy shall be obtained from a Nationally Accredited Insurance Company, with a financial rating of "A" or equivalent, licensed to do business in the State in which the leased premises are located and shall be written jointly to protect Lessee, Lessor, the Navajo Nation and United States and shall provide for notification to Lessor prior to any change in said policy or any cancellation or non-renewal of said policy for any reason, including nonpayment of premiums.

A copy of said policy shall be sent to:

Kayenta Township
P. O. Box 1490
Kayenta, Navajo Nation (Arizona) 86033

- B. In the event of damage to any improvement on the leased premises, Lessee shall rebuild, repair or otherwise reinstate the damaged improvement or building in a good and substantial manner according to the plan and elevation of the improvement or building so destroyed or damaged or in accordance with any modified plan approved in writing by Lessor prior to commencement of repair or reconstruction. Repair or reconstruction shall commence as soon as possible and, in any event, within one (1) year after the damage occurs and shall be pursued diligently. The insurance proceeds shall be deposited in an escrow account with an institution approved by Lessor. Lessee shall also deposit in said escrow account all additional funds required to reconstruct the damaged improvement. Escrow instructions shall include provisions that all funds so deposited shall be used to reconstruct the damaged improvements and that funds shall be disbursed during the progress of reconstruction on proper architect's, engineer's, or contractor's certificates. All money remaining in escrow after reconstruction has been completed shall be paid to Lessee.
- C. In the event of damage to the extent of seventy-five percent (75%) or more of the total value of all improvements on the leased premises during the last five (5) years of the term of this Lease, Lessee shall have the option to reconstruct said improvements. Lessee shall provide Lessor with a written notice of the exercise of Lessee's reconstruction option within thirty (30) days of the event of damage giving rise to Lessee's reconstruction option. Should Lessee exercise its option to reconstruct, Lessee shall commence reconstruction of the damaged improvements within ninety (90) days of Lessee's exercise of its reconstruction option and shall diligently pursue the reconstruction to completion. Should Lessee not exercise its option to reconstruct, this Lease shall terminate one hundred and twenty (120) days after the event of damage giving rise to Lessee's reconstruction option. The leased premises shall be cleared of debris at Lessee's expense prior to termination of the Lease. Lessee shall not be charged rent during the period of debris removal, unless Lessee occupies the leased premises beyond the Lease termination date, after which the Lessee will be charged hold over rental as provided herein. In the event Lessee does not reconstruct the improvements, all insurance proceeds shall be paid to Lessor.
- D. Any encumbrancer shall be named as a beneficiary under all insurance policies required by this Section, and in the event of loss or damage to the buildings on the leased property while an approved encumbrance remains unpaid, the amount of such loss or damage (but not exceeding the remaining balance of the approved encumbrance) shall be paid to the encumbrancer on the condition that the encumbrancer agrees to comply with the reconstruction obligations set forth herein. If such amount paid to the encumbrancer is sufficient to repair the loss or damage or if Lessor or Lessee shall within three (3) months after such payment by

the insurer to the encumbrancer deposit with the encumbrancer enough money to completely repair the loss or damage, when added to the amount paid by the insurer to the encumbrancer, the encumbrancer shall, upon written order of Lessor or Lessee, pay such monies for such repair, and it shall not be deemed a payment or credit on the encumbrance; but otherwise, at the expiration of such three (3) months said sum so paid by the insurer to the encumbrancer shall be applied and credited upon the approved encumbrance. It is understood and agreed that nothing herein shall relieve Lessee of its obligation to repair and/or replace the damaged improvement to a condition as good as or better than before the damage occurred.

1.13 INDEMNIFY, DEFEND AND HOLD HARMLESS.

Except for Lessor's gross negligence, Lessee shall indemnify, protect, defend and hold harmless the Lessor, the Navajo Nation and United States from and against any and all claims, loss of rents, damages, costs, liens, judgments, penalties, permits, attorney's or consultant's fees, expenses and/or liabilities arising out of, involving, or dealing with, the occupancy of the leased premises by Lessee, the conduct of the Lessee's business, any act, omission, neglect or misconduct of Lessee, its agents, contractors, employees or invitees, and out of any Default or Breach by Lessee in the performance in a timely manner of any obligation on the Lessee's part to be performed under this Lease. The foregoing shall include, but not be limited to, the defense or pursuit of any claim or any action or proceeding involved therein, and whether or not litigated and/or reduced to judgment, and whether well-founded or not. In case any action or proceeding be brought against the Lessor, the Navajo Nation or United States by reason of any of the foregoing matters, Lessee, upon any notice from any the Lessor, the Navajo Nation or United States, shall defend the same at Lessee's expense by counsel reasonably satisfactory to Lessor, the Navajo Nation or United States, and Lessor, the Navajo Nation or United States shall cooperate with Lessee in such defense. Lessee shall have the right to control such defense and to settle or compromise the claim in cooperation with Lessor, the Navajo Nation and/or United States as long as such defense, settlement or compromise does not unduly prejudice the Lessor, the Navajo Nation and/or United States.

1.14 EMINENT DOMAIN.

If, at any time during the term of this Lease, the leased premises or any part thereof is taken or condemned under the laws of eminent domain, then and in every such case, the leasehold estate and interest of the Lessee in said leased premises or part thereof taken shall forthwith cease and terminate. All compensation awarded by reason of any takings of the leased land and any taking of or injury to the buildings or improvements located thereon shall be awarded to the Lessee and Lessor as their interests appear at the time of such taking, provided that Lessee's right to such awards shall be subject to the rights of an encumbrancer to receive such awards as set out in an approved encumbrance. If the condemnation is for less than the entire leased premises and/or improvements, the lease shall continue as for the remainder of the term of the lease, however the rental shall be reduced proportionately. If a temporary condemnation of all or a portion of the leased premises and/or improvements, lessee will be entitled to the entire amount of an award, whether paid by way of damages,

rent or otherwise; however, if such condemnation extends beyond the term of the lease, such amounts will be apportioned among Lessor and Lessee based upon the duration of the term remaining following the condemnation and the duration of the condemnation following the end of the term of the lease.

1.15 DEFAULT.

- A. Time is declared to be of the essence of this Lease.
- B. Lessor may determine that Lessee is in default for the following:
- (1) Lessee fails to pay rents, monies or any other amounts such as posting a security deposit or acquiring insurance when due and such failure continues for ten (10) days after notice of default is sent to Lessee.
 - (2) Lessee fails to perform any of its material non-monetary obligations or duties under the Lease when required, and such failure continues for a period of ten (10) days after notice of default is sent to Lessee that such obligation or duty has not been performed; provided that if such failure is not reasonably susceptible to cure within ten (10) days and there would be no default for such longer period of time as is reasonably required to cure such failure, and provided further, that Lessee commences a cure within ten (10) days after the notice of default is mailed and Lessee diligently pursues the cure.
 - (3) Lessee abandons or surrenders the leased premises and if the operations required hereunder are not operated for a period of sixty (60) consecutive days for any reason other than a closure for major repairs or renovation, acts of god, casualty, war or insurrection, strikes or labor disputes or other matters beyond the reasonable control of Lessee after written notice thereof has been received by Lessee from Lessor
- C. Lessee shall, within ten (10) days, from the mailing of the notice of default either:
- (1) Notify in writing Lessor that the default has been cured and submit documentation necessary to indicate the default has indeed been cured; or
 - (2) Submit in writing to Lessor a statement and explanation disputing Lessor's determination that the Lessee is in default and why the Lease should not be terminated; or
 - (3) Request in writing to be given an additional ten (10) days to cure unless found not reasonably susceptible to cure within ten (10) days and there would be no default for such longer period of time as is reasonably required to cure. Any additional time granted to cure shall be in the discretion of Lessor.
- D. No waiver of any of the covenants of this Lease shall be construed to be a waiver of any succeeding breach of the same or any other provision or covenant of this Lease.

- E. If any approved encumbrancer shall give Lessor before any default shall have occurred in this Lease, a written notice containing the name and address and the interest in the leased premises of such encumbrancer, Lessor shall thereafter give to such encumbrancer a copy of each notice of default by Lessee at the same time as such notice of default shall be given by Lessor to Lessee. Lessor shall accept such encumbrancer's performance of any of Lessee's covenants or other obligations under this Lease, with the same force and effect as though performed by Lessee. Upon providing such written notice, the encumbrancer shall have standing to pursue any appeals permitted by applicable statutes and regulations that Lessee would be entitled to pursue. Further, Lessor shall not terminate the Lease if an encumbrancer has commenced and is diligently pursuing a foreclosure action to terminate Lessee's interest in said Lease and has cured or is taking action to cure the breach that is the cause of the termination.

1.16 REMEDIES.

- A. Lessor may take any of the following actions in accordance with the Tribal Regulations:
- (1) Collect, by suit or otherwise, all monies as they become due hereunder, or enforce, by suit or otherwise, Lessee's compliance with all terms of this Lease; or
 - (2) Re-enter the leased premises if the Lessee has abandoned the leased premises or has failed to conduct business for a period of time without notice and remove all persons and property therefrom, excluding the property belonging to authorized Sublessees, and re-let the leased premises without terminating this Lease as the agent and for the account of Lessee, but without prejudice to the right to terminate the Lease thereafter, and without invalidating any right of Lessor or any obligations of Lessee hereunder. The terms and conditions of such re-letting shall be in the sole discretion of Lessor, who shall have the right to alter and repair the leased premises as it deems advisable and to re-let with or without any equipment or fixtures situated thereon. Rents from any such re-letting shall be applied first to the expense of re-letting, collection, altering, and repairing, including attorney's fees and any real estate commissions actually paid, insurance, taxes and assessments and thereafter toward payment to liquidate the total liability of Lessee. Lessee shall pay to Lessor monthly when due, any deficiency and Lessor may sue thereafter as each monthly deficiency shall arise; or
 - (3) Terminate this Lease, as a matter of law; or
 - (4) Grant an extension of time to cure the default; or
 - (5) Pursue the execution on security deposit or collection of insurance proceeds; or
 - (6) Pursue any other remedy set forth in the business site leasing management plan(s); or

(7) Take any other action deemed necessary to protect any interest of Lessor or the Navajo Nation.

- B. If Lessor terminates the Lease, Lessor shall send a termination letter to Lessee within a reasonable time period from the date of determination by Lessor to terminate, by certified mail, return receipt requested. Lessee shall vacate the premises within thirty (30) days after receipt of the termination letter, unless an appeal has been filed.
- C. The termination shall become effective 31 days after mailing the letter. Any filing of an appeal shall not change the effective date of a cancellation. Pending the outcome of an appeal, the Lessee shall make all requisite payments, as well as comply with the terms of the Lease.
- D. If a grant of extension for time to cure is given, the Lessee shall diligently perform and complete the corrective actions within a time frame agreed, in writing, between Lessor and Lessee.
- E. The exercise of any of the remedies outlined in this Section shall not exclude recourse as to any other remedies, by suit or otherwise, which may be exercised by Lessor or any other rights or remedies now held or which may be held by Lessor in the future.

1.17 MUTUAL TERMINATION.

The Lessee may terminate this Lease, without penalty, subject to approval from Lessor only during the development period, if any, or with or without penalty after the Development Period in the discretion of Lessor, as set forth in Part I of this Lease and conditioned upon compliance with the Navajo Business and Procurement Code, 12 §§ N.N.C. 1501 *et seq.* Lessee must notify Lessor in writing of its intention to terminate no later than thirty (30) days prior to the expiration of such development period.

1.18 ATTORNEY'S FEES.

Lessee agrees to pay and discharge all reasonable costs, attorney's fees and expenses that may be incurred by Lessor in enforcing the provisions of this Lease.

1.19 NO PARTNERSHIP.

No term of this agreement shall be so construed as to provide that a partnership exists between Lessor and Lessee; the only relationship between the parties being that of Lessor and Lessee.

1.20 TERMINATION OF FEDERAL TRUST.

Nothing contained in this Lease shall operate to delay or prevent a termination of Federal Trust responsibility with respect to the land by the issuance of a fee patent or otherwise during the term of this Lease; however, such termination shall not serve to abrogate the Lease. The owners of the land and Lessee and their approved encumbrancers, surety or sureties, if any, shall be notified of any such change in the status of the land.

1.21 OBLIGATIONS OF LESSEE.

While the leased premises are in trust or restricted status, all of Lessee's obligations under this Lease, and the obligations of their approved encumbrancers and sureties, are to the Navajo Nation and United States as well as to the Lessor.

1.22 STATUS OF SUBLEASES.

Termination of this Lease, by cancellation or otherwise, shall automatically terminate any approved subleases.

1.23 INSPECTION.

A. Lessor and its authorized representatives, shall have the right, at any reasonable time during the term of this Lease, to enter upon the leased premises, or any part thereof, to inspect the same and all buildings and other improvements erected and placed thereon for purposes, including, but not limited to, conditions affecting the health, safety and welfare of those entering the leased premises, the protection of the leased premises, any improvements thereto or any adjoining property or uses, or compliance with applicable environmental health or safety laws and regulations. No showing of probable cause shall be required for such entry and inspection. If testing for environmental contamination reveals environmental contamination in violation of applicable law, Lessee shall pay the costs of such testing. Nothing in this Section shall limit Lessee's obligation under applicable law or this Lease to perform testing or remediation or otherwise limit Lessee's liability.

B. Lessor and its authorized representatives, shall have the right, during normal business hours, during the term of this Lease or if the Lease is terminated or expired, at any time, to enter upon the leased premises, or any part thereof, to inspect the same and all buildings and other improvements as is required under the Kayenta Township Annual Lease Compliance Form, and Lessor and its authorized representatives shall notify the Lessee not less than three (3) days before conducting the inspection. Such inspection shall not unreasonably interfere with the Lessee's business operations, unless the Lease has expired or is terminated.

1.24 HOLDING OVER.

Holding over by the Lessee after the termination of this Lease shall not constitute a renewal or extension thereof or give the Lessee any rights in or to the leased premises. In the event of a holding over by Lessee, the Lessee shall be subject to immediate removal and shall agree to pay as hold over rental an annual rental computed at double the rental amount charged during the twelve months immediately preceding the commencement of the holding over period. Accepting holdover rent from Lessee does not extend the Lease or constitute an election of remedies or adversely affect any of the Lessor's other remedies.

1.25 LEASE REQUIREMENTS NOT EXCLUSIVE.

Nothing in this Lease shall be construed to relieve Lessee of any obligations pursuant to any Federal or Navajo Nation law for the protection of the environment or the public health and safety, or general welfare, which is currently enacted or which may be enacted at a later date.

1.26 DELIVERY OF LEASED PREMISES.

- A. At the termination or expiration of this Lease, Lessee will peaceably and without legal process deliver up the possession of the leased premises, in good condition, usual wear and tear excepted.
- B. Lessee agrees to allow the Navajo Nation Environmental Protection Agency to conduct an environmental audit 360 days prior to the expiration or termination of such Lease. Such assessment shall be delivered to Lessor sixty (60) days prior to the expiration or termination of the Lease or the delivery of the leased premises, whichever occurs first. In turn, Lessor shall submit to the Lessee a copy of such audit within ten (10) days of receipt.

1.27 NAVAJO PREFERENCE.

In connection with all employment and contracting opportunities arising out of Lessee's activities under this Lease, Lessee shall give preference in employment and contracting to qualified Navajo individuals and certified contractors in compliance with the Navajo Preference in Employment Act, 15 N.N.C. § 601 et seq. ("NPEA"), and the Navajo Nation Business Opportunity Act, 5 N.N.C. § 201 et seq. ("NBOA"). The terms and provisions of the NPEA and NBOA are specifically incorporated in, and become a part of this Lease. Violation of such laws by the Lessee shall constitute a breach of this Lease and provide grounds for termination of the Lease or any other remedy prescribed by the NPEA and NBOA, provided such compliance does not violate applicable federal laws.

1.28 MINERALS.

All minerals, including sand and gravel, contained in or on the leased premises are reserved for the use of Navajo Nation, unless placed on the leased premises by the Lessee. The Navajo Nation reserves the right to enter upon the leased premises and search for and remove minerals located thereon, paying just compensation for any damage or injury caused to Lessee's personal property or improvements constructed by Lessee.

1.29 SUCCESSORS AND ASSIGNS.

The terms and conditions contained herein shall extend to and be binding upon the successors, heirs, assigns, executors, employees and agents, including all contractors and subcontractors, of Lessee. Except as the context otherwise requires, the term "Lessee," as used in this Lease, shall be deemed to include all such successors, heirs, assigns, executors, administrators, employees and agents.

1.30 INTEREST OF MEMBER OF CONGRESS.

No member of, or delegate to Congress, or Resident Commissioner shall be admitted to any share or part of this Lease or to any benefit that may arise herefrom, but this provision shall not be construed to extend to this Lease if made with a corporation or company.

1.31 USE OF NAVAJO PRODUCED GOODS AND SERVICES.

Lessee agrees to make all purchases of materials, equipment, goods, services and transportation from

Navajo-owned businesses, whenever such purchase is economically feasible, as required by Navajo law.

1.32 AGREEMENT TO ABIDE BY LOCAL, NAVAJO AND FEDERAL LAWS.

Lessee and its employees, agents, and sublessees and their employees and agents agree to abide by all laws, regulations, and ordinances of the Kayenta Township and Navajo Nation, and all applicable laws, regulations and ordinances of the United States, now in force and effect or as may be hereafter in force and effect.

1.33 GOVERNING LAW AND CHOICE OF FORUM.

Subject to Section 1.36 and except as may be prohibited by federal applicable law, the laws of the Navajo Nation shall govern the construction, performance and enforcement of this Lease. All actions or proceedings brought by Lessee against the Lessor in connection with or arising out of the terms and conditions of this Lease shall be brought only in the Courts of the Navajo Nation, and no action or proceeding shall be brought by Lessee against the Lessor in any court or administrative body of any state.

1.34 CONSENT TO JURISDICTION.

Subject to Section 1.36, Lessee hereby consents to the legislative, executive and judicial jurisdiction of the Navajo Nation in connection with all activities conducted by the Lessee within the Navajo Nation.

1.35 COVENANT NOT TO CONTEST JURISDICTION.

Lessee hereby covenants and agrees never to contest or challenge the legislative, executive or judicial jurisdiction of the Navajo Nation on the basis that such jurisdiction is inconsistent with the status of the Navajo Nation as an Indian nation, or that the Navajo Nation government is not a government of general jurisdiction, or that the Navajo Nation government does not possess full police power (i.e., the power to legislate and regulate for the general health and welfare) over all lands, persons and activities within its territorial boundaries, or on any other basis not generally applicable to similar challenges to the jurisdiction of a state government. Nothing in this Section shall be construed to negate or impair federal responsibilities with respect to the leased premises or to the Lessor.

1.36 NO WAIVER OF SOVEREIGN IMMUNITY.

Nothing in this Lease shall be interpreted as constituting a waiver, express or implied, of the sovereign immunity of the Navajo Nation, Kayenta Township or Kayenta Township Commission.

1.37 SAVINGS CLAUSE.

It is agreed that if any provision of this Lease shall be determined to be void then such determination shall not affect any other provision of this Lease and all such other provisions shall remain in full force and effect; and it is the intention of the parties hereto that if any provision of this Lease is capable of two interpretations, one of which would render the provision void and the other of which would render the provisions valid, then the provision shall have the meaning which renders it valid.

1.38 QUALIFICATIONS OF BUSINESS.

In the event Lessee hereunder is a business entity, the person(s) executing this Lease on behalf of Lessee hereby covenants and warrants that Lessee is a duly qualified business entity and all steps have been taken prior to the date hereof to qualify the Lessee to do business in the Navajo Nation; all franchise and corporate taxes have been paid to date; and all future forms, reports, fees, and other documents necessary to comply with applicable laws will be filed when due.

1.39 COMPLIANCE WITH THE BUSINESS SITE LEASING REGULATIONS.

Lessee, its sublessees and assignees and other successors in interest shall comply with the provisions of the Kayenta Township Business Site Leasing Regulations, which prescribe rules for the regulation of businesses within the Kayenta Township, and the Kayenta Township Business Site Leasing Management Plan, and Kayenta Township Business Site Leasing Administrative Plan, applicable provisions of the Navajo Nation Business Leasing Regulations of 2005 and Economic Development Committee Uniform Business Lease Regulations of 2008, which prescribe rules for the regulation of businesses on the Navajo Nation, as required by and consistent with 25 U.S.C. §415(e).

1.40 RESCISSION OF DELEGATION OF AUTHORITY.

Upon determination by the Economic Development Committee that Kayenta Township has its approval authority rescinded, the Lease shall immediately revert to the authority of the Navajo Nation Division of Economic Development. The Lessees shall be immediately notified by the Economic Development Committee upon its decision.

1.41 NO ORAL AGREEMENTS.

It is understood that there are no oral agreements between the parties hereto affecting this Lease, and this Lease supersedes and cancels any and all previous negotiations, arrangements, brochures, agreements and understandings, if any, between the parties hereto or displayed by Lessor to Lessee with respect to the subject matter hereof, and none thereof shall be used to interpret or construe this Lease.

1.42 VALIDITY.

This Lease, and any modification of or amendment to this Lease, shall not be valid or binding upon either party hereto until approved by Lessor and the President of the Navajo Nation, pursuant to Navajo Law.

2.0 SPECIAL TERMS AND CONDITIONS FOR KAYENTA TOWNSHIP BUSINESS SITE LEASES WITH STORAGE TANKS

2.1 DEFINITIONS.

- A. "Regulated Substance" is as defined in Section 9001(7) of the Resources Conservation and Recovery Act ("RCRA"), codified at 42 U.S.C. § 6991(7), which includes any substance defined in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), codified at 42 U.S.C. § 9601(14), but does not include any substances regulated as a hazardous waste under subtitle C of RCRA, codified at 42 U.S.C. § 6921 *et seq.*, and petroleum.
- B. "Storage Tank" is any tank defined by either of the following:
- (1) An underground storage tank as defined in RCRA, 42 U.S.C. 6991(1), or any storage tank, regardless of whether such tank is located above or below ground, and which is not excluded under 42 U.S.C. 6991(1) and used for the storage of regulated substances, or;
 - (2) Any above ground storage tank as defined in the proposed Navajo Nation Above Ground Storage Tank Act or any underground storage tank as defined in the Navajo Nation Underground Storage Tank Act, upon passage of each respective proposed Act.

2.2 REGULATED SUBSTANCES.

- A. Lessee shall not cause or permit any regulated substance (as defined by RCRA, 42 U.S.C. § 6901 *et seq.*, CERCLA, 42 U.S.C. § 9601 *et seq.* or any other federal law) to be used, stored, generated or disposed of on or in the leased premises without first obtaining written consent of the Navajo Nation Environmental Protection Agency. If such agency does not respond to a request for consent within thirty (30) days, consent shall be deemed granted.

If regulated substances are used, stored, generated or disposed of on or in the leased premises, or if the leased premises become contaminated in any manner for which Lessee or a Sublessee is legally liable, Lessee shall indemnify and hold harmless the Lessor, the Navajo Nation and United States from any and all claims, damages, fines, judgments, penalties, costs, liabilities or losses (including, without limitation, a decrease in value of the leased premises, damages due to loss or restriction of rentable or usable space, or any damages due to adverse impact on marketing of the space, and any and all sums paid for settlement of claims, attorneys' fees, consultant and expert fees) arising during or after the Lease term and arising as a result of such contamination by Lessee.

This indemnification includes, without limitation, any and all costs incurred due to any investigation of the site or any cleanup, removal or restoration mandated by Lessor, the Navajo Nation or federal government. Without limitation of the foregoing, if Lessee causes

or permits the presence of any hazardous or regulated substance on the leased premises that results in any contamination of the leased premises or other property including, but not limited to the improvements, soil, surface water or groundwater, Lessee shall promptly, at its sole expense, take any and all necessary actions to return the leased premises to the condition existing prior to the contamination by any such regulated substance on the leased premises. Lessee shall first obtain the Navajo Nation's approval for any such remedial action.

- B. Lessee shall provide the Navajo Nation Environmental Protection Agency and Lessor with a clear and legible copy of all notices or reports concerning storage tank installation, testing, leakage, or remediation at the premises subject to this Lease which Lessee is required by applicable law or regulation to provide to the United States Environmental Protection Agency or which Lessee otherwise provides to the United States Environmental Protection Agency. Service of documents as required by this Lease upon the Navajo Nation Environmental Protection Agency shall be by first class mail to:

UST-AST Program
Navajo Nation Environmental Protection Agency
Post Office Box 339
Window Rock, Navajo Nation (Arizona) 86515

and

Kayenta Township
P. o. Box 1490
Kayenta, Navajo Nation (Arizona) 86033

or their respective institutional successors.

2.3 FINANCIAL RESPONSIBILITY FOR STORAGE TANKS.

If Lessee or Sublessee installs or operates storage tanks on the leased premises, the Lessee or Sublessee shall post a bond, obtain insurance or provide such other evidence of financial responsibility that meets all the requirements of 40 C.F.R. Part 280, Subpart H, regardless of whether the storage tank in question is an aboveground or underground storage tank. Lessee shall provide proof of this bond, insurance, or other qualifying financial responsibility mechanism to Lessor. This bond, insurance or other qualifying financial responsibility mechanism shall remain in effect for the term of the base lease or sublease, and any renewals thereof, and shall not be released or terminated until such time as Lessor certifies that the facility is in compliance with all applicable law and regulations, or that the tanks have been removed and the site has been remediated, or that the base lease or sublease has been transferred and the new operator has provided proof of an adequate bond, insurance or otherwise satisfied the financial responsibility requirements of 40 C.F.R. Part 280, Subpart H. It shall be the responsibility of the Lessee and the Sublessee to provide Lessor with all proof required for release of bond or termination of insurance coverage.

2.4 ENVIRONMENTAL AUDITS AND COMPLIANCE DOCUMENTS.

- A. Entry Audit: If there are storage tanks located on the leased premises, the Lessee will supply the Navajo Nation Environmental Protection Agency and Lessor with a complete copy of the report and underlying data generated in preparation of a Phase Two environmental audit before Lessee places any regulated substance in the storage tanks or releases any regulated substances from the storage tanks but no later than ninety (90) days after the Lease is approved by the Lessor.

The Lessee shall notify the Navajo Nation Environmental Protection Agency and Lessor, or any institutional successor, of the firm chosen to perform the Phase Two Environmental audit prior to the performance of such audit. Lessor may accept or decline the choice of environmental auditor within twenty (20) days of written notice by Lessee. If Lessor does not respond within twenty (20) days of receipt of the Lessee's written notice, the environmental auditor is deemed accepted. If, however, the most recent prior Lessee of the leased premises has performed a Phase Two environmental audit on the leased premises at or after the termination of the prior tenancy, Lessee is not required to perform a Phase Two environmental audit if Lessee agrees to be conclusively and legally bound by the findings of such Phase Two environmental audit.

- B. Environmental Audit(s): Lessee shall pay to Lessor the amount of \$15,000, which will be held by Lessor during the term of the Lease. Lessee shall pay Lessor \$5,000 per year at the end of first, second and third years of Lessee's Lease, until the full \$15,000 has been paid.

The \$15,000 is in addition to any other rental obligations of Lessee. This sum shall be used to pay for a Phase Two environmental audit to be performed during the last year of the Lease and any other environmental audit(s) during the term of the Lease which Lessor determines, based on probable cause, to be reasonably necessary to ascertain whether environmental contamination by regulated substances has occurred. The Navajo Nation Environmental Protection Agency and Lessor shall determine whether an audit shall be necessary.

If the Navajo Nation Environmental Protection Agency and Lessor determine an environmental audit should be performed at the leased premises prior to the Lessee's deposit of the entire \$15,000 deposit and the amount deposited is insufficient to pay for the environmental audit, and the environmental audit determines regulated substances are unlawfully present, Lessee shall, upon written demand by Lessor, promptly deposit with Lessor an amount sufficient to pay for the environmental audit or to bring Lessee's deposit to \$15,000, whichever is less. If Lessor performs an environmental audit pursuant to this Section during the term of the Lease which finds regulated substances unlawfully present and which is financed by all or part of the above referenced sum, Lessee shall, at the end of the year in which the audit is completed, deposit funds with Lessor sufficient to

reestablish the amount deposited prior to the audit and to reimburse Lessor for any amount Lessor spent on the environmental audit in excess of the \$15,000 deposit.

The deposit shall be kept in an account by Lessor on behalf of the Lessee to meet the expenses of the obligations stated above. At the termination of the Lease and upon completion of all environmental audits, removal and remediation to be performed on the leased premises, Lessor shall return any of the money deposited to the Lessee which was not spent to conduct environmental audits of the leased premises or to remediate or remove regulated substances which were released on the leased premises.

Nothing stated herein shall be construed to limit Lessee's liability for costs associated with investigation, or remediation, of regulated substances located on the leased premises including Lessee's liability for litigation costs and attorneys fees.

2.5 OWNERSHIP AND REMOVAL OF STORAGE TANKS.

- A. The ownership and removal responsibility for any regulated substances or petroleum products manufacturing, processing, storage, or conveyance facilities placed in or on the leased premises shall be the responsibility of the Lessee. All facilities or storage tanks must comply with applicable federal, state, Navajo Nation and local law including requirements for corrosion protection, spill and overfill protection and leak detection. Any repairs made to such facilities or storage tanks must comply with applicable repair standards. Lessee shall provide Lessor with complete and legible copies of all documents establishing Lessee's ownership of, lease of, or acquisition of any other use interest in any storage tanks installed on the leased premises.
- B. Unless otherwise notified by Lessor, the regulated substances and storage tanks placed on the leased premises are the property of Lessee and do not become the property of the Navajo Nation and Lessor for RCRA liability purposes, unless or upon the expiration of the Lease. Lessee is the owner for RCRA, 42 U.S.C. 6991(3), purposes of any storage tanks placed on the leased premises. Petroleum manufacturing, processing, storage, storage tanks, or conveyance facilities shall be removed by Lessee unless notified by Lessor in writing not to remove all of part of such property.

8-05-19

EXHIBIT

B

KAYENTA TOWNSHIP

BUSINESS SITE LEASING ADMINISTRATIVE PLAN

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1.0. EXECUTIVE SUMMARY

- 1.1. This Administrative Management Plan ("Plan") provides policy, direction and guidance for the decision making of the leasing staff of the Kayenta Township ("Township") regarding applications received for business site leases and related documents within the boundaries of the Township.
- 1.2. Legal Framework: 25 U.S.C. § 415(e), as amended;~~;~~ Navajo Nation Business Site Leasing Act of 2000, 5 N.N.C. §§ 2301-2306 (2005), as amended;~~;~~ Navajo Nation Business Leasing Regulations of 2005, as amended;~~;~~ and Economic Development Committee Uniform Business Leasing Regulations of 2008, as amended; ~~Kayenta Township Business Site Leasing Ordinance, as amended;~~ and Kayenta Township Business Site Leasing Regulations, as amended.
- 1.3. Administrative Framework: The Kayenta Township Commission ("KTC") has the authority and responsibility to govern for the welfare of the Township and its residents, including the enactment of such ordinances, rules, regulations, policies and procedures as it deems in the best interest of the Township. See ACN-181-86 (Nov. 13, 1986) (established the boundaries for the Township); CJY-42-03 (July 25, 2003) and CAU-47-03 (Aug. 29, 2003) (established Home Rule); Economic Development Committee Resolution No. EDCJN-28-09 (June 3, 2009) (delegating approval authority for Business Site Leases to the Township and approving the Township's Business Site Leasing Administrative and Management Plans); Resources and Development Committee Resolution No. _____ (_____, 2019) (approving amendments to the Township's Business Site Leasing Administrative and Management Plans); and Kayenta Township Comm'n v. Ward, 9 Nav. R. 481 (Nav. Sup. Ct. 2011) (confirming the KTC's home rule authority for all inherently governmental functions and holding that KTC has the actual right of possession to lands withdrawn for the Township).
- 1.4. Amendment of the Plan: The Business Site Leasing Committee may recommend amendments to this Plan subject to approval by the Economic Resources and Development Committee of the Navajo Nation Council ("EDC-RDC") or its successor in accordance with the laws and regulations of the Navajo Nation and Township.
- 1.5. The Township shall provide an initial report to EDC-RDC not less than six (6) months from the date of execution of the EDC-RDC resolution granting delegation of approval authority to the Township and annually thereafter.
- 1.6. Objectives:
 1. Carry out the authority for issuing business site leases and set forth the details for approving, processing, administering, managing and enforcing such leases;
 2. Promote self-determination, encourage economic self-sufficiency and increase business activity and employment;
 3. Promote the uniformity of business site leases;
 4. Recommend the enactment, amendment or rescission of laws and regulations to enhance economic development and create a positive business environment; and

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BUSINESS SITE LEASING ADMINISTRATIVE PLAN
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5. Promote the efficient leasing of business sites, independent of the political process.

1.7. Severability:

If a court of competent jurisdiction determines a provision in the Kayenta Township Business Site Leasing Management Plan is invalid, void or unenforceable, it shall be stricken and the remainder shall remain in full force and effect.

2.0. PRE-BUSINESS SITE LEASE

- 2.1. An applicant for a business site lease can be an individual (sole proprietorship) or a legally recognized business entity ("LRBE"), i.e., a partnership, limited partnership, limited liability partnership, limited liability company, professional association, professional corporation, or corporation, organized or chartered under federal, state or Navajo law. All LRBEs must register with the Navajo Nation Business Regulatory Department ("Business Regulatory Department") and be in good standing under the laws of the Navajo Nation and Township.

2.2. Definitions.

1. *Applicant* means a person or LRBE who submits an Application.
2. *Application* means a written request for: a new lease, renewal of lease; novation, assignment, sublease; revocable use permit; or emergency operating agreement. All Applicants must be eighteen (18) years of age or older.
3. *Appraisal (or an equivalent procedure)* means an assessment of the worth or value of real property.
4. *Approving Entity* means the Business Site Leasing Committee ("BSL Committee" or "Committee") that has been established pursuant to Resolution No. KTCM-09-08 and delegated the authority by the ~~EDCRDC~~ to approve Business Site Leasing Transactions under this Plan.
5. *Assignment* means an agreement between a lessee and an assignee whereby the assignee acquires all of the lessee's rights and assumes all of the lessee's obligations under a lease.
6. *Business site lease* means any lease issued for lands within the boundaries of the Township for business purposes.
7. *Business Site Leasing Transactions* means a new lease, renewal of lease; modification, novation, assignment, sublease; collateral assignment of lease; revocable use permit; or emergency operating agreement.
8. ~~CD Department means the Community Development Department of the Township.~~
9. ~~Collateral Assignment of Lease~~ means an assignment of the leasehold interest of a lease as security for the payment of a specified debt.
409. *Consumer Price Index ("CPI")* means the Consumer Price Index - All Urban Consumers for all Items.
4410. Department means the Community Development Department, or its successor, which is responsible for business site leasing within the Township.

11. *Development Period* means a definite period of time beginning from the date the lease is executed to when improvements are expected to be substantially completed.
12. *Emergency Operating Agreement* means a written agreement between the Township and an operator of a business for emergency use on Navajo Nation trust lands for a specific purpose and specific period, which conveys no possessory interest rights and may be revoked at will.
13. *Environmental Reviewer* means the employee within the Real Estate Department of the Division of Economic Development of the Navajo Nation designated to review the environmental summary and related reports for a business site lease.
14. *Ethics clearance* means written clearance from the appropriate authorities pursuant to the Navajo Nation Ethics in Government Law, 2 N.N.C. § 3741. *et seq.* ~~(2005)~~.
15. *Executing Official* means the President of the Navajo Nation, or his authorized designee, who will sign all appropriate business site lease documents on behalf of the Navajo Nation.
16. *Finance Department* means the Finance Department of the Township.
17. *KTC* means the Kayenta Township Commission, the governing body of the Kayenta Township.
18. *Lease Package* means the Application and all required supporting documents for a business site lease.
19. *Lease Rental* means the monetary consideration for right of possession and use of Navajo Nation trust land within the Kayenta Township.
20. *Legally Recognized Business Entity ("LRBE")* means any partnership, limited partnership, limited liability partnership, limited liability company, professional association, professional corporation, or corporation, organized or chartered under federal, state or Navajo law.
21. *Managing Entity* means the ~~Economic Development~~ Department, as defined herein, of the Township ("ED Department") that has been delegated management authority by the ~~RDC, Navajo Nation Division of Economic Development,~~
22. *Modification* means any change in the terms or conditions of the lease.
23. *Novation* means a modification of the lease that permits the lessee to voluntarily consent to the leasing jurisdiction of the Township.
24. *NNDOJ* means the Navajo Nation Department of Justice.
25. *Permit* means a revocable use permit, which gives temporary rights to use lands within the Township for business purposes.
26. *Primary Term* means the initial term of a lease, permit or agreement.
27. *RED* means the Real Estate Department of the Division of Economic Development of the Navajo Nation.
28. *Review Team* means the team consisting of ~~a two (2) representatives of the ED Department, Finance Department, and one (1) representative from the CD Department, as defined herein, recommended by the respective Department~~ Director and approved by the Town Manager, to provide administrative review of a Lease Package prior to approval of a Business Site Lease Transaction by the BSL Committee.
29. *Security Deposit* means a cash deposit, letter of credit or certificate of deposit to

guarantee the annual rental and the performance of the terms and conditions of the lease.

30. *Sublease* means a written agreement by which the lessee grants an individual or LRBE a right of possession no greater than that held by the lessee under the primary lease.
31. *Town Manager* means the chief executive officer of the Township.
32. *Township* means the Kayenta Township, a political subdivision of the Navajo Nation.

2.3. Advertisement.

The Township may in its sole discretion advertise commercial land available for leasing.

2.4. Administrative fees.

1. The following administrative fees will be due upon the execution but prior to distribution of the following documents:

a. New lease	\$ 4 50.00
b. Renewal	\$ 4 00.00
c. Modification	\$ 4 00.00
d. Novation	\$ 5 100.00
e. Sublease	\$ 4 00.00
f. Assignment	\$ 4 00.00
g. Collateral assignment	\$ 4 00.00
h. Permits	\$ 5 100.00
i. Emergency operating agreement	\$ 5 100.00
j. Collections	\$ 4 00.00
k. Other administrative transactions	\$ 4 00.00
2. The above fee schedule may be modified from time to time by resolution of the BSL Committee.
3. The BSL Committee in its discretion may reduce or waive the above fees for good cause shown by an Applicant or a lessee, including as an incentive for a business to locate in the Township.
4. All payments are nonrefundable and shall be made by business check, money order or cashier's check, payable to the Township.

3.0. BUSINESS SITE LEASE APPROVAL PROCESS

- 3.1. A flow chart depicting the general business site leasing approval process is attached in Appendix A.

4.0. NEW LEASE

- 4.1. The Applicant must submit an Application and complete all Application requirements to obtain a new lease within six (6) months of the submission date of the Application. If the Application has not been completed at the end of such six (6) months, it will be void, unless the ~~FD~~ Department in its discretion determines that the Applicant has made significant progress in completing the Application process. When the Application

becomes void, the ~~ED~~ Department will return all original documents to the Applicant, but may choose to retain a copy of the Application in its files.

- 4.2. The Applicant shall submit to the ~~ED~~ Department:
 1. Application, with new lease box checked;
 2. Business Plan;
 3. Organizational documents, if applicable:
 - a. Articles of incorporation, articles of organization, etc.
 - b. Bylaws, operating agreement, partnership agreement, etc.
 4. Corporate resolution of authority, if applicable; and
 5. Certificate of good standing issued by the Business Regulatory Department within twelve (12) months prior to administrative review of the lease.
 - a. Must register with the Business Regulatory Department if an LRBE.

- 4.3. The ~~ED~~ Department shall:
 1. Review all documents for accuracy and compliance with applicable laws and regulations.
 2. ~~Obtain from the CD Department. Prepare the:~~
 - a. Site designation review and approval; and
 - b. Site survey and legal description.
 - 1) The site survey and legal description shall be based on metes and bounds, rectangular, or lot and block system.
 - 2) The site survey shall comply with a Cadastral survey (Navajo Nation and Federal requirements).
 3. Obtain from appropriate agencies any necessary clearances, including but not limited to:
 - a. Ethics, if applicable:
 - 1) All federal, tribal and Township employees and officials must comply with this requirement at all times during the term of the lease.
 - 2) Township employees and officials shall refrain at all times from conflict of interest situations and financial gains involving leases.
 - b. Navajo Business and Procurement Act, 12 N.N.C. § 1501 *et seq.*, by conducting a background check and obtaining written clearances from:
 - 1) Accounts Receivable, Navajo Nation Office of the Controller;
 - 2) Credit Services, Navajo Nation Office of the Controller;
 - 3) Navajo Tax Commission;
 - 4) Navajo Nation Shopping Centers, Inc.; and
 - 5) Township Finance Department.
 4. Obtain fair annual rental value from an appraisal or equivalent procedure.
 - a. Submit a copy of the appraisal or equivalent procedure for the business site to RED.
 5. ~~Prepare and p~~Process the Environmental Review ("ER"):
 - a. ~~Prepare an Environmental Summary.~~
 - b. ~~Work with RED Environmental Reviewer to determine which compliance determinations are necessary.~~

- ~~a.e.~~ ~~RED~~ The Department shall obtain environmental compliance determinations from:
- 1) Navajo Nation Historic Preservation Office;
 - 2) Navajo Environmental Protection Agency; and
 - 3) Navajo Nation Fish and Wildlife.
- ~~b.~~ The Department shall prepare the Environmental Summary.
- ~~cd.~~ The Department shall submit the Environmental Summary and environmental compliance determinations to RED. The RED Environmental Reviewer shall verify and -signs off on the Environmental Summary.
6. Negotiate all terms and conditions of the lease, including:
- a. Term:
 - 1) The Primary Term shall not exceed twenty-five (25) years.
 - 2) Depending on the type of business, the Township may provide ~~one up to~~ two (2) options to renew the lease; however, each option shall not exceed twenty-five (25) years.
 - 3) The lease may only authorize subleasing with the written consent of the Township and shall not preauthorize a sublease except for a lease to a wholly owned entity of the Kayenta Township.
 - b. Rental ~~may shall be a:~~
 - 1) Flat-A flat lease rate per year; or
 - 2) Percentage of gross receipts; or
 - 3) ~~Flat lease rate per year plus a percentage of gross receipts, if the business:~~
 - a) is located in a mini mall or shopping center; or
 - b) generates over \$1 million per year of gross receipts.
 - c. Initial Rent:
 - 1) May be based on an appraisal or equivalent procedure, utilizing the following data:
 - a) improvement cost;
 - b) replacement cost;
 - c) earning capacity;
 - d) sales; and
 - e) lease data of comparable sites.
 - ~~a2)~~ An equivalent procedure may include a market study or market analysis, utilizing the following available data:
 - i) ~~improvement cost;~~
 - ii) ~~replacement cost;~~
 - iii) ~~earning capacity;~~
 - iv) ~~sales; and~~
 - v) ~~lease data of comparable sites.~~
 - ~~b a)~~ If a market study is utilized, it shall be:
 - i) one conducted for the entire Township that includes the proposed lease premises; and
 - ii) updated every five (5) years.
 - ~~c b)~~ If a market analysis is utilized, it shall be conducted for the

- proposed leased premises.
- d. Rent may be waived, reduced up to forty percent (40%), or abated for the following reasons (which may be accounted for as a "leasehold credit"):
- 1) Development Period (as defined in Section 2.2);
 - a) Shall not exceed 3-ten (10) years, unless justified by extenuating circumstances shown by the Applicant.
 - b) Shall be granted ~~for~~ only for new construction of improvements under a new lease or a lease modification for such purpose.
 - 2) Substantial construction or reconstruction of the leasehold improvements is necessary.
 - a) If the lessee fails to undertake such reconstruction, he shall be required to pay the rent that was in existence before such waiver or abatement was granted for the period of the waiver or abatement of rent.
 - b) If lessee has difficulty securing financing, not to exceed one (1) year.
 - 3) An environmental cleanup involving substantial cost is necessary;
 - 4) The Applicant is a governmental entity or a nonprofit organization validly organized under federal law;
 - 5) To provide economic development incentives; or
 - 56) For any other justifiable reason in the discretion of the Approving EntityBSL Committee.
- e. Rent adjustments:
- 1) All leases shall be reviewed every five (5) years, beginning on the:
 - a) fifth (5th) anniversary from the date of the execution of the lease;
 - b) expiration date of the Development Period; or
 - c) date the first rental was due, whichever is applicable.
 - 2) Rent may be adjusted on the applicable fifth (5th) anniversary using the CPI, which shall be stipulated in the lease.
 - 3) The lease shall specify:
 - a) how the adjustment shall be made;
 - b) who will make the adjustment;
 - c) when the adjustment will be effective; and
 - d) how disputes shall be resolved regarding such adjustment.
 - 4) The lessee may be notified in writing ninety (90) days before any adjustment is made.
- f. Security Deposit:
- 1) Shall guarantee one (1) year's rental.
 - 2) May be reduced by twenty-five percent (25%) of the annual rental at the recommendation of the ~~ED~~ Department, if:
 - a) In the best interest of the Township;
 - b) Applicant or lessee has been in good standing with the Navajo Nation for a minimum of five (5) years;
 - c) Applicant has an acceptable creditworthiness rating as

- indicated by Dunn and Bradstreet, Fortune 500 Company or a credit agency; or
 - d) Applicant is a governmental entity or a nonprofit organization organized under federal law.
 - 3) May be postponed at the recommendation of the ~~ED~~ Department if the rental has been postponed.
- g. Insurance:
 - 1) Lessee shall submit evidence of the following insurance within thirty (30) days of execution of the lease.
 - a) Commercial General Liability Insurance:
 - i) \$1,000,000 in the aggregate with each occurrence at \$500,000; or
 - ii) \$2,000,000 in the aggregate with each occurrence at \$1,000,000 for leases with storage tanks or involving regulated substances.
 - b) Fire and Casualty Insurance with extended coverage endorsements covering not less than the full replacement value of all improvements on the leased premises.
 - 2) The above required insurance may be postponed:
 - a) To coincide with the commencement of construction; or
 - b) Upon the first drawdown of financing.
 - 3) Any postponement shall not to exceed ninety (90) days after the execution of the lease.
 - 4) If evidence of the required insurance is not submitted on the due date, or if postponed, within ninety (90) calendar days of execution of the lease, the lease will be subject to termination. See Section 7.0. of the Management Plan.
 - 5) All required insurance shall:
 - a) Be obtained from a Nationally Accredited Insurance Company with a financial strength of at least an "A" and authorized to do business within in the state where the leased premise is located;

- b) Include the Township, Navajo Nation and United States as additional insureds;
- c) Not be cancelled or amended without thirty (30) days' prior written notice to the ~~ED~~ Department and Finance Department.

h. Subleasing.

7. Draft the lease.

4.4. Administrative review of the lease.

The ~~ED~~ Department shall:

- 1. Prepare an executive summary.
- 2. Present the Lease Package for administrative review by the Review Team, which shall review the Lease Package to ensure that the Applicant and lease are in compliance with the regulations and this Plan.
- 3. Ensure legal review of the lease by the Township's legal counsel.

4.5. Approval of the lease.

- 1. The ~~ED~~ Department shall present the following to the BSL Committee for approval of the lease:
 - a. Lease (with any necessary attachments);
 - b. Executive summary;
 - c. Certificate of good standing;
 - d. Procurement clearance report; and
 - e. Environmental Summary.
- 2. The BSL Committee shall:
 - a. Consist of the Town Manager, Finance Department Director and ~~ED~~ Department Director of the Township, and two (2) community members residing within the Township;
 - ~~b. Consist of members~~ who are not Public Officials, as defined by the 2 N.N.C. § 374~~32~~ (2005);
 - ~~be.~~ Consist of members who have experience or knowledge in real estate, business, finance, planning, management, community relations or related areas;
 - ~~ce.~~ Operate by an adopted rules of order; and
 - ~~de.~~ Approve all Business Site Lease Transactions by resolution.
- 3. Once the lease form is approved by the ~~ED~~~~CRDC~~, any deviation or modification to Part II of the lease, including any minor changes, may be done only with the approval of the ~~ED~~~~CRDC~~. The lessee is responsible for understanding these terms and conditions.

4.6. Execution of the lease.

- 1. The ~~ED~~ Department shall forward the lease with the approving resolution to NNDOJ for review.
- 2. The ~~ED~~ Department shall finalize the lease and prepare six (6) original leases for execution.

3. The lease shall be signed by the lessee.
4. The lease shall be ~~concurred signed~~ by the Town Manager.
5. The lease shall be signed by the President of the Navajo Nation or designee.

4.7. Post execution and lease administration.

1. The ~~ED~~ Department shall forward the executed lease to RED for recording.
2. RED shall:
 - a. Assign a number to the lease.
 - b. Send a certified copy of lease to the ~~ED~~ Department.
 - c. Send the lease for recording to:
 - Land Title and Records Office
 - Southwest Regional Office
 - Bureau of Indian Affairs
 - P. O. Box 26567
 - Albuquerque, NM 87125-6567
 - d. Retain one (1) original of the recorded lease and forward the rest to the ~~ED~~ Department.
3. The ~~ED~~ Department shall retain one (1) original of the recorded lease and distribute the rest to the:
 - a. Lessee (original);
 - b. Navajo Nation Land Department (original); and
 - ~~e. Navajo Nation Records Management Department (original); and~~
 - cd. BIA Western Agency Real Estate Services Office (copy).
4. The Finance Department shall:
 - a. set up a computerized financial accounting file for the lease; and
 - b. collect all fees before lease is recorded.
5. The ~~ED~~ Department shall:
 - a. ~~Obtain the necessary~~ Ensure that the necessary clearances are obtained for:
 - 1) roads;
 - 2) utilities (water, sewer, electricity and gas);
 - 3) telecommunications (telephone, cable or satellite); and
 - 4) sanitation.
 - b. Collect the applicable fees.
 - c. Set up a computerized administrative file for the lease; and
 - d. Monitor the general compliance of the lease.

5.0. EXPIRING LEASE

- 5.1. A lessee intending to renew a lease shall provide written noticefy and a renewal Application to the ~~ED~~ Department at least one (1) year before the expiration of the lease. The lessee must submit the renewal Application at least one (1) year prior to expiration of lease. And. The lessee shall complete all Application requirements to renew the lease within six (6) months of the submission date of the Application. If the Application has not been completed at the end of such six (6) months, it will be void, unless the ~~ED~~ Department in its discretion determines that the Applicant has made significant progress in completing the Application process. When the Application becomes void, the ~~ED~~

Department will return all original documents to the Applicant, but may choose to retain a copy of the Application in its files.

5.2. Lessee's responsibilities.

1. Submit an Application, with the lease renewal box checked at least one (1) year before the expiration of the lease.
2. Be conducting an operating business on the leased premises.
3. Be in compliance with the terms and conditions of the existing lease and applicable laws and regulations.
4. Submit a certificate of good standing issued within twelve (12) months prior to administrative review of the lease.
5. Provide copies of all required insurance certificates. See Section 4.3.6.g. of this Plan.
6. Submit an updated business plan, site survey, appraisal and/or ER, if applicable.
7. Maintain liaison with the ~~ED~~ Department upon renewal of the lease.

5.3. The ~~ED~~ Department's responsibilities.

1. Review all documents for accuracy and compliance with applicable laws and regulations.
2. Ensure that lessee is not in default of any lease provisions.
3. Ensure that the site survey, appraisal and/or ER are updated, if applicable. See Section 4.3.2. of this Plan.
4. Obtain written clearances to verify the Applicant's compliance with the Navajo Business and Procurement Act. See Section 4.3.3.b. of this Plan.
5. Negotiate the terms and conditions of the lease.
6. Prepare an executive summary.
7. Process the Lease Package for administrative review by the Review Team and legal counsel. See Section 4.4. of this Plan.
8. Present the lease with appropriate documents to the BSL Committee for approval. See Section 4.5. of this Plan.
9. Finalize the lease and prepare six (6) original leases for execution.
10. Forward the lease with a transmittal letter to the NNDOJ for review.
11. Obtain the signatures of the lessee, Town Manager and Navajo Nation President.
12. Collect the applicable fees.
13. Ensure that the lease is recorded and distributed. See Section 4.7. of this Plan.

6.0. EXERCISING AN OPTION TO RENEW

6.1. Lessee's responsibilities.

1. Submit a letter of intent to the ~~ED~~ Department at least one (1) year before the expiration of the lease
 - a. The letter shall consist of the following language:

ACKNOWLEDGEMENT BY THE NAVAJO NATION:

Approved:

Disapproved:

Navajo Nation President or Designee

Navajo Nation President or Designee

DATE: _____

CONCURRENCE BY THE KAYENTA TOWNSHIP:

Authorized Representative

DATE: _____

2. Be in compliance with the terms and conditions of the existing lease and applicable laws and regulations.

6.2. ~~ED~~ Department responsibilities.

1. Obtain written clearance to verify the Applicant's compliance with the Navajo Business and Procurement Act. See Section 4.3.3.b. of this Plan.
2. Obtain the signatures of the Town Manager and Navajo Nation President.
3. Collect the applicable fees.
4. Ensure that the ~~option to lease~~ renewal is recorded and distributed. See Section 4.7. of this Plan.

7.0. **MODIFICATION**

7.1. Lessee's responsibilities.

1. Submit a written request to modify certain provisions of the lease, which may include without limitation the term, purpose, rental adjustment, land description, lease improvements, business ownership, or other changes.
2. Submit additional documents, such as an updated site survey and legal description, appraisal and/or ER, if major changes are involved.
3. Be in compliance with the terms and conditions of the existing lease and applicable laws and regulations.

7.2. ~~ED~~ Department responsibilities.

1. Review all documents for accuracy and compliance with applicable laws and regulations.
2. Ensure that lessee is not in default of any lease provision.
3. Request any additional clearances that may be necessary. See Section 4.3. of this Plan.
4. Obtain written clearance to verify the Applicant's compliance with the Navajo Business and Procurement Act. See Section 4.3.3.b. of this Plan.
5. Prepare an executive summary.
6. Process the Lease Package for administrative review by the Review Team and legal counsel. See Section 4.4. of this Plan.
7. Present the lease modification with appropriate documents to the BSL Committee for approval. See Section 4.5. of this Plan.
8. Finalize the lease modification and prepare six (6) original documents for

execution.

9. Forward the lease modification with the existing lease and a transmittal letter to the NNDOJ for review.
10. Obtain the signatures of the lessee, Town Manager and Navajo Nation President.
11. Collect the applicable fees.
12. Ensure that the lease modification is recorded and distributed. See Section 4.7. of this Plan.

8.0. NOVATION

8.1. The ~~ED~~ Department shall notify all existing lessees, sublessees and assignees within the Township who are governed by the Navajo Nation and/or federal government that they may novate their leases, subleases and assignments to the business site leasing authority of the Township. Any consent to novation shall be in the discretion of the lessee.

8.2. Lessee's responsibilities.

1. Submit an Application with the Novation box checked.
2. Be in compliance with the terms and conditions of the existing lease and applicable laws and regulations.
3. Provide copies of all required insurance certificates. See Section 4.3.6.g. of this Plan.
4. Maintain liaison with the ~~ED~~ Department upon novation of the lease, sublease or assignment.

8.3. ~~ED~~ Department Responsibilities.

1. Review all documents for accuracy and compliance with applicable laws and regulations.
2. Prepare a modification to the lease, sublease or assignment to novate to the jurisdiction of the Township.
3. Process the modification for administrative review by the Review Team and legal counsel. See Section 4.4. of this Plan.
4. Finalize the modification and prepare six (6) original documents for execution.
5. Forward the modification with the existing lease, sublease or assignment and transmittal letter to the NNDOJ for review.
6. Obtain the signatures of the lessee, sublessee or assignee, Town Manager, and Navajo Nation President.
7. Collect the applicable fees.
8. Ensure that the novated lease is recorded and distributed. See Section 4.7. of this Plan.

9.0. SUBLEASE

9.1. A lessee who intends to sublease part of the lease shall notify the ~~ED~~ Department. The Applicant must submit an Application and complete all Application requirements within three (3) months of the submission date of the Application. If the Application has not been completed at the end of such three (3) months, it will be void, unless the ~~ED~~ Department in its discretion

determines that the Applicant has made significant progress in completing the Application process. When the Application becomes void, the ~~ED~~ Department will return all original documents to the Applicant, but may choose to retain a copy of the Application in its files.

9.2. General Requirements.

1. A sublease:
 - a. cannot exceed the balance of the term of the primary lease;
 - b. cannot be for the entire leased premises under the primary lease;
 - c. cannot be approved for an activity not authorized by the purpose of the primary lease;
 - d. will not be approved if the primary lease does not have an operating business; ~~and~~
 - e. will not be approved for undeveloped land; ~~and~~
 - f. may not be preauthorized, except for a lease to a wholly owned entity of the Kayenta Township.
2. Subleases may be approved by the BSL Committee provided the lessee and any sublessee is in compliance with the lease/sublease terms and is in compliance with all applicable Navajo Nation Laws and Policies.
3. Subleases that Agreements that by their express terms do not grant a leasehold interest do not require approval by the BSL Committee. These may include without limitation the following:
 - a. Tenant ~~leases-agreements~~ in permanent office buildings;
 - b. Tenant ~~leases-agreements~~ in shopping centers; or
 - c. Tenant ~~leases-agreements~~ in mini malls.

9.3. Sublessor's responsibilities.

1. Provide written notice to the ~~ED~~ Department of its intent to sublease part of the leased premises.
2. Be in compliance with the terms and conditions of the existing lease and applicable laws and regulations.

9.4. Applicant's responsibilities.

1. Submit an Application, with the sublease box checked, and all documents required under Section 4.2 of this Plan.
2. Register with the Business Regulatory Department if an LRBE.
3. Submit a certificate of good standing issued within twelve (12) months prior to administrative review of the sublease, if applicable.
4. Be in compliance with all applicable laws and regulations.
5. Provide copies of all required insurance certificates. See Section 4.3.6.g. of this Plan.
6. Submit a business plan, if applicable.
7. Submit an updated survey, appraisal and/or ER, if applicable.
8. Agree to be bound by all the terms and conditions of the primary lease.
9. Maintain liaison with the ~~ED~~ Department upon approval of the sublease.

9.5. ~~ED~~ Department's responsibilities.

1. Review all documents for accuracy and compliance with applicable laws and regulations.
2. Ensure that lessee (sublessor) is not in default of any the lease provisions.
3. Ensure that the site survey, appraisal and/or ER are updated, if applicable. See Section 4.3. of this Plan.
4. Obtain written clearances to verify the Applicant's compliance with the Navajo Business and Procurement Act. See Section 4.3.3.b. of this Plan.
5. Negotiate the terms and conditions of the lease, if applicable.
6. Prepare an executive summary.
7. Process the Lease Package for administrative review by the Review Team and legal counsel. See Section 4.4. of this Plan.
8. Present the sublease with appropriate documents to the BSL Committee for approval. See Section 4.5. of this Plan.
9. Finalize the sublease and prepare six (6) original documents for execution.
10. Forward the sublease with a transmittal letter to the NNDOJ for review.
11. Obtain the signatures of the lessee, Town Manager and Navajo Nation President, if applicable. In the case of a sublease by a wholly owned entity of the Kayenta Township, the sublease shall only require signatures of the Town Manager, lessee, and sublessee.
12. Collect the applicable fees.
13. Ensure that the sublease is recorded and distributed. See Section 4.7. of this Plan.

10.0. ASSIGNMENT

10.1. A lessee who intends to assign the lease to another must notify the ~~ED~~ Department. The potential assignee ("Applicant") must submit an Application and complete all Application requirements within three (3) months after the submission date of the Lease Package. If the Application has not been completed at the end of such three (3) months, it will be void, unless the ~~ED~~ Department in its discretion determines that the Applicant has made significant progress in completing the Application process. When the Application becomes void, the ~~ED~~ Department will return all original documents to the Applicant, but may choose to retain a copy of the Application in its files.

10.2. General Requirements:

1. Business sites that are not fully developed, or have never been developed, cannot be assigned.
2. If an assignee wishes to change any of the terms and conditions of the original lease, the Lessee must modify such lease and conduct an updated ER, if applicable, prior to assigning the lease.
3. In the event of a foreclosure:
 - a. If the purchaser is the encumbrancer, the purchaser may assign the lease to another without the approval of the lessee, BSL Committee and Executing Official, provided the assignee agrees to be bound by all the terms and conditions of the lease.
 - b. If the purchaser is other than the encumbrancer, the BSL Committee and

Executing Official must approve the assignment, and the assignee must agree to be bound by all the terms and conditions of the lease.

10.3. Assignor's responsibilities.

1. Provide written notice of intent to assign the lease.
2. Provide a copy of the purchase agreement and all related documents.
3. Be in compliance with the terms and conditions of the lease and applicable laws and regulations.

10.4. Assignee's responsibilities.

1. Submit an Application, with the lease assignment box checked.
2. Register with the Business Regulatory Department if an LRBE.
3. Submit a certificate of good standing issued within twelve (12) months prior to administrative review of the assignment.
4. Pay any applicable fees.
5. Maintain liaison with the ~~ED~~ Department upon assignment of the lease.

10.5. ~~ED~~ Department responsibilities.

1. Review all documents for accuracy and compliance with applicable laws and regulations.
2. Ensure that lessee (assignor) is not in default of any the lease provisions.
3. Ensure that the appraisal is updated, if applicable. See Section 4.3. of this Plan.
4. Obtain written clearances to verify the Assignee's compliance with the Navajo Business and Procurement Act. See Section 4.3.3.b. of this Plan.
5. Negotiate the terms and conditions, if applicable.
6. Prepare an executive summary.
7. Process the Lease Package for administrative review by the Review Team and legal counsel. See Section 4.4. of this Plan.
8. Present the assignment documents to the BSL Committee for approval. See Section 4.5. of this Plan.
9. Finalize the assignment and prepare six (6) original documents for execution.
10. Forward the assignment with the original lease with a transmittal letter to the NNDOJ for review.
11. Obtain the signatures of the lessee, Town Manager and Navajo Nation President.
12. Collect the applicable fees.
13. Ensure that the assignment is recorded and distributed. See Section 4.7. of this Plan.

11.0. COLLATERAL ASSIGNMENT OF LEASE

- 11.1. Lessee must submit a letter of intent and complete all requirements to obtain a collateral assignment of lease within three (3) months of the submission date of the Application. If the Application has not been completed at the end of such three (3) months, it will be void, unless, the ~~ED~~ Department in its discretion determines that the lessee has made significant progress in completing the Application process. When the Application has

become void, the ~~ED~~ Department shall return all original documents to the lessee, but may choose to retain a copy of the Application in its files.

11.2. Lessee's responsibilities.

1. Provide letter of intent to collateralize the leasehold interest held under a lease to the ~~ED~~ Department.
2. Be in compliance with the terms and conditions of the lease and applicable laws and regulations.
3. Submit copies of the following documents:
 - a. Loan agreement and/or promissory note;
 - b. Collateral assignment of lease;
 - c. Security agreement; and/or
 - d. Any other document as required by the lender.
4. Comply with all terms and conditions of the collateral assignment upon its approval.
5. Not modify, sublease, transfer, assign or mortgage the leasehold interest or enter into a management agreement without the prior approval of the BSL Committee and surety of the lease, if any, unless otherwise stipulated in the lease or collateral assignment of lease.

11.3. ~~ED~~ Department responsibilities.

1. Review all documents for accuracy and compliance with applicable laws and regulations.
2. Ensure that lessee is not in default of any the lease provisions.
3. Obtain written clearances to verify the Applicant's compliance with the Navajo Business and Procurement Act. See Section 4.3.3.b. of this Plan.
4. Prepare an executive summary.
5. Process the Lease Package for administrative review by the Review Team and legal counsel for review. See Section 4.4. of this Plan.
6. Forward the collateral assignment of lease with the existing lease and transmittal letter to the NNDOJ for review.
7. Obtain the signatures of the lessee, Town Manager and Navajo Nation President.
8. Collect applicable fees.
9. Ensure that the lease is recorded and distributed. See Section 4.7. of this Plan.

12.0. REVOCABLE USE PERMIT

12.1. A Permit may be issued:

1. For land previously designated for commercial purposes; and
2. The purpose of the Permit is short-term, including:
 - a. business, nonprofit or government use or operations;
 - b. political or fund-raising events;
 - c. mobile business operations; or
 - d. any other justifiable purpose.

12.2. Terms and conditions of the Permit:

1. Term:
 - a. All Permits shall be for the actual period of time needed, but in no event shall the term exceed one (1) year. Perpetual terms will not be permitted.
 - b. Permittees may be granted one (1) option to renew, but in no event shall the option period exceed the Primary Term of the Permit.
 - c. The permittee can exercise the option to renew by providing a letter of intent to the ~~ED~~ Department at least ten (10) working days prior to the expiration of the Primary Term of the Permit, provided the permittee is:
 - 1) Not in default of the terms and conditions of the Permit; and
 - 2) In compliance with all applicable laws and regulations.
2. Rental:
 - a. For profit organizations:
 - 1) \$50.00 per day for a term less than 30 days.
 - 2) \$200.00 per day for term over 30 days.
 - b. Nonprofit organizations or governments:
 - 1) \$25.00 per day for a term less than 30 days.
 - 2) \$100.00 per day for term over 30 days.
 - c. Licensed dealerships including but not limited to motor vehicles, ATVs, motorcycles, boats, and motor homes;
 - 1) \$250.00 per day for a term less than 30 days.
 - 2) \$500.00 per day for term over 30 days.
 - d. Entertainment events, including but not limited to carnivals: \$500.00 per day.
 - e. Rental may be waived upon the written recommendation from the ~~ED~~ Department to the BSL Committee, for the term of the Permit if:
 - 1) It is in the best interest of the Township; or
 - 2) For good cause shown by the Applicant.
3. Termination:
 - a. All Permits shall automatically terminate at the end of the term or at the end of the renewed option term.
 - b. Permits shall be terminated or cancelled for noncompliance with the terms and conditions of the Permit or for violation of any applicable law and regulation.
 - c. The ~~ED~~ Department shall notify the permittee by certified letter, return receipt requested within five (5) days of any discovered non-compliance or violation, informing the permittee that the Permit is terminated.
 - d. The certified letter shall state the cause for termination, the date of the termination, and the time-frame for vacating the premises, which shall not exceed five (5) calendar days from the effective date of the termination.
4. No Permit shall be issued for a contaminated site unless the site has been cleaned up and approved by the Navajo EPA and/or United States EPA, except that no Permit ~~is~~ shall be necessary for an environmental cleanup of a contaminated site.

12.3. Applicant's responsibilities.

1. Submit an Application, with the Permit box checked.
2. Submit evidence of:

- a. Insurance specified by Section 4.3.6.g. of this Plan; or
- b. Executed indemnification form.
3. Submit an ER, if hazardous substances are involved.
4. Register with the Business Regulatory Department if an LRBE.
5. Submit a certificate of good standing issued within twelve (12) months prior to administrative review of the Permit.
6. Be in compliance with the terms and conditions of the Permit and applicable laws and regulations.
7. Provide sanitary facilities on the permitted area with appropriate utility connections.

12.4. ~~ED~~ Department responsibilities:

1. Review all documents for accuracy and compliance with applicable laws and regulations and check the land status.
2. Obtain written clearances to verify the Applicant's compliance with the Navajo Business and Procurement Act. See Section 4.3.3.b. of this Plan.
3. Inform the Applicant if appropriate insurance is not obtained, that the Applicant may be:
 - a. Subject to lawsuit by any injured party for compensatory, consequential, incidental and punitive damages.
 - b. Subject to loss of personal property, if sued.
 - c. Required to indemnify the Township and/or Navajo Nation.
4. Prepare an executive summary.
5. Process the Permit with any necessary attachments for administrative review by the Review Team and legal counsel.
6. Present the Permit with appropriate documents to the BSL Committee for approval.
7. Prepare the Permit for signature by the Applicant and Township Manager.
8. Collect the administrative fee for the Permit.
9. Provide a copy of the Permit to the permittee, Navajo Nation Land Department and RED.

13.0. EMERGENCY OPERATING AGREEMENT

13.1. An Emergency Operating Agreement ("Agreement") shall be issued only in the following situations:

1. Where a lessee has abandoned a business site lease and an operator is deemed necessary to protect the facilities and/or business.
2. Where an operator is operating abandoned facilities or business and has been diligently pursuing a new lease but has experienced delays in obtaining the new lease that are beyond his or her control.

13.2. Requirements:

1. Term.
 - a. The Primary Term of an Agreement shall not exceed one (1) year. Perpetual terms are not permitted.

- b. An operator pursuing a new lease shall have ~~one-two~~ (+2) options to renew the Agreement. The operator can exercise the option to renew by submitting notice to the ~~ED~~ Department at least ten (10) working days prior to the expiration of the Primary Term of the Agreement, provided:
 - 1) The operator has begun the process for obtaining a lease.
 - 2) The operator is in compliance with the terms and conditions of the Agreement and applicable laws and regulations.
 - 3) The renewal term does not exceed the Primary Term.
 - c. An operator not pursuing a new lease shall have up to two (2) options to renew the Agreement. The operator shall exercise an option to renew the Agreement by providing a letter of intent to the ~~ED~~ Department at least ten (10) working days prior to the expiration of the Primary Term or the option period, provided:
 - 1) The operator is in compliance with the terms and conditions of the Agreement and applicable laws and regulations.
 - 2) The renewal term does not exceed the Primary Term.
 2. Rental: ~~shall may~~ be waived upon a finding by the BSL Committee that such waiver is in the best interest of the Township.
 3. Termination.
 - a. The Agreement shall be terminated for non-compliance with the terms and conditions of the Agreement or violation of any applicable law or regulation.
 - b. The ~~ED~~ Department shall notify the operator by certified letter, return receipt requested within five (5) days of any discovered non-compliance or violation, informing the operator that the Agreement is terminated.
 - c. The certified letter shall state the cause for termination, the date of the termination and the time-frame for vacating the premises, which shall not exceed five (5) calendar days from the effective date of the termination.
 4. No Agreement for a contaminated site shall be issued until the site has been cleaned up and approved by the Navajo EPA and United States EPA.

13.3. Applicant's responsibilities.

1. Submit an Application to the ~~ED~~ Department with the emergency operating agreement box checked.
2. Submit evidence of:
 - a. Insurance specified by Section 4.3.6.g. of this Plan; or
 - b. Executed indemnification form.
3. Submit an ER, if hazardous and regulated substances are involved.
4. Register with the Business Regulatory Department if an LRBE.
5. Submit a certificate of good standing issued within 12 months prior to administrative review of the Agreement.
6. Maintain compliance with terms and conditions of the Agreement and applicable laws and regulations.
7. Diligently pursue a lease unless the Agreement is to provide security for the premises or to temporarily manage a business.

13.4. ~~ED~~ Department responsibilities:

1. Review all documents for accuracy and compliance with applicable laws and regulations.
2. Obtain written clearances to verify the Applicant's compliance with the Navajo Business and Procurement Act. See Section 4.3.3.b. of this Plan.
3. Prepare an executive summary.
4. Process the Agreement with any necessary attachments for administrative review by the Review Team and legal counsel.
5. Present the Agreement to the BSL Committee for approval.
6. Prepare the Agreement for signature by the Applicant and Township Manager.
7. Collect the administrative fee for the Agreement.
8. Provide copy of the Agreement to the operator, Navajo Nation Land Department and RED.

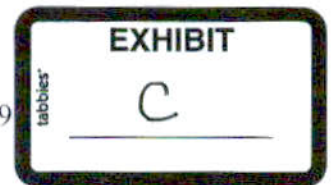
14.0. APPENDIX

14.1. Appendix A: Business Site Lease Approval Process – Flowchart

14.2. Appendix B: Forms.

1. Business Site Lease Application.
2. Business Site Lease Form - Part I.
3. Business Site Lease Form - Part II.
4. Modification of Lease.
5. Sublease.
6. Assignment of Lease.
7. Collateral Assignment of Lease.
8. Revocable Use Permit.
9. Emergency Operating Agreement.
10. Mutual Termination of Lease.
11. Security Deposit Agreement

8-05-19



KAYENTA TOWNSHIP
BUSINESS SITE LEASING MANAGEMENT PLAN
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1.0 EXECUTIVE SUMMARY.

- 1.1. This Management Plan ("Plan") provides the Kayenta Township ("Township") leasing staff with policy, direction and guidance in the management of business site leases and related documents within the boundaries of the Township.
- 1.2. Legal Framework: 25 U.S.C. § 415(e), as amended; Navajo Nation Business Site Leasing Act of 2000, 5 N.N.C. §§ 2301-2306 (2005), as amended; Navajo Nation Business Leasing Regulations of 2005, as amended (["2005 Regulations"](#)); and Economic Development Committee Uniform Business Leasing Regulations of 2008, as amended; ~~Kayenta Township Business Site Leasing Ordinance, as amended; and Kayenta Township Business Site Leasing Regulations, as amended.~~
- 1.3. Administrative Framework: The Kayenta Township Commission ("KTC") has the authority and responsibility to govern for the welfare of the Township and its residents, including the enactment of such ordinances, rules, regulations, policies and procedures as it deems in the best interest of the Township. See ACN-181-86 (Nov. 13, 1986) (established boundaries for the Township); CJY-42-03 (July 25, 2003) and CAU-47-03 (Aug. 29, 2003) (established Home Rule); Economic Development Committee Resolution No. EDCJN-28-09 (June 3, 2009) (delegating approval authority for Business Site Leases to the Township and approving the Township's Business Site Leasing Administrative and Management Plans); Resources and Development Committee Resolution No. _____ (_____, 2019) (approving amendments to the Township's Business Site Leasing Administrative and Management Plans); and Kayenta Township Comm'n v. Ward, 9 Nav. R. 481 (Nav. Sup. Ct. 2011) (confirming the KTC's home rule authority for all inherently governmental functions and holding that KTC has the actual right of possession to lands withdrawn for the Township).
- 1.4. Amendment of the Plan: The Business Site Leasing Committee may recommend amendments to this Plan subject to approval by the ~~Economic Resources and Development Committee~~ of the Navajo Nation Council ("~~EDCRDC~~") or its successor in accordance with the laws and regulations of the Navajo Nation and Township.
- 1.5. The definitions of the Kayenta Township Business Site Leasing Administrative Plan ("Administrative Plan") and the 2005 Regulations will apply to this Plan. In the event that there is a conflict between the 2005 Regulations and this Plan, the 2005 Regulations will govern.
- 1.6. Severability:
If a court of competent jurisdiction determines a provision in the Kayenta Township Business Site Leasing Management Plan is invalid, void or unenforceable, it shall be stricken and the remainder shall remain in full force and effect.

2.0 LEASE COMPLIANCE.

- 2.1. ~~ED~~ Department responsibilities:

Upon execution of a business site lease ("lease") by all parties:

1. Collect the appropriate administrative fee. See Section 2.4. of the Administrative Plan.
2. Ensure a number is assigned to the lease by RED. See Section 4.7.2. of the Administrative Plan and Section 6.3.6. of this Plan.
3. Obtain a Security Deposit from the lessee to guarantee the annual rental of the lease. See Section 4.3.6. of the Administrative Plan.
 - a. The Security Deposit can be in the form of cash, letter of credit or certificate of deposit.
 - b. The Security Deposit may be waived or postponed under certain circumstances, (see Section 4.3.6 of the Administrative Plan); such waiver or postponement must be incorporated into the lease terms and conditions.
 - 1) If the Security Deposit is waived, no further action is necessary.
 - 2) If the Security Deposit is postponed, the ~~ED~~ Department shall send written notice to the lessee within ninety (90) days before the date the Security Deposit is due, which shall include the following:
 - a) The actual due date of the Security Deposit;
 - b) That lessee must notify the ~~ED~~ Department within thirty (30) calendar days of the notice if lessee is unable to post the Security Deposit; and
 - c) That if lessee fails to post a Security Deposit within ninety (90) calendar days of the notice, the lease will be subject to termination. See Section 7.0. of this Plan.
 - 3) If the Security Deposit is not waived or postponed, the ~~ED~~ Department shall send written notice to the lessee within thirty (30) calendar days from the signature of the President, which shall include the following:
 - a) The actual due date of the Security Deposit;
 - b) That lessee must notify the ~~ED~~ Department within thirty (30) calendar days of the notice if lessee is unable to obtain a Security Deposit; and
 - c) That if lessee fails to post a Security Deposit within forty-five (45) calendar days of the notice, the lease will be subject to termination. See Section 7.0. of this Plan.
 - c. If lessee is unable to post the Security Deposit:
 - 1) The lease shall be subject to termination. See Section 7.0. of this Plan.
 - 2) Lessee shall notify the ~~ED~~ Department within thirty (30) days of the notice and explain why he is unable to post a Security Deposit.
 - 3) Upon lessee's notification, the ~~ED~~ Department may:
 - a) Allow lessee to deposit any other guarantee deemed acceptable for a minimum of one (1) year's rental fees;
 - b) Reduce the Security Deposit amount, but which reduction shall not be less than twenty-five percent (25%) of one (1) year's rental provided the conditions set forth in Section 4.3.6.f of the Administrative Plan are met; or

- c) Terminate the lease. See Section 7.0. of this Plan.
4. Obtain the required insurance within thirty (30) days of the execution of the lease. See Section 4.3.6.g. of the Administrative Plan.

2.2. Rental compliance.

The ~~ED~~ Department and Finance Department shall ensure that the rental payments are timely and lessee is not in default.

1. Late Charges:
 - a. Rental is due on the date specified in the lease.
 - b. If the rental payment is not received within ten (10) days following the due date, a late fee of ten percent (10%) of the rental due for the month shall be charged.
 - c. If the rental payment is not received within sixty (60) days following the due date, another late fee of ten percent (10%) of the past due rental shall be charged.
 - d. If the rental payment is not received within ninety (90) days following the due date, another late fee of ten percent (10%) of the past due rental shall be charged, and the lease will be subject to termination. See Section 7.0. of this Plan.
 - e. Any late rentals charged and paid may be prorated for the month.
2. It is the lessee's responsibility to ensure that the rental payment is paid before 3:00 p.m. at the Finance Department on or before the due date of the rental.
3. Failure of the Finance Department to send notices or invoices to the lessee does not relieve the lessee of his obligation to pay rent on a timely basis.
4. Rental received shall be posted to the lessee's account and deposited in the bank as soon as possible.

2.3. Annual lease compliance.

The ~~ED~~ Department shall conduct an on-site inspection of all leases on an annual basis, to ensure compliance with the lease terms and conditions.

1. A written Annual Lease Compliance Report ("Lease Compliance Report") shall be completed by July 1 of each year.
2. The ~~ED~~ Department shall prepare and complete the Lease Compliance Report, a site status report ("Status Report") and a Property Inventory Form after completion of the on-site inspection.
3. If the lessee is not in compliance with the terms and conditions of the lease, the ~~ED~~ Department shall initiate and implement the enforcement provisions under Section 8.0. of this Plan.

2.4. Property inventory form.

The ~~ED~~ Department shall complete the Property Inventory Form during the on-site inspection.

3.0. ENVIRONMENTAL REVIEW.

- 3.1. The Navajo Nation Business Site Leasing Regulations of 2005 provide that if a NEPA

type review was completed and "A Finding of No Significant Impact" ("FONSI") has been issued, the lessee may use such document to meet its environmental compliance determination obligations. See § 806. The Township has conducted an Environmental Assessment, dated April 1, 1999, for which the Bureau of Indian Affairs issued a FONSI on July 21, 1999. The Township has also conducted several Archaeological Clearances dated July 17, 1987, September 8, 1987 and October 20, 1987. These reports cover all lands located within the boundaries of the Township and are on file with the RED. Thus, those documents will be used to determine whether any further action is necessary during the Environmental Review ("ER") process of all leases. Generally, the ER requirements of this Section 3.0, will not apply to a lease on lands for which: 1) an Environmental Assessment and Archaeological Clearance have been conducted; 2) will not involve hazardous substances, including but not limited to, underground or above ground storage tanks, asbestos, and discharge of emissions or effluents; or 3) will not impact, alter or disturb the biological or cultural resources.

3.2. New leases, renewals, options to renew, modifications, novations, subleases, assignments or collateral assignment of leases:

1. Subject to Section 3.1 of this Plan, an ER may not be required for any of the following:
 - a. A new lease that contains lands for which an Environmental Assessment and Archaeological Clearance have already been conducted and will not create any new disturbance.
 - b. A lease that involves a decrease in the acreage of the land leased or any other change that does not involve hazardous substances.
 - c. A lease that involves a decrease in the acreage of the land leased or any other change that will not impact, alter or disturb the biological or cultural resources.
 - d. Extending the term of the lease with no other changes.
 - e. Renewing or exercising an option to renew lease without any significant changes in the terms and conditions of the lease.
 - f. A modification, novation, assignment or transfer of a lease without any significant changes to the terms and conditions of the lease.
 - g. A collateral assignment of a lease.
 - h. Construction of improvements (buildings) on the leased premises for the permitted business purpose, without an increase in the acreage of land or without any changes in the terms or conditions of the lease.
 - i. Any increase in the value of improvements.
 - j. Any change in the rent or rental adjustments as permitted in the lease.
 - k. Any waiver, postponement or change in the Security Deposit, construction bond or insurances.
 - l. Any demolition or removal of a building that does not involve potential environmental contamination. (E.G., hazardous substances, including but not limited to, underground or above ground storage tanks and asbestos, and discharge of emissions or effluents.)

If the lease involves any of the above, proceed to Sections 3.3. of this Plan.

2. Subject to Section 3.1. of this Plan, an ER shall be required for any of the following:
 - a. Any lease for lands for which an Environmental Assessment and/or Archaeological Clearance have not been conducted.
 - b. Any Business Site Leasing Transaction that will involve hazardous substances, including but not limited to, underground or above ground storage tanks, asbestos, and discharge of emissions or effluents.
 - c. Any Business Site Leasing Transaction that will impact, alter or disturb the biological or cultural resources.
 - d. Any existing lease, for which an ER was not properly conducted or where not all impacts were addressed in the initial ER.
 - e. Any change in the purpose(s) of the lease that would dramatically transform the business (e.g., from an office building to a gas station).
 - f. Any demolition or removal of any building or improvements that involves potential environmental contamination (e.g., hazardous substances, including but not limited to, underground or above ground storage tanks and asbestos, and discharge of emissions or effluents).

If the lease involves any of the above, proceed to Section 3.3. of this Plan.

3.3. ER process.

1. If the leasing activity falls under Section 3.2.1. above, the ~~ED~~ Department shall state the exception on the Environmental Summary form. There is no need to fill out the rest of the Environmental Summary form. The ~~ED~~ Department shall submit the Environmental Summary with all required documents to RED for review in accordance with RED's Environmental Policy and signature.
2. If the leasing activity falls under Section 3.2.2. above, the ~~ED~~ Department shall fill out the Environmental Summary form. The ~~ED~~ Department shall submit the Environmental Summary with all required documents to RED for review in accordance with RED's Environmental Policy and signature.

3.4. Public notice and review.

1. If RED determines that the proposed lease involves hazardous substances or critical impacts to the Nation's biological or cultural resources, it may publish a notice of such impact and of its intent to certify that the lessee has completed the ER process in a newspaper of general circulation.
2. The notice must provide an opportunity for public comments within a thirty (30) day period, and the notice must inform the public of the procedures for review and comment.
3. Any public comments received must be taken into consideration in the ER.

3.5. ER record.

1. RED shall maintain a record of the ER conducted for each Business Leasing Transaction pursuant to applicable laws and regulations.
2. The ER record must contain:

- a. The compliance determination;
 - b. Any correspondences;
 - c. Any supporting documents;
 - d. Environmental Summary;
 - e. Public notice, if any; and
 - f. Public comments, if any.
3. The ER record and ER documents must be available for public review at all times during normal business hours.

4.0. APPRAISAL OR EQUIVALENT PROCEDURE.

4.1. Implementation.

1. The ~~ED~~ Department shall conduct an appraisal or an equivalent procedure for the purpose of determining the Lease Rental by:
 - a. Contracting with Appraiser(s) to conduct appraisals or equivalent procedures;
 - b. Assisting all contracted Appraisers with data and information; and
 - c. Reviewing all appraisals or equivalent procedures reports.
2. Appraisals shall be conducted for:
 - a. lands redesignated for business purposes, which were not included in the Kayenta Township Real Estate Market Study ("Market Study"); or
 - b. business sites involving unusual or extraordinary circumstances, for example, when no comparable data exists for a large business to be established.
3. Equivalent procedures shall be used in all other cases not identified in Section 4.1.2.

4.2. Objectives.

The objectives of the Township are to:

1. Provide uniform, equitable and credible services consistent with the standards of the appraisal profession to appraise or value all existing improvements and lands designated for business purposes by either an appraisal or equivalent procedure.
2. Design a streamlined process to optimize and expedite the flow of appraisals or equivalent procedures.
3. Comply with policies established by RED for the prompt and complete processing of appraisals or equivalent procedures.

4.3. Criteria for Appraisers.

1. All Appraisers who perform appraisals or equivalent procedures shall:
 - a. Complete the appraisal or equivalent procedure in compliance with the Uniform Standards of Professional Appraisal Practice ("USPAP").
 - b. Meet the requirements of Standards Rule 2-2(a) (i.e., the content of a self-contained Appraisal or equivalent procedure report must be consistent with the intended use of the appraisal) and comply with the Competency Rule, including geographic competency.

- c. Be licensed and in good standing in the same state of the property to be appraised.

4.4. Appraisals or equivalent procedures reports.

1. The appraisal or equivalent procedure shall determine the fair annual lease value of the existing improvements and lands designated for business purposes utilizing generally accepted appraisal methodologies and the data required by this Section 4.0. For leases generating more than \$1,000,000.00 of revenues, the appraisal or equivalent procedure may also address percentage rents.
2. The Township or the Navajo Nation shall have the right to promulgate supplemental standards and to change such standards as deemed necessary. The Appraiser must familiarize himself with any applicable supplemental standards and comply with them.
3. The Appraiser shall:
 - a. Certify that the appraisal or equivalent procedure report was prepared in compliance with the USPAP and any supplemental standards promulgated by the Township or Navajo Nation;
 - b. Include an acknowledgment in the appraisal or equivalent procedure report that ~~it~~states the report is subject to review by the Township and RED and the right of the Township and/or the Navajo Nation to either reject or require specific changes to the report;
 - c. Include a statement in the report agreeing to protect the confidentiality of all information obtained during the appraisal process relative to Navajo Nation trust lands and businesses;
 - d. Attach a log describing the appraisal or equivalent procedure;
 - e. Include a copy of his license in the appraisal report or equivalent procedure report; and
 - f. Comply with all applicable federal, state and Navajo Nation regulations.
4. The ~~ED~~ Department shall provide a copy of the appraisal to RED to ensure compliance with USPAP.

4.5. Kayenta Township Real Estate Market Study ("Market Study").

1. The Township shall contract with an independent licensed Appraiser to conduct a Market Study (as an equivalent procedure) to:
 - a. Value all sites designated for business purposes; and
 - b. Recommend an optimal rental structure for such business sites.
2. The Appraiser shall:
 - a. Review the following information for each business site:
 - 1) improvement costs;
 - 2) replacement costs;
 - 3) earning capacities;
 - 4) sales; and
 - 5) lease data of comparable sites.
 - b. Generate a data base after analysis of the above five (5) factors and consistent with the regulations and this Plan.
 - c. Recommend a rental structure for similar groups of businesses, which the

- ~~ED~~ Department shall utilize to negotiate rents to be charged for new businesses or existing businesses that novate or renew their leases.
3. An initial Market Study was done in October of 1999. The Market Study shall be updated every five (5) years. A copy of the study shall be provided to RED for review to ensure compliance with USPAP.

5.0. FILE MANAGEMENT.

- 5.1. Lease files shall be maintained by the ~~ED~~ Department for each lessee in accordance with the Navajo Nation Privacy Act, 2 N.N.C. §§ 81-92 (2005). Files shall be kept for a minimum of five (5) years after the expiration or termination of the lease. Thereafter, all files shall be digitized and archived by the ~~ED~~ Department and the paper documents may be destroyed.
- 5.2. All files shall contain the following documents for all approved leases:
1. Legal opinions or reviews;
 2. All correspondence;
 3. Summary sheets of supporting documents;
 4. Lease application;
 5. Resolutions;
 6. Clearance documents;
 7. Other documents;
 8. Approved lease;
 9. Survey plat;
 10. All exhibits;
 11. Organizational documents (charter, bylaws, etc.);
 12. Security Deposits and insurance certificates;
 13. Receipts for fees;
 14. Appraisal report or equivalent procedure determination;
 15. Environmental review report;
 16. Archaeology inventory and cultural resources compliance forms;
 17. Financial and accounting information;
 18. Enforcement and compliance information; and
 19. Miscellaneous.
- 5.3. The ~~ED~~ Department shall scan all documents, to the extent practicable, and index all files, during the term of each lease.

6.0. FINANCIAL MANAGEMENT.

- 6.1. Definitions for purposes of this Section.
1. *Billing* means the Invoice process.
 2. *Invoice* means a written and detailed record of rental and other charges due from the lessee with specific amounts for each item and sent to the lessee as a request for payment.

6.2. Accounting system.

1. The Finance Department shall utilize an automated accounting system tailored to the needs of municipalities.
 - a. The applications shall include an Accounts Payable, Accounts Receivable and Asset Management.
 - b. The accounting for leases shall be maintained under the Accounts Receivable component of the accounting system.
2. The accounting system shall be capable of:
 - a. generating invoices in advance of the due date;
 - b. accounting for all payments; and
 - c. generating statements for the lessees upon request.
3. The accounting information maintained for each lessee shall include the name, address and telephone numbers of the lessee, business site lease number, due dates for rental payments and applicable Township taxes, amounts due, payments made, late charges, collection efforts, cancellation efforts, balance due, cumulative payments, cumulative balance due, and the dates when rate adjustments are scheduled to be made.

6.3. Accounting procedures.

1. The Finance Department shall generate invoices for lease rentals due for each month and transmit such invoices to the appropriate lessees by the fifteenth (15th) day of the month preceding the month for which the rental is due.
2. The lessee shall make payments on lease rentals by the first (1st) day, but no later than the tenth (10th) day, of the month for which the rental is due.
3. A lease established after the first day of any month shall have their charges prorated for the first month the lease is in effect, respectively.
4. All rental payments shall be made by business check, cashier's check or money order payable to the Kayenta Township and hand delivered to the Township Office or mailed to P. O. Box 1490, Kayenta, AZ 86033.
 - a. If a lessee's business check is returned at any time for insufficient funds or for any other reason, the lessee will no longer be permitted to pay its rental payments by business checks.
 - b. No cash or personal checks will be accepted.
5. The Township shall comply with the Navajo Business and Procurement Act in the administration of all leases. Thus, if a lessee, whether an individual, business, corporation, partnership or other organization, has an outstanding debt or delinquent accounts receivable owing to the Township or the Navajo Nation, the Finance Department may offset any such outstanding debt or delinquent accounts receivable against the amounts owed to the lessee, and forward any amounts due to the Township or Navajo Nation Office of the Controller, as the case may be.
6. All leases shall be assigned a lease number and recorded by RED.
7. A Status Report on each lease shall be prepared by July 1 of each year. The report shall indicate whether the lease is active or inactive, or whether the lessee is a holdover or deceased or has abandoned the leased premises. When a lessee is deceased or has abandoned or closed the business, the Finance Department shall cease billing the lessee.

8. Any "Settlement Agreement" reached between a lessee and the Township shall be filed in the lessee's file and the Finance Department shall cease billing the lessee after such agreement has been fully executed.
9. All lease information shall be kept confidential. The Township shall not disclose any such confidential information to third parties (except appropriate departments of the Navajo Nation) without the lessee's written permission.

6.4. Financial reports.

The Finance Department shall prepare an annual accounts receivable report by June 1 of each year, verify such report with the ~~ED~~ Department, and forward a copy of such report to RED.

6.5. Audits.

1. The Navajo Nation Office of the Auditor General and the Township shall be permitted to conduct random audits of the leases at any time.
2. If conducted by the Township, a copy of the completed audit report shall be provided to the Navajo Nation Office of the Auditor General.
3. If conducted by the Navajo Nation Office of the Auditor General, a copy of the completed audit report shall be provided to the Township.

7.0. **TERMINATION.**

7.1. If an Appeal is filed.

If at any time the lessee files an appeal with the Office of Hearings and Appeals or an Appeals Officer appointed by the BSL Committee, any steps to terminate the lease shall immediately cease. See Section 9.0. of this Plan.

7.2. Mutual termination.

Mutual termination of a lease shall occur when the lessee and ~~ED~~ Department both agree to terminate the lease. Any outstanding financial or environmental obligations of the lessee shall survive the termination of the lease. See Section 8.5.1. of this Plan.

7.3. Unilateral termination.

If lessee is in default of the terms and conditions of the lease, including but not limited to, the rental, purpose, unlawful use, accounting, improvements, non-development, security deposit, insurance, sublease, assignment, transfer, management agreement, encumbrance, lien, taxes, assessments, utility charges, sanitation, holdover, trespass and abandonment provisions, the ~~ED~~ Department may unilaterally terminate such lease. See Section 8.0. of this Plan.

7.4. Expiration/Option to Renew.

If the lessee has not notified the ~~ED~~ Department within a reasonable time to renew a lease, the lease shall be considered to have expired.

1. To avoid expiration of a lease, the lessee must notify the ~~ED~~ Department of its intent to renew or to exercise an option to renew the lease at least one (1) year prior to the expiration date of the lease.

2. If the lessee does not notify the ~~ED~~ Department of its intention to renew or exercise an option to renew the lease in a timely manner, the ~~ED~~ Department shall notify the lessee of the:
 - a. Date of expiration of the lease or the option to renew the lease.
 - b. Request that the lessee respond within ten (10) working days.
3. Response process:
 - a. If the lessee begins the process to renew the lease or exercise the option, the ~~ED~~ Department should proceed to Sections 5.0. or 6.0. of the Administrative Plan, whichever is applicable.
 - b. If the lessee does not respond within the ten (10) day time limit, the lease shall be considered expired, and, if the lessee does not timely vacate the premises, the ~~ED~~ Department may begin the process for a forcible detainer action and/or a trespass action against the lessee.

7.5. Property management.

The ~~ED~~ Department shall inspect and inventory all improvements located on the leased premises within thirty (30) days after the expiration, termination or abandonment of a lease. A copy of the Inventory shall be submitted to the Navajo Nation Environmental Protection Agency and Navajo Nation Risk Management Program.

8.0. ENFORCEMENT, RELIEF AND REMEDIES.

- 8.1. The ~~ED~~ Department shall be responsible for enforcing the terms and conditions of the lease, including but not limited to, collections, obtaining insurance proceeds, and collecting the Security Deposit.
 1. If at any time the lessee files a claim or appeal with the Office of Hearings and Appeals or an Appeals Officer appointed by the Township, any steps to terminate the lease shall immediately cease. See Section 9.0. of this Plan.
 2. The ~~ED~~ Department shall consult with the Township's legal counsel for any legal advice or legal action that may be necessary.
- 8.2. Defaults.
 1. Defaults shall include without limitation the following:
 - a. Failure to pay rent, late charges, payments under repayment plans, and other required charges;
 - b. Conducting business outside the leased premises;
 - c. Conducting business without a valid lease;
 - d. Conducting business not authorized by the lease;
 - e. Conducting unlawful business or conduct on the leased premises;
 - f. Unauthorized holding over;
 - g. Assigning, subleasing or transferring a lease without the approval of the BSL Committee pursuant to Sections 9.0., 10.0. and 11.0. of the Administrative Plan;
 - h. Failure to complete development within the permitted Development Period;
 - i. Failure to commence development on the leased premises within a

- reasonable period of time after commencement of the lease, in the discretion of the ~~ED~~ Department;
 - j. Unlawful construction or violation of any applicable building codes;
 - k. Failure to submit or to maintain any required Security Deposit throughout the term of the lease;
 - l. Failure to post or to maintain any construction bond required during the construction period;
 - m. Failure to submit or to maintain any required insurance throughout the term of the lease;
 - n. Violation of health codes and standards;
 - o. Commission of malpractice for professional offices;
 - p. Failure to promptly remove any liens placed on the leased premises;
 - q. Failure to pay any required taxes;
 - r. Failure to pay any utility payments necessary for the health and safety of customers and employees;
 - s. Failure to comply with any required environmental laws, including but not limited to, those related to hazardous and regulated substances and underground or aboveground storage tanks;
 - t. Failure to comply with the Navajo Preference in Employment Act;
 - u. Failure to comply with any applicable federal, Navajo Nation or Township laws or regulations; and
 - v. Any other violation or breach of the terms and conditions of the lease.
2. If a default has occurred, the ~~ED~~ Department shall proceed to Section 8.3. of this Plan. If a default will cause death, injury or sickness to any person, then the ~~ED~~ Department shall proceed to Section 8.7. of this Plan.

8.3. Default process.

- 1. Once a default has occurred, the ~~ED~~ Department shall immediately send written notice to the lessee, which must include the following:
 - a. The date the default occurred;
 - b. A description or determination of the default;
 - c. The remedies available;
 - d. Applicable laws and regulations;
 - e. Possible termination of the lease and collections on the Security Deposit and/or insurance;
 - f. Inform the lessee of three options:
 - 1) Cure the default within the specified time;
 - 2) Request additional time to cure the default, which cure shall be within a reasonable period of time; or
 - 3) Dispute the determination of the default; and
 - g. The actual date by which the lessee must respond to the notice.
- 2. The notice must be given by certified mail, return receipt requested.
- 3. The lessee shall have ten (10) days from the date of the notice to respond.

8.4. Response process.

- 1. If the lessee cures the default within a reasonable period of time ~~on a timely basis~~,

no further action is necessary.

2. If the lessee requests additional time, the ~~ED~~Department will proceed as follows:
 - a. Send notice to the lessee allowing the additional time for a response, in the ~~ED~~Department's discretion.
 - b. If additional time is granted, it shall be no less than ten (10) days and no more than ninety (90) days, depending on the circumstances; however, the lessee should be encouraged to resolve the default as quickly as possible.
 - c. The ~~ED~~Department shall consider whether the lessee is diligently pursuing the cure in granting the additional time.
 - d. If the default cannot be cured within the specified time, the lessee may request additional time and the ~~ED~~Department in its discretion may grant a second extension.
 - e. If the default is not cured within the additional time granted, the ~~ED~~Department may proceed to Section 8.5. of this Plan.
3. If the lessee chooses to dispute the determination of the default, the lessee must provide a full explanation in writing to the ~~ED~~Department by certified mail, return receipt requested or by personal delivery to the Township Office within ten (10) days of the date of the notice.
 - a. The ~~ED~~Department may request a legal opinion from legal counsel.
 - b. If legal counsel determines that there is no default, no further action is necessary.
 - c. If legal counsel determines that there is a default and if the lessee continues to dispute the default, the ~~ED~~Department shall meet with the lessee to resolve the dispute.
4. If the lessee does not respond within the time allowed or refuses to cooperate to resolve the default, the ~~ED~~Department shall proceed to Section 8.6. of this Plan.
5. If the lessee appeals, the ~~ED~~Department shall proceed to Section 9.0. of this Plan.

8.5. Compromise.

1. If the lessee is not able to cure but is willing to cooperate with the Review Team to resolve the default, the lessee may compromise with the Review Team by agreeing to a mutual termination of the lease.
 - a. Mutual termination may be granted:
 - 1) During the Development Period without a penalty.
 - 2) At any other time with or without a penalty, in the discretion of the ~~ED~~Department.
 - b. The lessee shall send notice to the ~~ED~~Department requesting mutual termination of the lease.
 - c. The ~~ED~~Department shall:
 - 1) Obtain written clearance from the appropriate authorities to verify the Applicant's compliance with the Navajo Business and Procurement Act.
 - 2) Obtain written clearance from the Navajo Environmental Protection Agency regarding any environmental matters.
 - 3) Obtain legal review of the termination documents.
 - 4) Present the termination to the BSL Committee for approval.

- 5) Record and distribute the termination of lease in accordance with Section 4.7. of the Administrative Plan.
 2. The Review Team may hear the dispute and negotiate a fair and reasonable solution.
 - a. If necessary, the Review Team, with the assistance of legal counsel, shall enter into a settlement agreement with the lessee. See Section 9.2. of this Plan.
 3. If the default is still not cured and a compromise is not likely, the ~~ED~~ Department shall proceed to Section 8.6. of this Plan.
- 8.6. Remedies.
1. If the lessee does not cure or respond within the time allowed or refuses to compromise or cooperate to resolve the default, the ~~ED~~ Department may:
 - a. Terminate the lease. See Section 7.3. of this Plan.
 - b. Pursue any other remedy, including collecting on the Security Deposit and/or insurance proceeds; or
 - c. Pursue any combination of the remedies listed above.
 2. If the ~~ED~~ Department decides to terminate the lease, it shall obtain written clearance from the appropriate authorities to verify lessee's compliance with the Navajo Business and Procurement Act and other applicable Navajo Nation laws and regulations.
 3. The ~~ED~~ Department shall send notice to the lessee informing him of the termination of the lease. Such notice shall be sent by certified mail, return receipt requested.
 4. The termination letter shall:
 - a. Explain the reasons for termination;
 - b. Provide a detailed invoice of any unpaid amounts of rents, interests, other charges and penalties due under the lease;
 - c. Include a demand for full payment, if applicable;
 - d. Inform the lessee of its right to appeal the termination; and
 - e. Order the lessee to vacate the leased premises within thirty (30) days of the date of the certified letter, if an appeal has not been timely filed.
 5. Termination of the lease shall become effective on the thirty-first (31st) day after the date of the certified letter.
 6. The filing of an appeal shall toll the effective date of the termination of the lease. Pending the outcome of the appeal, the lessee shall be responsible for continuing to make all required payments, as well as complying with the terms and conditions of the lease.
 7. After a lease has been terminated, the ~~ED~~ Department may:
 - a. Enter the premises and change the locks or place padlocks on the building(s) or other facilities;
 - b. Discontinue the utility services to the leased premises;
 - c. Assist the lessee in vacating the leased premises; and/or
 - d. Do anything else necessary to retake the leased premises, to the extent permitted by law.

8.7. Emergency cancellation.

If the conduct of the lessee or lessee's invitees or agents causes or threatens to cause immediate and significant harm to the leased premises or persons, including the business owner, or undertakes unlawful activity thereon, the ~~ED~~ Department may contact the Navajo Nation Police Department and immediately terminate the lease without notice to the lessee.

8.8. Eviction and court action.

Eviction through court action will be imposed on the lessee if he is unwilling to vacate the premises after termination of the lease. Upon issuance of a warrant of removal by the Navajo Nation courts, the ~~ED~~ Department shall secure the leased premises with the assistance of the Navajo Nation Police Department and repossess the leased premises in accordance with the Forcible Entry and Detainer Act, 16 N.N.C. § 1801 et seq. The Township shall be entitled to restitution for any loss or damages as a result of a lessee's wrongful holding over after termination of the lease.

8.9. Holding Over.

1. Lessees holding over after termination of the lease for any defaults or non-compliance as provided herein:
 - a. Shall be charged the holdover rental specified in the lease; and
 - b. May be subject to a trespass action and eviction through a forcible detainer action as determined by the ~~ED~~ Department.
2. Lessees holding over after expiration of the lease may be subject to the holdover rental specified in the lease unless due to:
 - a. Unforeseen circumstances;
 - b. Circumstance beyond the control of the Lessee; or
 - c. Any other circumstances justified in writing by the Lessee or determined reasonable at the discretion of the ~~ED~~ Department.
3. Holdover Lessees may be subject to eviction through a forcible detainer action if:
 - a. Lessee is not diligently pursuing renewal of a lease;
 - b. Lessee defaults or is in non compliance as provided herein; or
 - c. Any other circumstance determined reasonable at the discretion of the ~~ED~~ Department.

8.10. Trespass.

If the lessee or a person occupies the premises without a valid lease or remains in possession after the termination or expiration of a lease, the ~~ED~~ Department shall treat such occupation as a trespass and pursue appropriate remedies, including the filing of a trespass action to regain possession. The ~~ED~~ Department shall take action to recover possession of the premises and pursue additional remedies and may seek assistance from legal counsel to file any trespass or forcible detainer action in court.

9.0. APPEALS.

- 9.1. Compliance with the process set forth in this Section 9 is required to exhaust tribal remedies under 25 U.S.C. § 415(e). ~~Any applicant, lessee or other affected party~~

~~("Interested Party") may appeal the decision of the Township, after the exhaustion of all tribal remedies, to the Secretary of the Interior ("Secretary").~~

9.2. Compromise Administrative Review.

1. The Interested Party may contact the ~~ED~~ Department and attempt to reach a compromise for a fair and reasonable solution to the dispute, as provided for in Section 8.0. of this Plan, prior to any suit or appeal.
2. If the Interested Party and ~~ED~~ Department cannot reach a compromise, the Interested Party may request an administrative hearing with the Review Team, which shall be scheduled within a reasonable time. The Review Team shall render a decision as soon as practicable, but no later than thirty (30) days after the date of the hearing.
3. The Interested Party may appeal the Review Team's decision to the BSL Committee for a hearing, which shall be scheduled within a reasonable time. The Committee shall render a decision as soon as practicable, but no later than thirty (30) days after the date of the hearing.

9.3. Office of Hearing and Appeals or Appeals Officer.

1. The Interested Party may appeal the BSL Committee's decision within ten (10) days with-to the Office of Hearing and Appeals (~~"OHA"~~) of the Navajo Nation or ~~with-to~~ the Appeals Officer (~~"AO"~~) hired by the Township (together, referred to as the "OHA").
 - a. The written complaint shall set forth in plain language the basis for the appeal, a short statement indicating the nature and circumstances of the appeal, and a short statement indicating the remedy being sought. A stay of enforcement shall be effectuated only by the filing of an appeal bond set by the tribunal. Service of process shall be made on the authorized Kayenta Township representative identified in the lease.
 - b. An appeal bond shall be posted in an amount sufficient to protect the party whose remedy has been stayed from all financial losses that may occur as a result of the appeal. The appeal bond requirements shall not be subject to a separate appeal, but may be contested during the cancellation appeal as a preliminary matter for expedited decision by OHA.
2. The BSL Committee's decision is presumed to be correct. The OHA or AO shall review shall uphold the BSL Committee's decision to determine whether it is unless it determines by a preponderance of the evidence that the decision was:
 - a. Arbitrary, capricious or an abuse of discretion.
 - b. Not supported by substantial evidence.
 - c. Not in accordance with the law.

9.4. Navajo Nation Supreme Court.

1. The Interested Party may appeal an OHA ~~or AO~~ decision to the Navajo Nation Supreme Court within thirty (30) days of the OHA's final decision. The failure to exhaust the administrative remedies before the OHA within the time permitted shall be a jurisdictional bar to the filing and consideration of any such appeal.
2. The review shall be limited to issues of law and the record.

3. The review shall not be *de novo*.
4. The Navajo Nation Supreme Court shall uphold the OHA's findings of facts if supported by substantial evidence.
5. The Navajo Nation Supreme Court's decision shall be final for the Navajo Nation.

9.5. Secretary of the Interior.

1. An ~~The~~ Interested Party may, after exhaustion of Navajo Nation remedies, submit in a timely manner a petition to the Secretary to review the compliance of the Navajo Nation with the 2005 Regulations, appeal to the Secretary after the Navajo Nation Supreme Court has rendered a decision.
2. The Secretary shall determine:
 - a. Any adverse effects on the Interested Party;
 - b. If the termination is in accordance with the Navajo Nation and Township rules and regulations; or
 - c. If the termination is discriminating to the Interested Party.

10.0. COLLECTIONS PROCEDURES.

10.1. Collections.

Lessees that are in arrears or otherwise not in compliance with the terms and conditions of the lease shall be considered for collections.

1. The ~~ED~~ Department shall keep detailed records of its collection efforts, correspondence and contacts with the lessee in accordance with its internal policies and procedures. (The lease file is a legal document and any entries made should be considered as potential evidence in court.)
2. The ~~ED~~ Department may charge the lessee a collection fee.
3. The lessee is responsible for keeping the ~~ED~~ Department and Finance Department informed of its current address and telephone numbers. The ~~ED~~ Department and Finance Department are only responsible for sending any correspondence to the last address provided by the lessee.
4. If an account must be collected through judicial action, the lessee shall not be considered for another lease until at least ten (10) years has elapsed.
5. All bankruptcy cases shall be subject to the federal bankruptcy laws and all other applicable laws to discharge a debt. However, the Township shall have the continued right to terminate the lease, and the leased premises shall be subject to all applicable Navajo Nation, federal and state laws in which the property is located.
6. In the event of death of a lessee, the ~~ED~~ Department shall contact the surviving spouse or administrator of the deceased's estate to ensure that the lease is probated in compliance with the Navajo Nation probate laws and regulations.
7. Any payments in arrears owed by lessees to the Township, Navajo Nation or entities of the Navajo Nation shall be pursued pursuant to the Navajo Business and Procurement Act, 12 N.N.C. § 1501 *et seq.* (2005).

10.2. Compromise with delinquent lessee(s).

When the lease rental is uncollectible and all collection efforts have been exhausted, the

~~ED~~ Department may settle the outstanding debt pursuant to a settlement agreement and/or promissory note.

1. The ~~ED~~ Department shall consider such factors as death, bankruptcy or other extenuating circumstances and the amount of debt on a case-by-case basis before entering into a settlement agreement and/or promissory note.
2. The ~~ED~~ Department may in its discretion negotiate with the Sublessee, Assignee, Permittee, Encumbrancer or any other person or entity ("Affected Party") as to the terms and conditions of the Settlement Agreement and/or Promissory Note.
3. After negotiations have been completed, the Township's legal counsel shall draft the settlement agreement and/or promissory note.
4. The settlement agreement and/or promissory note shall be reviewed by NNDOJ.
5. The settlement agreement and/or promissory note shall be signed by the Affected Party and concurred with by the Town Manager.
6. The settlement agreement and/or promissory note shall be executed by the Navajo Nation Attorney General.
7. Upon execution of the settlement agreement and/or promissory note by all parties, the accrued rental and fees shall be taken off the books of the Township. The lease records shall indicate the accounts receivable have been settled or a repayment plan has been agreed to.
8. For any amounts not collected or not subject to a settlement agreement or promissory note, the Finance Department may forward such information to the credit bureaus for reporting or posting as bad credit.

11.0. APPENDIX – FORMS.

1. Annual Lease Compliance Report
2. Property Inventory
3. Site Status Report
4. Environmental Summary



NAVAJO NATION DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL


DOREEN N. MCPAUL
Attorney General

KIMBERLY A. DUTCHER
Acting Deputy Attorney General



MEMORANDUM

TO: Greg Kelly, Counsel
Kayenta Township

FROM: 
LaTonia B. Johnson, Assistant Attorney General
Economic/Community Development Unit
Department of Justice

DATE: August 9, 2019

SUBJECT: **Amendments to Kayenta Township Administrative and Management Plan**

The Navajo Nation Division of Economic Development and Department of Justice met with the Kayenta Township to review the amendments to the Kayenta Township Administrative and Management Plan (Plans). In reviewing the last version of the Plans dated August 5, 2019 (attached), the Plans appears to be sufficient and meets the concerns noted at our last meeting on May 7, 2019 between the above-mentioned parties.

If you have any questions regarding the memorandum or the attachments, please contact me at 928-871-6933. Thank you.

LBJ/cb/232

Attachments:

- xc: Lillian Schwales, Attorney
ECDU/DOJ
- : Gabriel Yazzie, Township Manager
Kayenta Township
- : Sally Yabeny, Economic Development Specialist
Shiprock RBDO/DED
- : John Largo, Economic Development Specialist
Eastern RBDO/DED
- : Bertha Aguirre, Department Manager
Real Estate Department/DED
- : Sharlene Begay-Platero, Industrial Development Specialist
Project Development Department/DED



THE KAYENTA TOWNSHIP

P.O. Box 1490 KAYENTA, AZ 86033 - PHONE: (928) 697-8451 FAX: (928) 697-8461

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Resolution No: KTCJY-43-19

RESOLUTION OF THE KAYENTA TOWNSHIP COMMISSION

Approving Revised Proposed Amendments to the Kayenta Township Business Site Leasing Administrative and Management Plans and Recommending Them to the Resources and Development Committee of the Navajo Nation Council for Its Approval

WHEREAS:

1. The Kayenta Township Commission ("Commission") is a home-rule municipality of the Navajo Nation with the general authority and responsibility to govern for the welfare of the Kayenta Township ("Township"), the Township's employees, and its residents, including the enactment of such ordinances, rules and regulations as it deems in the best interest of the Township. See 2 N.N.C. §§ 4081-4086, as amended; and
2. A delegation of business site leasing approval authority to the Township, and the Township's Business Site Leasing Administrative and Management Plans, were approved by the former Economic Development Committee of the Navajo Nation Council by Resolution No. EDCJN-28-09 (June 3, 2009); and
3. Pursuant to Resolution No. KTCM-09-08 (Mar. 15, 2008), the Commission established the Business Site Leasing Committee ("BSL Committee") to approve all business site leases and related documents for the Kayenta Township. The Business Site Leasing Administrative Plan defines the BSL Committee as the "Approving Entity" for business site leases and provides that the BSL Committee shall consist of the Town Manager, the Finance Department Director, the Development Services Department Director, and two community members residing within the Township; and
4. The Commission earlier reviewed and approved in Resolution No. KTCA-21-19 (April 17, 2019) proposed amendments to the Business Site Leasing Administrative and Management Plans, which incorporated most of NNDOJ's recommended changes and that were reviewed by Township management and the Commission's legal counsel; and
5. Subsequent to the Commission's approval, NNDOJ recommended additional changes to the proposed amendments that were reviewed by Township management and the Commission's legal counsel, with NNDOJ's recommendations adopted or addressed in the versions of the amended BSL Administrative and Management Plans attached hereto as composite Exhibit "A" (the "Revised BSL Amendments"), with all proposed amendments set forth in underline and strikeout (redline); and
6. The Revised BSL Amendments were approved by the BSL Committee by Resolution BSLC-JU-01-19 adopted on June 20, 2019, attached hereto as Exhibit "B"; and
7. Having been fully advised by management, and with approval of the BSL Committee, the Commission now wishes to approve and recommend the Revised BSL Amendments to the Resources and Development Committee of the Navajo Nation Council for its approval of the

amendments pursuant to 2 N.N.C. § 501(B)(2)(f), in the best interest of the Kayenta Township.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The Kayenta Township Commission hereby approves the Revised BSL Amendments, as shown in the attached composite Exhibit "A" in underline and strikeout (redline), and hereby recommends such amendments to the Resources and Development Committee of the Navajo Nation Council for its approval, in the best interest of the Kayenta Township.
2. The Town Manager is hereby authorized to take any and all actions necessary and prudent to carry out the intent of this Resolution.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Kayenta Township Commission at a duly called meeting at Kayenta, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 4 in favor, 0 opposed, and 1 abstained, this 8 day of July, 2019.

Motion: Commissioner Kescoli

Second: Commissioner Williams



Ed Seaton, Chairperson
Kayenta Township Commission

**RESOLUTION OF THE
KAYENTA TOWNSHIP BUSINESS SITE LEASING COMMITTEE**

Approving Revised Proposed Amendments to the Kayenta Township Business Site Leasing Administrative and Management Plans and Recommending Their Approval by the Kayenta Township Commission and the Resources and Development Committee of the Navajo Nation Council

WHEREAS:

1. The Kayenta Township Commission ("Commission") has the authority and responsibility to govern for the welfare of the Kayenta Township ("Township") and its residents, including the enactment of such ordinances, rules, and regulations as it deems in the best interest of the Township; and

2. Pursuant to Resolution No. KTCM-09-08 (Mar. 15, 2008), KTC established the Business Site Leasing Committee ("Committee") to approve all business site leases and related documents for the Township. A delegation of business site leasing authority to the Township, and the Township's Business Site Leasing Administrative and Management Plans, were approved by the former Economic Development Committee of the Navajo Nation Council by Resolution No. EDCJN-28-09 (June 3, 2009). The Business Site Leasing Administrative Plan defines the Committee as the "Approving Entity" for business site leases and provides that the Committee shall consist of the Town Manager, the Finance Department Director, the Development Services Department Director, and two community members residing within the Township; and

3. The Commission earlier reviewed and approved in Resolution No. KTCA-21-19 (April 17, 2019) proposed amendments to the Business Site Leasing Administrative and Management Plans, which incorporated most of the Navajo Nation Department of Justice's ("NNDJOJ") recommended changes and that were reviewed by Township management and the Commission's legal counsel; and

4. Subsequent to the Commission's approval, NNDJOJ recommended additional changes to the proposed amendments that were reviewed by Township management and the Commission's legal counsel, with NNDJOJ's recommendations adopted or addressed in the versions of the amended BSL Administrative and Management Plans attached hereto as composite Exhibit "A" (the "Revised BSL Amendments"), with all proposed amendments set forth in underline and strikeout (redline); and

5. The Committee has reviewed the Revised BSL Amendments and now wishes to approve the Revised BSL Amendments, and to recommend their approval by the Commission the Resources and Development Committee of the Navajo Nation Council.

NOW THEREFORE BE IT RESOLVED THAT:

1. The Kayenta Township Business Site Leasing Committee hereby approves the revised proposed amendments to the Business Site Leasing Administrative and Management Plans, attached hereto in

underline and strikeout (redline) as composite Exhibit "A," and recommends that the revised amendments be approved by the Kayenta Township Commission and the Resources and Development Committee of the Navajo Nation Council.

2. The Kayenta Township Business Site Lease Committee hereby authorizes the Town Manager to take appropriate action on the Committee's behalf consistent with this Resolution.

CERTIFICATION

I hereby certify that the foregoing resolution was considered by the Kayenta Township Business Site Leasing Committee of the Kayenta Township Commission at a duly called meeting at Kayenta, Navajo Nation (Arizona), at which a quorum was present and voted 3 in favor, 0 opposed, 1 abstained, and 0 absent on this 20th day of June, 2019.

Motion: Heston Zonnie

Second: Frank Donald, Jr.

BUSINESS SITE LEASING COMMITTEE

By: _____

Gabriel Yazzie, Chairperson

RESOURCES AND DEVELOPMENT COMMITTEE
24th Navajo Nation Council

ROLL CALL
VOTE TALLY SHEET:

LEGISLATION #0004-20: AN ACTION RELATING TO RESOURCES AND DEVELOPMENT COMMITTEE: APPROVING AMENDMENTS TO THE KAYENTA TOWNSHIP BUSINESS SITE LEASING ADMINISTRATIVE AND MANAGEMENT PLANS. *Sponsor: Honorable Nathaniel Brown. Co-Sponsor: Honorable Herman M. Daniels*

Date: January 22, 2020 - Regular Meeting
Meeting Location: Navajo Nation Council Chambers
Window Rock, Arizona

Main Motion:

Motion: Mark A. Freeland S: Wilson C. Stewart, Jr. Vote: 5-0-1 (CNV)

In Favor: Mark A. Freeland; Kee Allen Begay, Jr.; Thomas Walker, Jr.; and Herman M. Daniels;

Oppose: None

Excused: None

Not Voting: Chairperson Rickie Nez



Honorable Rickie Nez, Presiding Chairperson
Resources and Development Committee



Shammie Begay, Legislative Advisor
Office of Legislative Services