



## 24<sup>th</sup> NAVAJO NATION COUNCIL LEGISLATION SPONSORSHIP WITHDRAWAL

I, Amber Kanazbah Crotty, Primary  
Sponsor of proposed legislation hereby withdraw my  
sponsorship of the proposed legislation. The legislation  
tracking number is 0095-19.

If there are any co-sponsors, they may re-sponsor the same  
bill by beginning a new legislation.

SPONSOR SIGNATURE:

Amber Kanazbah Crotty

DATE:

July 27, 2021

**LEGISLATIVE SUMMARY SHEET**

Tracking No. 0095-19

**DATE:** April 16, 2019

**SUBJECT: AN ACTION RELATING TO RESOURCES AND DEVELOPMENT COMMITTEE; APPROVING A DELEGATION OF AUTHORITY TO THE NAVAJO NATION SHOPPING CENTERS, INC. TO EXERCISE LEASING AND MANAGEMENT AUTHORITY OVER BUSINESS SITE LEASES**

**PURPOSE:** To approve a delegation of authority to Navajo Nation Shopping Centers, Inc. to exercise leasing and management authority over business site leases.

**This written summary does not address recommended amendments as may be provided by the standing committees. The Office of Legislative Counsel requests each Council Delegate review the proposed resolution in detail.**



5-DAY BILL HOLD PERIOD:                       
Website Posting Time/Date: 4-19-19 6:28pm  
Posting End Date: 04-24-19  
Eligible for Action: 04-25-19

PROPOSED STANDING COMMITTEE RESOLUTION  
24th NAVAJO NATION COUNCIL -- First Year, 2019

INTRODUCED BY

  
(Prime Sponsor)

TRACKING NO. 0095-19

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT COMMITTEE; APPROVING  
A DELEGATION OF AUTHORITY TO THE NAVAJO NATION SHOPPING  
CENTERS, INC. TO EXERCISE LEASING AND MANAGEMENT AUTHORITY  
OVER BUSINESS SITE LEASES

**BE IT ENACTED:**

**SECTION ONE. AUTHORITY**

- A. The Resources and Development Committee of the Navajo Nation Council ("RDC") serves as the oversight committee for the Division of Economic Development. 2 N.N.C § 500(C)(1).
- B. The Division of Economic Development ("DED") currently exercises management authority over business site leases.

**SECTION TWO. FINDINGS**

- A. Navajo Nation Shopping Centers, Inc. ("NNSCI") has requested RDC approve a delegation of authority to NNSCI to exercise business site lease management authority currently provided by DED.

- 1 B. The Board of Directors for NNSCI (the “Board”) approved the Administrative and  
2 Management Plans (the “Plans”) in Resolution NNSCI-271-18 on December 18,  
3 2018, a copy of which is provided in **Exhibit A**.
- 4 C. The Board also recommended a “delegation of leasing and management authority to  
5 the Navajo Shopping Centers Inc. per the Uniform Business Leasing Regulations of  
6 2008.” **Exhibit A**, Resolution NNSCI-271-18, Resolved Paragraph.
- 7 D. The NNSCI obtained approval from the review team of Navajo DED for the Plans.  
8 Additionally, the Department of Justice completed an Executive Official Review and  
9 determined the Plans to be legally sufficient. The review package is attached as  
10 **Exhibit B**.
- 11 E. The Business Site Leasing Administrative Plan and Business Site Leasing  
12 Management Plan are included in **Exhibit C** along with other documents, which  
13 background information.

14  
15 **SECTION THREE. APPROVAL**

- 16 A. The Resources and Development Committee of the Navajo Nation Council approves  
17 NNSCI’s request for a delegation of authority from the Navajo DED to NNSCI to  
18 exercise business site lease management authority.
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**RESOLUTION OF THE  
BOARD OF DIRECTORS OF THE  
NAVAJO NATION SHOPPING CENTERS, INC.**

No NNSCI-271-18

**APPROVING THE ADMINISTRATIVE PLAN AND THE MANAGEMENT PLAN FOR THE  
NAVAJO NATION SHOPPING CENTERS, INC. AND REQUESTING DELEGATION OF  
LEASING AND MANAGEMENT AUTHORITY FROM THE RESOURCES DEVELOPMENT  
COMMITTEE OF THE NAVAJO NATION COUNCIL**

**WHEREAS:**

1. Pursuant to the Articles of Incorporation and the Bylaws of the Navajo Nation Shopping Centers Inc. (NNSCI), the Board of Directors of the NNSCI is authorized to adopt policies to govern and manage the leases of the NNSCI. See, Article III (a) of Incorporation, and section 4 of the Bylaws; and
2. Per Resolution No. NNSCI-215-16, the NNSCI approved its proposed Administrative Plan and Management Plan (Plans) for approval by the Resources and Development Committee of the Navajo Nation Council. See attached Resolution No. NNSCI-215-16.
3. The NNSCI obtained approval from the Review Team of the Division of Economic Development of the Plans for the NNSCI. Thereafter, the Navajo Nation Department of Justice (NNDOJ) raised several issues concerning the Plans. The NNSCI worked with NNDOJ and resolved all of the issues on December 6, 2018. A letter from NNDOJ has been issued which paves the way for submitting the Plans to the Resources and Development Committee of the Navajo Nation Council for final approval.
4. It is in the best interest of the Navajo Nation Shopping Centers, Inc. to request approval from the Resource Development Committee of the Navajo Nation Council of the Plans.

**NOW, THEREFORE, BE IT RESOLVED THAT:**

1. The Board of Directors of the Navajo Nation Shopping Centers, Inc. approves and adopts the attached Administrative Plan (Exhibit "A") and Management Plan (Exhibit "B") and recommends delegation of leasing and management authority to the Navajo Nation Shopping Centers Inc. per the Uniform Business Leasing Regulations of 2008.

**CERTIFICATION**

I, hereby certify that the foregoing resolution was considered and approved by the Board at a duly called meeting on December 18, 2018, at Twin Arrows Casino, Twin Arrows, Arizona,



(Navajo Nation), at which a quorum was present and that the same passed by a vote 5 in favor, 0 opposed and 0 abstained.

Denise Canyon

Ms. Denise Canyon, Vice-Chairperson

12/18/18

Date



**NAVAJO NATION DEPARTMENT OF JUSTICE**  
**OFFICE OF THE ATTORNEY GENERAL**

ETHEL B. BRANCH  
ATTORNEY GENERAL

CHERIE ESPINOSA  
ACTING DEPUTY ATTORNEY GENERAL



**ATTORNEY-CLIENT PRIVILEGED**  
**CONFIDENTIAL**

M E M O R A N D U M

TO: Juanita Yazzie, Leasing Manager  
Navajo Nation Shopping Centers, Inc.

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

DATE: December 18, 2018

SUBJECT: Document No. 7416 #6: Review of the Navajo Nation  
Shopping Center's Administrative and Management Plan

In reviewing the updated documents dated December 6, 2018, it appears sufficient. The only outstanding issue is that the Navajo Nation Shopping Center intended to revise the definition of "Exigent Circumstances" as provided in Section 2.2(13) in the Administrative Plan. Please amend this definition.

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

LBJ/ah/302

xc: Sampson Martinez, Counsel  
Navajo Nation Shopping Centers, Inc.

Jeanette Jones, Principal Economic Development Specialist  
Project Development Department  
Division of Economic Development

**EXECUTIVE OFFICIAL REVIEW**Title of Document: Administrative and Management Lease Plan Contact Name: Juanita YazzieProgram/Division: Navajo Nation Shopping Centers, Inc.Email: jyazzie@nnsccinc.com Phone Number: 928.871.2218/4973☐ **Business Site Lease** Sufficient    Insufficient1. Division: \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐2. Office of the Controller: \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐

(only if Procurement Clearance is not issued within 30 days of the initiation of the E.O. review)

3. Office of the Attorney General: \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐☐ **Business and Industrial Development Financing, Veteran Loans, (i.e. Loan, Loan Guarantee and Investment) or Delegation of Approving and/or Management Authority of Leasing transactions**1. Division: \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐2. Office of the Attorney General: \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐☐ **Fund Management Plan, Expenditure Plans, Carry Over Requests, Budget Modifications**1. Office of Management and Budget: \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐2. Office of the Controller: \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐3. Office of the Attorney General: \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐☐ **Navajo Housing Authority Request for Release of Funds**1. NNEPA: \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐2. Office of the Attorney General: \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐☐ **Lease Purchase Agreements**1. Office of the Controller: \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐

(recommendation only)

2. Office of the Attorney General: \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐☐ **Grant Applications**1. Office of Management and Budget: \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐2. Office of the Controller: \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐3. Office of the Attorney General: \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐☐ **Five Management Plan of the Local Governance Act, Delegation of an Approving Authority from a Standing Committee, Local Ordinances (Local Government Units), or Plans of Operation/Division Policies Requiring Committee Approval**1. Division: \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐2. Office of the Attorney General: \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐☐ **Relinquishment of Navajo Membership**1. Land Department: \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐2. Elections: \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐3. Office of the Attorney General: \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐



☐ Land Withdrawal or Relinquishment for Commercial Purposes

Sufficient Insufficient

1. Division: \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐  
2. Office of the Attorney General: \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐

☐ Land Withdrawals for Non-Commercial Purposes, General Land Leases and Resource Leases

1. NLD \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐  
2. F&W \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐  
3. HPD \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐  
4. Minerals \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐  
5. NNEPA \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐  
6. DNR \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐  
7. DOJ \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐

☐ Rights of Way

1. NLD \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐  
2. F&W \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐  
3. HPD \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐  
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5. NNEPA \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐  
6. Office of the Attorney General: \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐  
7. OPVP \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐

☐ Oil and Gas Prospecting Permits, Drilling and Exploration Permits, Mining Permit, Mining Lease

1. Minerals \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐  
2. OPVP \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐  
3. NLD \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐

☐ Assignment of Mineral Lease

1. Minerals \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐  
2. DNR \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐  
3. DOJ \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐

☐ ROW (where there has been no delegation of authority to the Navajo Land Department to grant the Nation's consent to a ROW)

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8. OPVP \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐

☒ OTHER: Administrative and Management Lease Plan

1. Original Deed \_\_\_\_\_ Date: 1-24-17 ☒ ☐  
2. UBJ \_\_\_\_\_ Date: 4/30/18 ☒ ☒  
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# NAVAJO NATION DEPARTMENT OF JUSTICE

## DOCUMENT REVIEW REQUEST FORM



DOJ  
12/6/18 @ 1044  
DATE / TIME  
☐ 7 Day Deadline  
DOC #: 007416 +16  
SAS #:  
UNIT: ECU

☒ RESUBMITTAL

\*\*\* FOR NNDOJ USE ONLY - DO NOT CHANGE OR REVISE FORM. VARIATIONS OF THIS FORM WILL NOT BE ACCEPTED. \*\*\*

### CLIENT TO COMPLETE

DATE OF REQUEST: 12/6/18 ENTITY/DIVISION: NNSCI  
CONTACT NAME: Tynika Yarnie DEPARTMENT:  
PHONE NUMBER: 871-4973 E-MAIL: yarnie@nnscinc.com  
TITLE OF DOCUMENT: Admin. of Mgmt Lease Plan

### DOJ SECRETARY TO COMPLETE

DATE/TIME IN UNIT: DEC 06 2018 1:00pm REVIEWING ATTORNEY/ADVOCATE: Latoni Johnson  
DATE/TIME OUT OF UNIT:

### DOJ ATTORNEY / ADVOCATE COMMENTS

See memo. Sufficient.

REVIEWED BY: (PRINT)	DATE / TIME	SURNAMED BY: (PRINT)	DATE / TIME
LRB	12/18/18 439 pm	LRB	12/18/18 439 pm

DOJ Secretary Called: for Document Pick Up on at By:

PICKED UP BY: (PRINT) DATE / TIME:

NNDOJ/DRRF-July 2013





NAVAJO  
NATION  
SHOPPING  
CENTERS  
INCORPORATED

Think. Plan. Live. Shop Navajo!

December 6, 2018

LaTonia B. Johnson  
Assistant Attorney General  
Economic/Community Development Unit  
Department of Justice  
Window Rock, Arizona 86515

Dear Mrs. Johnson:

Thank you for your review of Document No. 007416: Administrative and Management Lease Plan. Changes were made per the face of the documents. Also, Mr. Sampson Martinez addressed the concerns per letter dated October 18, 2018.

The document is being resubmitted. Thank you.

Sincerely,

Juanita Yazzie  
Leasing Manager

xc: Nathaniel Begay, CEO, NNSCI



SAMPSON MARTINEZ  
PROFESSIONAL CORPORATION

300 WEST HILL AVE., STE. B  
P. O. Box 2415  
GALLUP, N.M. 87305  
TEL: (505) 726-1218  
FAX: (505) 726-1219

October 18, 2018

LaTonia B. Johnson, Assistant Attorney General  
Economic Community Development Unit  
Navajo Nation Department of Justice  
Window Rock, Arizona 86515

Dear Mrs. Johnson,

In your letter dated October 5, 2018, you addressed the Administrative Plan (AP), the Management Plan (MP) and the Revocable Use Permit of the Navajo Nation Shopping Centers, Inc. (NNSCI). I will be addressing two items in this letter.

The first item concerns your recommendation to define the terms "exigent circumstance" which appear at section 4.2(5)(d)(5) of the AP. This is at page 13 of the AP.

The terms "exigent circumstance" appear in the Administrative Plan in the section that deals with negotiation of terms and conditions of the lease. "Exigent circumstance" appears under the heading of rental reduction. This is where the rental rate can be reduced if the lessee can justify the existence of an "exigent circumstance." It is expected that this section would not be used often.

"Exigent circumstance" can be defined in the following manner and inserted into the definition section of the AP:

*Exigent Circumstance: a situation that is beyond the control of the applicant that would justify a reduction of rental rate not to exceed a year from the reduction of rental rate.*

Under section 4.2(5)(d), the Department and the Applicant are still negotiating the terms and conditions when the Applicant requests for a rental rate reduction. Applicant may or may not have received some reduction of rent for undeveloped land, leasehold improvement, construction or reconstruction, or environmental cleanup, and even a reduction for one or two of these, the Applicant may still request for rent reduction. The reason he may do so may relate to the high cost of materials for the construction or improvement that justifies reduction of rent. The high cost may not have been anticipated when the initial lease negotiation commenced.

It may relate to Applicant coming out of bankruptcy or Applicant losing a business partner or family member who was important to the profitability and survival of the

business. Also, this may relate to economic conditions that took a downturn in the services and products that were beyond the control of the Applicant when the lease was negotiated initially. Such a downturn would have an effect on services and products to Navajo communities and to the employment of Navajos. It is similar to Walmart moving into the border towns and having an effect on businesses located on the Navajo Nation.

The other option that can be taken with the terms "exigent circumstance" is to delete "circumstance" and use the same definition that was advanced above. The last option is to delete the entire section of 4.2(5)(d)(5). When the NNSCI started developing the AP, it started with the AP of the Division of Economic Development (DED) as a boilerplate. The language contained in section 4.2(5)(d)(5) appears in the AP of DED. The terms of "exigent circumstance" are not defined in DED's AP. Presumably, if all other factors listed under 4.2(5)(d)(5) fail to address an urgent matter, the terms "exigent circumstance" serve as a default to address reduction of rent with discretion of DED to decide if the justification of lessee warrants a reduction in the rental rate.

The second item concerns section 4.2(5)(f)(a)(i)(iii). In your review, you wrote on page 5 of the MP, in the above section, the following "The appraisal is only one section of lease rate adjustment. There is no information of how NNSCI will address 4.2(5)(f)(a)(i)(iii)."

Essentially, you want the NNSCI to explain the factors that are contained in section 4.2(5)(f)(a)(i)(iii). The entire section of 4.2(5)(f)(a) should be read together. If the rent is to be adjusted, the lessee must present a business plan. The plan would contain the investment that the lessee is making into the business. The plan would contain the design of the anticipated improvement of the business. The plan would explain the type of business and the activities of the business. The plan would also contain the appraisal.

Here is the new language that ties the factors together and clarifies the intent of the section:

- a. Lease rate adjustments shall be negotiated on a case by case basis which must be based on the following factors and presented in a business plan with documentation to satisfy the factors:
  - (i). Proposed investment in the business by proof of capital for the investment;
  - (ii). Anticipated Improvements of the business by presentation of a design or drawing for the improvement;
  - (iii). Type of business, business activity for the investment and improvement; and
  - (iv). Appraisal value of the improvement.

The lease adjustment may either lower the rental rate or increase the rental rate. A lessee may want to increase the premises to include more businesses to his or her existing business. Adjustment of the rent would be necessary at that time.

If you have any questions or need further clarification, please call or email. Thank you.

Sincerely,



Sampson Martinez, Attorney at Law

cc: Ms. Juanita Yazzie, Leasing Manager  
Ms. Gilbertina Jackson, Administrative Assistant  
Mrs. Jeanette Jones, Project Development Department  
file





**NAVAJO NATION DEPARTMENT OF JUSTICE**  
**OFFICE OF THE ATTORNEY GENERAL**

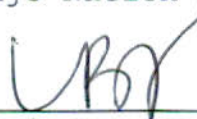
ETHEL B. BRANCH  
ATTORNEY GENERAL

CHERIE ESPINOSA  
ACTING DEPUTY ATTORNEY GENERAL

**ATTORNEY-CLIENT PRIVILEGED**  
**CONFIDENTIAL**

M E M O R A N D U M

TO: Juanita Yazzie, Leasing Manager  
Navajo Nation Shopping Centers, Inc.

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

DATE: October 5, 2018

SUBJECT: Document No. 007416 #5: Review of the Navajo Nation  
Shopping Center's Administrative and Management Plan

As you know, I issued a memorandum dated June 27, 2018 that outlined six (6) issues. In response, Navajo Nation Shopping Center, Inc. (NNSCI) submitted an updated response dated September 28, 2018. In reviewing the response and the Administrative Plan (AP), Management Plan (MP) and other documents, I have noted that you have satisfactorily addressed the following issues that were noted in the June 27, 2018 memorandum: 1, 3, and 6. The other issues have not been satisfactorily addressed or require further clarification. Also, please see the face of the documents for further comments.

1. In reviewing the updated version of the MP, I have made some changes to the face of the document. Also, it appears that Section 2.1 (3) does not address how NNSCI is going to address the other factors noted in AP Section 4.2 (5)(f)(3)(a)(i)-(iii). It is recommended that NNSCI consider whether it wants to add a process for the aforementioned.

Memorandum to: Juanita Yazzie

RE: Document No. 007416 #5: Review of the Navajo Nation Shopping  
Center's Administrative and Management Plan

October 5, 2018

Page 2 of 2

2. I have made some changes to the face of the Revocable Use Permit (RUP) to make it clear and to be consistent with the exception.
3. In your memorandum, it was noted that NNSCI has made the necessary change, but Paragraph 4 does not outline who the "sublessor" will be.

Once the above-mentioned changes and the face of the documents are made, the documents will be deemed legally sufficient. If you have any questions regarding this memorandum or the attachments, please contact me at 928-871-6933. Thank you.

LBJ/ah/250

Attachments

xc: Jeanette Jones, EDS, Project Development Department  
Division of Economic Development

## 1.0 Executive Summary

The Navajo Nation Council (NNC) by Resolution CO-63-02 approved Articles of Incorporation and Bylaws for the Navajo Nation Shopping Centers, Inc. (NNSCI) on October 24, 2002, thereby established the NNSCI as a Corporation.

This Administrative Plan (Admin Plan) applies to pad sites. This Admin Plan is in compliance with the Uniform Business Leasing Regulations of 2008 (Uniform Regulations).

### 1.1 Legal Framework:

1. 25 U.S.C. § 415(e), ~~Navajo Nation Business Leasing Regulations of 2005~~ (Tribal Regulations);
2. Uniform Regulations.
3. The NNC Resolution Number CO-63-02, the Articles of Incorporation and the Bylaws of the NNSCI.

### 1.2 Amendment/Recession

1. The Admin Plan may be amended by written recommendation from the NNSCI and Navajo Nation Division of Economic Development and to be approved by the Resources and Development Committee (RDC) of the NNC.
2. Upon determination by the ~~Resources Development Committee~~ <sup>NNSCI</sup> that the ~~Navajo Nation Shopping Centers, Inc.~~ <sup>RDC</sup> 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 ~~Resources Development Committee~~ <sup>RDC</sup> its decision.

### 1.3 Reports:

The NNSCI shall provide an initial report to the RDC not less than six (6) months from the date this Admin Plan is approved by the RDC. Subsequent reports are due annually thereafter.

### 1.4 Administrative Framework:

NNSCI is established for the purpose of creating an environment that is conducive to promoting and developing businesses within the communities of the Navajo Nation.



1. Objectives:

- a. Lease spaces on pad sites to individuals and businesses wishing to operate on the Navajo Nation.
- b. Provide products and services to the Navajo Nation communities.
- c. Promote and create employment and business opportunities for Navajos in the commercial, industrial, tourism and other private sectors of the Navajo economy.
- d. Maintain and strengthen landlord-Lessee relationship and promote open-door communication.
- e. Develop and manage a comprehensive plan to expand current shopping centers and/or develop new shopping centers.

1.5 Severability:

If a court of competent jurisdiction or a tribunal of Navajo Nation determines a provision in the Admin Plan is invalid, void or unenforceable, it shall be stricken and the remainder shall remain in full force and effect.

1.6 Organization:

The NNSCI Leasing Department is responsible for business site leasing.

1.7 Navajo Nation Privacy and Access to Information Act

Information or documentation requested shall be available to the extent provided by the Navajo Nation Privacy and Access to Information Act, 2 N.N.C. § 81 et/ Seq.

↓  
Italicized

## 2.0 Pre-Business Site Lease

### 2.1 General Information:

The Leasing Department (Department) is the contact for prospective lessees. A prospective lessee can be an individual (sole proprietorship) or any legally recognized business entity or organization. A legally recognized entity or organization (LRE) must register with the Business Regulatory Department, Division of Economic Development (BRD) and be in good standing under the Navajo Nation laws.

### 2.2 Definitions for purposes of the Admin Plan and Management Plan (Mgmt Plan). Other definitions may be included in the actual Lease or tribal regulations:

1. *Approving Entity*: the NNSCI Leasing Approval Committee consist of CEO, Leasing Manager, and Controller.
2. *Assignment*: an agreement between a Lessee and an Assignee whereby the Assignee acquires all of the Lessee's rights and assumes all the Lessees obligations under a Lease.
3. *Bond*: security interest providing security for the performance of a duty or the payment of a debt. The bond can be furnished by the Lessee or by a third-party surety.
4. *Business Site Lease ("Lease")*: any agreement granting the Lessee a right to possess Navajo Nation Trust Land under the authority of this Admin Plan.
5. *Business Leasing Transactions*: Lease, Sublease, Renewal, Modification, Novation, Assignment, Collateral Assignment, Revocable Use Permit, Amendments or Emergency Operating Agreement, and Mutual/Unilateral Termination.
6. *Complex assignments*: an assignment of rights, duties and liabilities.
7. *Consumer Price Index*: An indicator of rising prices or inflation used to measure the impact of inflation upon consumers.
8. *Construction Bond*: Security interest providing security for the completion of improvements and/or construction. The bond can be furnished by the lessee, contractor, or by a third-party surety.
9. *Department*: The NNSCI Leasing Department.

24. *Sublease*: a written agreement by which the lessee grants a person a right of possession no greater than that held by the Lessee under the Lease.

25. *Termination of lease*: The Lease would be terminated before the expiration of the Lease term. The term cancellation would also mean termination.

2.3 Advertisement

Department may advertise available commercial land for leasing.

2.4 Administrative Fees

Administrative Fee(s) shall be due and payable upon execution of all Business Leasing Transactions. (Attached as the Exhibit "A" is Fee Schedule). All payments shall be made in the form of one of the following: money order, cashier's check, ACH and credit card and made payable to "Navajo Nation Shopping Centers, Inc.".

1. Administrative fees are non-refundable.

2. There shall be no waiver or reduction of an administrative fee to a Lease ~~Agreements~~ or Permit.

The Department has the discretion to adjust the admin fee schedule periodically without RDC's approval.



*Recommend that this is defined to assist.*

5) An exigent circumstance must be justified by the Applicant in writing and provide supporting documents for Department's approval.

e. Aside from the Development Period, rental may be postponed to allow the Lessee to secure financing; however, the postponement shall not exceed twelve (12) months from execution of the Lease.

f. Rental review and/or adjustments:

1) Leases may be reviewed every five (5) years from execution of the Lease.

2) The Lessee shall be notified in writing ninety (90) days before any adjustment is made.

3) Rent may be adjusted on the applicable fifth anniversary using the CPI or based on Lease rate adjustments, which shall be stipulated in the Lease.

a. Lease rate adjustments shall be negotiated on a case by case basis which must be based on the following factors:

- i. Proposed Investment into the business;
- ii. Anticipated Improvements of the business;
- iii. Type of business, business activity; and
- iv. Appraised value.

4) 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.

g. Security Deposit:

1) Shall be for 2 months rent of the 1<sup>st</sup> year rental.

2) Security deposit may be waived if:

- a. Applicant has been in good standing for a minimum of five (5) years with the Department;

Lessee may exercise options to renew for one additional term of \_\_\_\_\_ years, and a second additional term of \_\_\_\_\_ years. The option may be granted provided the Lease is not in default. Lessee shall give written notice of its intent to renew this Lease to the Chief Executive Officer of the NNSCI or an authorized designee, at least one year, prior to the expiration date of this Lease. Renewal of this Lease is subject to the written approval of the Chief Executive Officer of the NNSCI or an authorized designee, execution by the Navajo Nation President and to applicable provisions of Navajo Nation Law and the regulations contained in the Tribal Regulations, including all amendments and successors thereto.

D. RENTAL.

1. The Lessee, in consideration of the foregoing, covenants and agrees to pay in lawful money of the United States of America to the NNSCI, for the use and benefit of the Lessor the following: (Be specific as to the rental terms of the Lease)

a. Guaranteed Minimum Annual Rental (GMAR)

b. Percentage Rental (PR) (if applicable)

Lease Years \_\_\_\_\_: \_\_\_\_\_ Percent (\_\_\_\_%) of Lessee's total annual gross sales in excess of \_\_\_\_\_ Dollars (\$\_\_\_\_\_)

c. Other (if applicable)

2. Lessee must make [monthly/quarterly or annual] rental payments in advance not later than the tenth (10<sup>th</sup>) day of the month for which the rental is due. Lessee may elect to pay monthly rental in an amount based on the percentage rental rate on the month's gross receipts; however, no payment shall be less than one-twelfth of the minimum rental. When the annual accounting required by Section 1.3, Part II, of this Lease is completed, the Lessee shall pay any balance due on any percentage rental, or if there is an overpayment, the overpayment shall be credited toward future rents. It is the Lessee's responsibility to ensure that the rental payment is received by NNSCI on or before the date specified above, and payable to:

Navajo Nation Shopping Centers, Inc.  
Attn: Accounting Department  
Post Office Box 478  
Window Rock, Navajo Nation (Arizona) 86515

3. If the rental payment is not received within ten (10) days following the due date:
- A late fee shall be charged and pro-rated for each day the rent is not paid, beginning the tenth day after due date, until the thirtieth day, when the amount shall be paid in full.
  - The late fee shall be 10% of the rental due for the month or an amount determined by the Lease terms.
  - If rental payment is not received within 30 calendar days following the due date a late fee shall be charged at 10% of the rental due for the month.
  - If rental payment is not received within 60 calendar days following the due date a late fee shall be charged at 5% of the rental due for the month or an amount specified in the Lease.
  - If rental payment is not received within 90 calendar days following the due date a late fee should be charged at 5% of the rental due for the month or an amount specified in the Lease.

4. In the event a sublease, assignment, amendment or transfer of this Lease, or any right to or interest in this Lease, or any improvements are made to the leased premises, the rent and other terms of this Lease shall be subject to renegotiation. In addition, if the Lessee

Admin Plan 6.1(1)  
provides that the Dept  
should receive  
the renewal  
not the  
CEO.  
6.2(3)

Approving Entity has  
approved per Admin plan,



IN WITNESS THEREOF:

\_\_\_\_\_, Lessee

Date: \_\_\_\_\_

Date: \_\_\_\_\_

*Approval*

CONCURRENCE:

NAVAJO NATION SHOPPING CENTERS, INC.

\_\_\_\_\_  
Chief Executive Officer

Date: \_\_\_\_\_

APPROVAL:

NAVAJO NATION

*Execution*

\_\_\_\_\_  
President/Vice President

Date: \_\_\_\_\_



**NAVAJO NATION SHOPPING CENTERS, INC.**  
**Revocable Use Permit**

possession of said property and premises by the Permittee, or injury sustained by the Permittee, or any other person or damage to property, on or about said premises during the term of this Permit.

8. OBLIGATIONS OF PERMITTEE. While the permitted premises are in trust or restricted status, all of the Permittee's obligations under this Permit and the obligations of its surety or sureties, are to the Permitter.
9. TERMINATION OF FEDERAL TRUST. Nothing contained in this Permit shall operate to delay or prevent a termination of Federal trust responsibilities with respect to the land by the issuance of a fee patent or otherwise during the term of this Permit, however, such termination shall not serve to abrogate the Permit. The owners of the land and the Permittee and its surety shall be notified of any such changes in the status of the land.
10. TERMINATION. This Permit may be terminated by either party by giving a two (2) week notice in writing to the other party. The Permit shall terminate automatically when the Permit expires or is terminated and the Permittee shall have no rights including holdover on any portion of the premises unless Permitter gives written consent.
11. ENVIRONMENT. Permittee shall take all necessary measure to assure compliance with applicable Federal and Tribal laws including the Navajo Nation Environmental Review in accordance with the Tribal Regulations including any amendments thereto which by this reference are made a part hereof.
12. PERFORMANCE CASH BOND. Permittee shall provide a security or cash bond to the Permitter to ensure performance of the terms and conditions in this Permit. The security or cash bond amount shall be equal to two (2) month's rent. ~~A security is not required for a permit that does not exceed six (6) months from the issuance of the permit.~~ *has a term that is 6 months less* *This needs to be rewritten*
13. EMPLOYMENT OF QUALIFIED NAVAJOS. In connection with all employment and contracting opportunities arising out of Permittee's activities under this Permit, Permittee 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 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 Permit. Violation of such laws by the Permittee shall constitute a breach of this Permit and provide grounds for suspension or termination of the Permit or any other remedy prescribed by the NPEA and NBOA. *Also the exception is not added*
14. AGREEMENT TO ABIDE BY NAVAJO AND FEDERAL LAWS. The Permittee and its employees and agents agree to abide by all laws, regulations, and ordinances of the Navajo and all laws, regulations and ordinances of the United States now in force and effect or which may hereafter be in force and effect. This agreement to abide by Navajo laws shall not forfeit rights, which the Permittee and its employees and agents enjoy under the federal laws of the United States Government.



3. Periodic review:

periodic review

- a. The Department shall be responsible for the periodic review.
- b. One year prior to the end of the periodic review, the Department shall begin the process for ~~(lease rental adjustment)~~ which provides that Rent may be adjusted on the applicable fifth anniversary using the CPI or based on lease rate adjustment, which shall be stipulated in the lease. ~~[Section 4.2.5.f of the Admin Plan states that the lease rate adjustments shall be renegotiated on a case by case basis which must be based on the following factors: (i) Proposed investment into the business; (ii) Anticipated Improvements of the business; (iii) Type of business, business activity; and (iv) Appraised value.]~~

Why is this necessary? I would recommend deleting

1. Proceed to 4.2.5.f of the Admin Plan.

- i. A report shall be developed;
- ii. Negotiate lease adjustment with the Lessee; and
- iii. Process a Lease Modification, proceed to 8.0 of the Admin Plan.

2. Consumer Price Index;

- i. Shall be calculated by the Department;
- ii. Notification shall be given to the Lessee of the adjusted amount, 90 days before the end of the periodic review; and
- iii. Process a Lease modification, proceed to 8.0 of the Admin Plan.

3. Appraisal:

The appraisal is only one section of adjustment. There is no info on how NSCI will address 4.2(5)(f)(a) (iv)(iii)

- i. A report shall be developed by a Professional Appraiser;
- ii. Negotiate the lease rental adjustment with the Lessee; and
- iii. Process a Lease modification, proceed to 8.0 of the Admin Plan.

2.2 Annual Lease Compliance:

Department will conduct inspection of all Leases, on an annual basis to ensure Lessee's compliance with the Lease terms and conditions. If the

## 9.0 Appeal

1. The Lessee may appeal a decision of the Department.
2. Upon receipt of such decision by the Department, the Lessee shall work with the Department to address the decision. If there is no compromise between the Lessee and Department, the Department shall provide the final decision in writing to the Lessee.
3. The Lessee may appeal the final decision of the Department to the Approving Entity. If this appeal is made by the Lessee, the Approving Entity shall make a final decision which is appealable to the Office of Hearings and Appeals (OHA). If an appeal is made to the Approving Entity, the Approving Entity shall render a decision in fifteen (15) days from receiving the appeal from the Lessee.
4. The Lessee may decide to appeal the decision of the Department directly to the OHA without appealing the final decision of the Department to the Approving Entity.
5. The appeal to the OHA shall be filed within thirty-one (31) days from the date of the final decision by the Department. The appeal shall be conducted in accordance with Section 601 of the Navajo Nation Business Site Leasing Regulations of 2005.
6. The Lessee may appeal the OHA's decision to the Navajo Nation Supreme Court in compliance with Section 602 of the Navajo Nation Business Site Leasing Regulations of 2005. The Lessee shall file the appeal with the Navajo Nation Supreme Court within thirty-one (31) days from the date of the OHA Order.

*Considering that Lessee  
may appeal AE's decision  
I added  
Section  
or Approving Entity*





# NAVAJO NATION DEPARTMENT OF JUSTICE

## DOCUMENT REVIEW REQUEST FORM



DOJ  
09/28/18 @ 357  
DATE / TIME  
☐ 7 Day Deadline  
DOC #: 007416 #5  
SAS #:  
UNIT: ECDU

☐ RESUBMITTAL

(Jan/Dec 2017 / June/July 2018)

\*\*\* FOR NNDJ USE ONLY - DO NOT CHANGE OR REVISE FORM. VARIATIONS OF THIS FORM WILL NOT BE ACCEPTED. \*\*\*

### CLIENT TO COMPLETE

DATE OF REQUEST: Sept. 28, 2018 ENTITY/DIVISION: PNSCI  
CONTACT NAME: Tuente Yazzie DEPARTMENT:  
PHONE NUMBER: 871-2218 E-MAIL: jyazzie@nnsinc.com  
TITLE OF DOCUMENT: Administrative & Lease Management Lease Plan.

### DOJ SECRETARY TO COMPLETE

DATE/TIME IN UNIT: OCT 01 2018  
8 am REVIEWING ATTORNEY/ADVOCATE:  
Latoria Johnson  
DATE/TIME OUT OF UNIT:

### DOJ ATTORNEY / ADVOCATE COMMENTS

See memo - insufficient

REVIEWED BY: (PRINT) UPB DATE / TIME 10/5/18 1233pm SURNAMED BY: (PRINT) UPB DATE / TIME 10/5/18 1233pm

DOJ Secretary Called: TINA for Document Pick Up OCT 05 2018 at 255 pm By: AH

PICKED UP BY: (PRINT) DATE / TIME:





NAVAJO  
NATION  
SHOPPING  
CENTERS  
INCORPORATED

Think. Plan. Live. Shop Navajo!

September 28, 2018

LaTonia B. Johnson  
Assistant Attorney General  
Economic/Community Development Unit  
Department of Justice  
Window Rock, Arizona 86515

Dear Mrs. Johnson:

Thank you for your comments regarding Document No. 007416 #4: Administrative and Management Lease Plan. The concerns are addressed, as follows:

- 5. To make it clear who the sublessor is in the sublease, a new language has been inserted in the sublease form. The new language is added at the end of the first paragraph, "The Lessor is the Lessee of the base Lease."
- The documents are the current versions and the date has been changed from June 6, 2018 to September 21, 2018.

The document is being resubmitted.

Sincerely,

Juanita Yazzie  
Leasing Manager

xc: Nathaniel Begay, CEO, NNSCI  
Sampson Martinez, Legal Counsel, NNSCI



**NAVAJO NATION DEPARTMENT OF JUSTICE**  
**OFFICE OF THE ATTORNEY GENERAL**

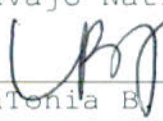
ETHEL B. BRANCH  
ATTORNEY GENERAL

CHERIE ESPINOSA  
ACTING DEPUTY ATTORNEY GENERAL

**ATTORNEY-CLIENT PRIVILEGED**  
**CONFIDENTIAL**

M E M O R A N D U M

TO: Juanita Yazzie, Leasing Manager  
Navajo Nation Shopping Centers, Inc.

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

DATE: September 10, 2018

SUBJECT: **Document No. 7416 #4: Review of the Navajo Nation Shopping Center's Administrative and Management Plan**

The Navajo Nation Department of Justice received the re-submitted above-mentioned document. In reviewing, it was noted that the documents still reflected a date of June 6, 2018 yet in a letter dated July 3, 2018, Sampson Martinez, Navajo Nation Shopping Center Inc.'s (NNSCI) Outside Counsel provided a response to my January 31, 2018 memorandum. In an email dated July 16, 2018 (attached), I requested for clarification as to whether NNSCI has more recent documents to ensure I was reviewing the correct version. To date, there has been no response from NNSCI or Mr. Martinez. As such, I am returning this document without a legal review. Until my question is clarified and the documents are updated, I will conduct another legal review. It is imperative that I review the correct documents.

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

LBJ/ah/217  
Attachment

xc: Jeanette Jones, Economic Development Specialist  
Project Development Department/DED



## LaTonia Johnson

---

**From:** LaTonia B. Johnson  
**Sent:** Monday, July 16, 2018 12:35 PM  
**To:** Sampson Martinez ; Juanita Yazzie (JYazzie@nnsinc.com)  
**Cc:** Nathaniel Begay (NBegay@nnsinc.com); Jeannette Jones  
**Subject:** Updated NNSCI Plan

Sampson and Juanita,

I am reviewing NNSCI's response to my June 27<sup>th</sup> memorandum that requested for clarification. In reviewing Sampson's letter dated July 3<sup>rd</sup> to the documents, it is noted that all the documents are still dated June 6, 2018. My question are whether these are the most recent documents? For example, I had asked a question related to a provision in the sublease. Sampson noted that issued has been addressed, but yet the sublease form dated June 6 does not reflect that change noted by Sampson. Please clarify whether NNSCI has more recent version of all the leasing transaction documents. I want to ensure that I am reviewing the correct version. Please clarify. Until there is clarification, I am going to stop reviewing the documents. Please let me know.

Thanks, LaTonia

--

**LaTonia B. Johnson, Assistant Attorney General**

Economic and Community Development Unit

Navajo Nation Department of Justice

Post Office Box 2010

Window Rock, Navajo Nation (AZ) 86515

Phone: 928.871.6932 and 6933

Fax: 928.871.6200

Email: lbjohnson@nndoj.org



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# NAVAJO NATION DEPARTMENT OF JUSTICE

## DOCUMENT REVIEW REQUEST FORM



DOJ
7/5/18 10:57am
DATE / TIME
<input type="checkbox"/> 7 Day Deadline
DOC #: 007416 #4
SAS #:
UNIT: ECDU

☒ RESUBMITTAL  
(Dec/Jan) 06/18/18

\*\*\* FOR NNDJ USE ONLY - DO NOT CHANGE OR REVISE FORM. VARIATIONS OF THIS FORM WILL NOT BE ACCEPTED. \*\*\*

### CLIENT TO COMPLETE

DATE OF REQUEST: 7/5/18	ENTITY/DIVISION: NUSCI
CONTACT NAME: Juanita Yazzie	DEPARTMENT:
PHONE NUMBER: 871-2218	E-MAIL: jyazzie@nuscinc.com
TITLE OF DOCUMENT: Administrative Management Lease Plan	

### DOJ SECRETARY TO COMPLETE

DATE/TIME IN UNIT: JUL 05 2018 12pm	REVIEWING ATTORNEY/ADVOCATE: Latonia Johnson
DATE/TIME OUT OF UNIT:	

### DOJ ATTORNEY / ADVOCATE COMMENTS

emailed NUSCI to obtain clarification in the correct version UBT 7/16 @ 1230pm

REVIEWED BY: (PRINT) UBT	DATE / TIME 9/10/18 1233pm	SURNAMED BY: (PRINT) UBT	DATE / TIME 9/10/18 1233pm
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DOJ Secretary Called: for Document Pick Up on at By:

PICKED UP BY: (PRINT) DATE / TIME:

NNDJ/DRRF-July 2013

Return to  
Sponsor. See memo.



NAVAJO  
NATION  
SHOPPING  
CENTERS  
INCORPORATED

Think. Plan. Live. Shop Navajo!

July 5, 2018

LaTonia B. Johnson  
Assistant Attorney General  
Economic/Community Development Unit  
Department of Justice  
Window Rock, Arizona 86515

Dear Mrs. Johnson:

Thank you for your review and comment regarding Document No. 007416#3: Administrative and Management Lease Plan. The concerns were addressed and attached also is Sampson Martinez's letter.

The document is being resubmitted.

Sincerely,

Juanita Yazzie  
Leasing Manager

xc: Nathaniel Begay, CEO, NNSCI



SAMPSON MARTINEZ  
PROFESSIONAL CORPORATION

300 WEST HILL AVE., STE. B  
P. O. Box 2415  
GALLUP, N.M. 87305  
TEL: (505)726-1218  
FAX: (505) 726 1219

July 3, 2018

LaTonia B. Johnson, Assistant Attorney General  
Economic Community Development Unit  
Navajo Nation Department of Justice  
Window Rock, Arizona 86515

Dear Mrs. Johnson,

The Navajo Nation Shopping Centers, Inc. (NNSCI) is responding to your comments and recommendations that you made in your memorandum dated June 27, 2018 concerning the Administrative Plan (AP), Management Plan (MP) and Part I Lease. The response is as follows:

1. The terms "mobile business" will be deleted from section 11.1 (2)(A)(iii). Section 11.1 (2)(A)(ii) will be used to issue revocable use permit to a vendor who wants to conduct business from his/her concession trailer.
2. To reconcile sections 3.1.3 of the MP with section 4.2.(f)(3)(a) of AP, the language that is in latter will be inserted into the former. A new language appears in section 3.1.3. of the MP as follows:
  3. Period Review:
    - a. The Department shall be responsible for the periodic review.
    - b. One year prior to the end of the period review, the Department shall begin the process for lease rental adjustment.

Proceed to 4.2.5.f of the Admin Plan which provides that Rent may be adjusted on the applicable fifth anniversary using the CPI or based on lease rate adjustment, which shall be stipulated in the lease. Section 4.2.5.f of the Admin Plan states that the lease rate adjustments shall be renegotiated on a case by case basis which must be based on the following factors: (i) Proposed investment into the business; (ii) Anticipated Improvements of the business; (iii) Type of business, business activity; and (iv) Appraised value.

3. The language at section O of Part I has been deleted.
4. In regard to your fourth comment, section 12 of the Revocable Use Permit has been rewritten. The new language will read as follows:

12. PERFORMANCE CASE BOND. Permittee shall provide a security or case bond to the Permittee to ensure performance of the terms and conditions in this Permit. The security or case bond amount shall be equal to two (2) month's rent. A security is not required for a permit that does not exceed six (6) months from the issuance of the permit.

The "unless otherwise agreed" has been deleted from section 12 of the Revocable Use Permit and replaced with new language that is consistent with section 11.1(3)(B) of the AP.

5. To make it clear who the sublessor is in the sublease, a new language has been inserted in the sublease form. The new language will read: The Sublessor is the Lessee of the base lease.
6. The language that you are recommending to be in Part II has been inserted into section 1.37 of Part II.

You have made other markups and comments to the documents, and they are addressed as follows:

1. "CEO" has been deleted from the flow chart of AP.
2. You wrote "What about in situations when the permittee signs the indemnification document?" The answer is, the moment the permittee signs the revocable use permit and indemnification document, he or she is pledging to indemnify, protect and defend the NNSCI against claims arising from the use of the permit on the premises of the NNSCI. An incident giving rise to a claim against the permittee can potentially occur moments after signing the document. A permittee who receives a permit to use the premises for a few hours or to use the premises for a day is required to sign the indemnification document.
3. The terms "as applicable" have been deleted from Section 3 of the Environmental Review section per your recommendation.
4. You made a comment that relates to section 4, Fair Annual Lease Value. You wanted to know if the NNSCI was going to provide guidance to the terms of "similar common method of evaluation."

No guidance is provided and none should be given. "Similar common method of evaluation" means the NNSCI can use other methods of determining the fair annual lease value and such method may include "market analysis and comparative analysis." Each of the means of obtaining the values does not have to be outlined. For instance, with regards to appraisal, the NNSCI does not go into

the methodology of appraising land but indicate that appraisal of the land will be used to obtain the rental value of the premises.

5. You raised a question that pertains to section 6.2 of the MP. You asked "what is this?" to the phrase "Uniform Regulations of 2008." The phrase has been changed and the new language is as follows:

#### 5.2. Annual Accounting

1. Annual Accounting shall include the information as provided in 604.42 ~~and (4.2)~~ of the Uniform Business Leasing Regulation of 2008 and in 402 of the Navajo Nation Business Leasing Regulations of 2005.
6. You noted inconsistencies with the appeal process of section 9 of the MP. The NNSCI is separating the appeal of the Approving Entity's initial decision from Approving Entity's final decision. There will be a total of six sections. Two more sections have been added to address the inconsistencies.

Here is the rewritten paragraph in the appeal section.

#### 9. Appeal

1. The Lessee may appeal the decision of the Department.
2. Upon receipt of such decision by the Department, the Lessee shall work with the Department to address the decision. If there is no compromise between the Lessee and the Department, the Department shall provide the final decision in writing to the Lessee.
3. The Lessee may appeal the final decision of the Department to the Approving Entity. If this appeal is made by the Lessee, the Approving Entity shall make a final decision which is appealable to the Office of Hearings and Appeals (OHA). If an appeal is made to the Approving Entity, the Approving Entity shall render a decision in fifteen (15) days from receiving the appeal from the Lessee.
4. The Lessee may decide to appeal the decision of the Department directly to the OHA without appealing the final decision of the Department to the Approving Entity.

The old section number 3 under section 9.0 is now section 5, and old section number 4 is now section 6. Their languages stayed the same and were not changed.

7. You made a remark about approval of leases by resolution by the Approving Entity. The Approving Entity will be approving leases by resolution. To indicate this in the AP, new language has been added to section 4.4(2). It reads as follows:



2. Submit the Lease package to the Approving Entity for review and approval by resolution.

If you have any questions or need further clarification, please call or email. Thank you.

Sincerely,



Sampson Martinez, Attorney at Law

cc: Juanita Yazzie, Leasing Manager  
Ms. Briana Slinkey, Administrative Assistant  
Jeanette Jones, Project Development Department

file



NAVAJO  
NATION  
SHOPPING  
CENTERS  
INCORPORATED

Think. Plan. Live. Shop Navajo!

June 8, 2018

LaTonia B. Johnson  
Assistant Attorney General  
Economic/Community Development Unit  
Department of Justice  
The Navajo Nation  
Window Rock, Arizona 86515

Dear LaTonia:

Thank you for your review and comments regarding Document No. 007416:  
Administrative and Management Lease Plan. The concerns were addressed and  
attached also is Sampson Martinez's letter.

The document is being resubmitted for surname.

Sincerely,

Juanita Yazzie  
Leasing Manager

xc: Nathaniel Begay, CEO, NNSCI

SAMPSON MARTINEZ  
PROFESSIONAL CORPORATION

300 WEST HILL AVE., STE. B  
P. O. BOX 2415  
GALLUP, N.M. 87305  
TEL: (505)726-1218  
FAX: (505) 726-1219

June 8, 2018

LaTonia B. Johnson, Assistant Attorney General  
Economic Community Development Unit  
Navajo Nation Department of Justice  
Window Rock, Arizona 86515

Dear Mrs. Johnson,

I am in receipt of your memorandum that you wrote to Ms. Juanita Yazzie. The memorandum is dated January 31, 2018. Ms. Yazzie and I went over your comments. We are responding to them as follows:

1. Rent adjustment will be performed in the following manner. New languages are inserted into section 4.2, f. 3 of the Administrative Plan (AP) to address rent adjustment. The language reads as follows:

Rent may be adjusted on the applicable fifth anniversary using the CPI or based on lease rate adjustment, which shall be stipulated in the lease.

- a. Lease rate adjustments shall be renegotiated on a case by case basis which must be based on the following factors:
  - i. Proposed investment into the business;
  - ii. Anticipated Improvements of the business;
  - iii. Type of business, business activity; and
  - iv. Appraised value.
2. You raised a question that pertains to section 11.0 of the AP of the Navajo Nation Shopping Centers, Inc. (NNSCI). You questioned what authority does the NNSCI has to conduct this type of business? Section 11 of the AP concerns revocable use permit which is a short term permit. Section 11.1 anticipates the issuance of a permit to mobile business operator. A mobile business is a concession trailer where food is sold to patrons from a trailer. The permits are only issued during fairs or during special events of the Navajo Nation. The permit is short term not lasting more than a couple of days.



The source of this authority comes from the Navajo Nation Business Leasing Regulations of 2005 (Regulations). In the Regulations, Lease is defined as "a written agreement between the Lessor and a Lessee ... wherein the lessee is granted a right to possess Navajo Nation trust land for a specific purpose and duration. Section 103 of the Regulations. It goes on to state that "[p]ursuant to 103, a 'Lease' also means a business lease, permit and licensing granting land use privileges in Navajo Nation trust land for business purposes...." Section 103(A)(16) of the Regulations. The Regulations define "permit" as "a written agreement between the Navajo Nation and the applicant for permit, ... whereby the permittee is granted a revocable use privilege to use the Navajo Nation Trust Land for a specified purpose."

The NNSCI is authorized to issue a permit to a permittee to operate a business from a concession trailer on Navajo trust land for a day or two.

3. To address the inconsistencies of the late charge section of section 2.1 of the Management Plan, the language of section 2.1.1. a, b, c, d and e have been inserted into Part 1 (D). Part 1 (D) is consistent with section 2.1 of the Management Plan.
4. You sought clarification to section 2.1 of the Management Plan relating to periodic review. You questioned whether consumer price index and appraisal are methods to be used for periodic review. New language has been added to section 2.1.(3)(b) which provides as follows:
  - b. One year prior to the end of the periodic review, the Department shall begin the process for lease rental adjustment. The Department will use the following factors to conduct its periodic review for possible rental adjustment to the lease:

Note that consumer price index and appraisal are factors to be utilized during periodic review. They are among the factors to be considered.

5. The terms "as applicable" have been removed from section 2.3 (2) of the Management Plan.
6. Section 10.0 of the Management Plan has been removed in its entirety. Section 7 of the Management Plan will be used instead.
7. As indicated above, section 2.1.1 a - e has been inserted into Part I D (3).
8. You questioned why section O was included in Part I? Section O provides, "EXCEPTIONS TO STANDARD TERMS AND CONDITIONS (Insert and justify any deviations from the Standard Terms and Conditions in Part II of this Lease.)"

One reason why this language is included in Part I is because it is in Part I of the version for the Navajo Nation. The Economic Development Committee of the

Navajo Nation Council presumably approved Part I with the exact language contained in Part I and is then the policy of the Navajo Nation.

The NNSCI would like to maintain the concept of Section O. Section O should state: Section 1.29, 1.30, 1.31, 1.32, 1.33, and 1.34 of Part II cannot be changed, amended or modified unless approved by the Resources and Development Committee of the Navajo Nation Council. This would prevent substantive laws of Navajo Nation and the federal government from being changed without RDC's approval. These changes will be inserted if the parties agree to the content and terms of the new language.

9. You pointed out that essentially many changes have been made to Part II, and you cited section 301 of the Regulations. It is correct that NNSCI did change provisions of Part II. Herein is the reason.

Section 301 of the Regulations provide as follows:

“Lease shall be governed by the standard terms and conditions set forth in Part II of the Navajo Nation Business Site Lease Form, or equivalent document. The standard terms and conditions may be modified only with the approval of the Economic Development Committee of the Navajo Nation Council....” (Emphasis Added).

This section allows modifications to be made to Part II. The new Part II can be equivalent to the existing Part II. The equivalent Part II has to be approved by the RDC. The NNSCI seeks to request RDC to modify Part II to make it equivalent to the current Part II and tailoring NNSCI's Part II to NNSCI needs and leasing operation of the shopping centers.

To devise NNSCI's Part II, the NNSCI worked painstakingly with the Review Team of the Division of Economic Development and the Navajo Nation Department of Justice (NNDOJ). It took many hours, days and years to come up with the revision that would be suitable for the NNSCI's leasing operation.

Part II of the NNSCI received the blessings of the Review Team and NNDOJ. The NNSCI and the Review Team worked with Ms. Karis Begaye on the formation of Part II. Ms. Begaye was the attorney at the NNDOJ when we worked on Part II.

The changes to Part II that were made by the NNSCI and the Review Team should be maintained. The changed sections are:

1. 1.2,
2. 1.3 (B),
3. 1.5 (A),
4. 1.10, (Regulated Substance is addressed below)
5. 1.11 (B),



6. 1.14 (A),
7. 1.14 (E),
8. 1.15(D),
9. 1.16,
10. 1.30 or 1.31,
11. 1.32,
12. 1.40,
13. Page 11 from 1.41 through 1.44,
14. 2.1(B), and
15. 2.4(B).

These changes from the current Part II should be presented to RDC for modification to the current Part II. RDC would be informed of the changes.

As to the "Regulated Substance" provision, this is at section 2.2 of Part II. The language has been changed slightly but the concept is basically the same. It was changed with the help and input of the Review Team and NNDOJ.


10. Relying on the Navajo Nation's version of the Revocable Use Permit, you noted section 8 of the Revocable Use Permit of the Navajo Nation's reversion was deleted from NNSCI Revocable Use Permit. Section 8 has been reinserted into the Revocable Use Permit of the NNSCI. Also in the Revocable Use Permit, change made by inserting two (2) month's rent and removing the terms "one (1)" from section 12 of the Revocable Use Permit. It is now consistent with section 11.1 (3)(B)(ii) of the Administrative Plan. The provision for 20. NOTICES was inserted.
11. You wanted clarification as to why several provisions were deleted or amended to deviate from the version of the Navajo Nation. Rather than clarifying, the version of the Navajo Nation has been reinserted in the section that deals with sublease.
12. There is a new section added to the Administrative Plan. It is section 1.10 of the Administrative Plan enunciating the Approving Committee as the Approving Entity of the NNSCI.
13. Section 401(1.5) requires certain language to be in Part II pertaining to rescission. The NNSCI has inserted that language into section 1.37 of Part II.

The changes to the Administrative Plan, Management Plan, Part I and Part II are attached.

If you have any questions, please call or email. Thank you.

Sincerely,





Sampson Martinez, Attorney at Law

cc: Nathaniel Begay, CEO, NNSCI  
Juanita Yazzie, Leasing Manager, NNSCI  
Briana Slinkey, Administrative Assistant, NNSCI  
Jeanette Jones, Project Development Department, DED



**NAVAJO NATION DEPARTMENT OF JUSTICE**  
**OFFICE OF THE ATTORNEY GENERAL**

ETHEL B. BRANCH  
ATTORNEY GENERAL

CHERIE ESPINOSA  
ACTING DEPUTY ATTORNEY GENERAL

**ATTORNEY-CLIENT PRIVILEGED**  
**CONFIDENTIAL**

Received

JUN 28 2018

M E M O R A N D U M

Navajo Nation Management Office

TO: Juanita Yazzie, Leasing Manager  
Navajo Nation Shopping Centers, Inc.

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

DATE: June 27, 2018

SUBJECT: EOR No. 7416#3 - Review of the Navajo Nation Shopping  
Center's Administrative and Management Plan

As you know, I issued a memorandum dated January 31, 2018 that outlined 13 issues. In response, Navajo Nation Shopping Center, Inc. (NNSCI) submitted a letter dated June 8, 2018. In reviewing the response and the Administrative Plan (AP), Management Plan (MP) and other documents, I have noted that you have satisfactorily addressed the following issues that were noted in the January 31, 2018 memorandum: 1, 3, 5, 6, 7, and 12. The other issues have not been satisfactorily addressed or require further clarification. Also, please see the face of the documents for further comments.

1. I previously requested clarification regarding the term "mobile business." The term, without a definition, would imply that NNSI would be able to provide permits for business like a transport business. In order to avoid situation as such, it is recommended that NNSI either change the term mobile business to something else or define the term "mobile business." Alternatively, the manner in which Mr. Martinez's defined mobile business

Memorandum to: Juanita Yazzie, Leasing Manager

RE: EOR No. 7416#3 - Review of the Navajo Nation Shopping Center's  
Administrative and Management Plan

June 27, 2018

Page 2 of 2

could constitute as short term business, including special events or fundraising as provided in Section 11.1(2)(A)(ii).

2. In reviewing the updated version of the MP, Section 2.1 (3) to AP Section 4.2 (f)(3)(a), both sections are inconsistent. First, the proposed language that you have recommended for MP, Section 2.1 is not added to the final version of the MP. Second, even if you do add the new section, it doesn't coordinate with how the section is written. Third, with the new provision added, it appears that period review/lease adjustments would be determined by consumer price index and appraisal. However, AP Section 4.2 (f) provide that lease adjustments can be done by CPI or lease adjustments, which appears to be inconsistent with MP, Section 2.1 (3). Then lease adjustment factors are noted in AP, Section 4.2 (f)(3)(a). Please clarify.
3. I requested for clarification as to why there are exceptions noted in Part I of the Business Site Lease, Section O. In response, NNSI noted that Resources and Development Committee has the authority to amend Part II. It is not clear why there are exceptions when the general rule is that RDC has the authority to approve any amendments to the template version of Part II, not just the sections that are noted in Section O. Please further clarify.
4. While you updated the language in the Revocable Use Permit (RUP), it is still inconsistent with the AP, Section 11.1(3)(B). The RUP Section 12 may provide the 2 month, but also notes "unless otherwise agreed." Yet, the AP, Section 11.1(3)(B)(ii) only refers to 2 months as the general rule. Is there an exception?
5. The Sublease, Paragraph 4 refers to the "sublessor." It is not clear who the sublessor would be. Please clarify.
6. The letter indicated that the below clause was inserted as Paragraph 1.37 in Part II of the Business Site Lease. In reviewing Part II, that clause has not been added. Please add.



Memorandum to: Juanita Yazzie, Leasing Manager

RE: EOR No. 7416#3 - Review of the Navajo Nation Shopping Center's  
Administrative and Management Plan

June 27, 2018

Page 3 of 3

"Upon determination by the Resources Development Committee that the Navajo Nation Shopping Center, Inc. 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 Resources Development Committee upon its decision."

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

LBJ/ah/146

Attachments

xc: Jeanette Jones, EDS, Project Development Department  
Division of Economic Development

*Nathan Begay, CEO, NNSCF*  
*Sampson Harding, Legal Counsel, NNSCF*



# NAVAJO NATION DEPARTMENT OF JUSTICE

## DOCUMENT REVIEW REQUEST FORM



DOJ
6/11/18 924a
DATE / TIME
<input type="checkbox"/> 7 Day Deadline
DOC #: 007416#3
SAS #:
UNIT: ECD

☒ RESUBMITTAL  
(Dec / Jun)

\*\*\* FOR NNDJ USE ONLY - DO NOT CHANGE OR REVISE FORM. VARIATIONS OF THIS FORM WILL NOT BE ACCEPTED. \*\*\*

### CLIENT TO COMPLETE

DATE OF REQUEST: 6/8/18 ENTITY/DIVISION: NNSCI  
CONTACT NAME: Juane Yurze DEPARTMENT:  
PHONE NUMBER: 928/871-2218 E-MAIL: jyurze@nnsinc.com  
TITLE OF DOCUMENT: Administrative and Management Lease Plan

### DOJ SECRETARY TO COMPLETE

DATE/TIME IN UNIT: JUN 11 2018  
10:27 AM REVIEWING ATTORNEY/ADVOCATE: Latonia Johnson  
DATE/TIME OUT OF UNIT:

### DOJ ATTORNEY / ADVOCATE COMMENTS

See memo. requires further clarification

REVIEWED BY: (PRINT) JBG	DATE / TIME 6/20/18 234pm	SURNAMED BY: (PRINT) CPT	DATE / TIME 6/20/18 234pm
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DOJ Secretary Called: for Document Pick Up on at By:

PICKED UP BY: (PRINT) DATE / TIME:

NNDJ/DRRF-July 2013

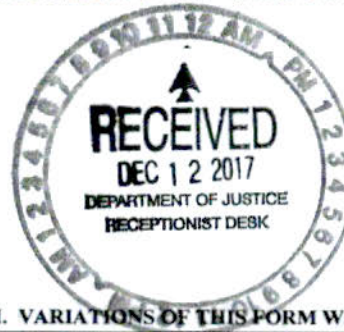






# NAVAJO NATION DEPARTMENT OF JUSTICE

## DOCUMENT REVIEW REQUEST FORM



DOJ  
12/12/17 11:18  
DATE / TIME  
☐ 7 Day Deadline  
DOC #: 007416#2  
SAS #:  
UNIT: ECDW

☐ RESUBMITTAL  
(Jan 2017)

\*\*\* FOR NNDJ USE ONLY - DO NOT CHANGE OR REVISE FORM. VARIATIONS OF THIS FORM WILL NOT BE ACCEPTED. \*\*\*

### CLIENT TO COMPLETE

DATE OF REQUEST: 12/12/2017 DIVISION: Tribal Entity  
CONTACT NAME: J. Yazzie DEPARTMENT: NN Shopping Center  
PHONE NUMBER: 871-2218 E-MAIL: Click here to enter text.

TITLE OF DOCUMENT: Administrative and Management Lease Plan

### DOJ SECRETARY TO COMPLETE

DATE/TIME IN UNIT: DEC 12 2017 1:00pm REVIEWING ATTORNEY/ADVOCATE: Latoria Johnson

DATE TIME OUT OF UNIT:

### DOJ ATTORNEY / ADVOCATE COMMENTS

Insufficient. See memo

REVIEWED BY: (Print) LBJ Date / Time 1/30/18 3:19 pm SURNAMED BY: (Print) LBJ Date / Time 1/30/18 3:19 pm

DOJ Secretary Called: Juanita Yazzie for Document Pick Up on 1/30/18 at 4:40pm By: CK

PICKED UP BY: (Print) DATE / TIME:

NNDJ/DRRF-July 2013







**NAVAJO NATION DEPARTMENT OF JUSTICE**  
**OFFICE OF THE ATTORNEY GENERAL**

ETHEL B. BRANCH  
ATTORNEY GENERAL

CHERIE ESPINOSA  
ACTING DEPUTY ATTORNEY GENERAL

M E M O R A N D U M

FEB - 1 2018

TO: Juanita Yazzie, Leasing Manager  
Navajo Nation Shopping Centers, Inc.

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

DATE: January 31, 2018

SUBJECT: UPDATED MEMO EOR No. 7416#2 - Review of the Navajo  
Nation Shopping Center's Administrative and Management  
Plan

As you know, I issued a memorandum dated January 30, 2018. This memorandum updates the January 30<sup>th</sup> memorandum as I have additional concerns that I have noted as 12 and 13 to this memorandum. In reviewing the resubmitted document, there are some areas that require clarification or correction. Please see the face of the document for review. The following is a list of the substantive issues that I have noted:

1. Administrative Plan, Section 4.2 (f) refers to another section in the Administrative Plan. In reviewing that section, that section only outlines how rent will be determined, not how it will be adjusted. It is recommended that this area is clarified.
2. Administrative Plan, Section 11.0 outlines that Navajo Nation Shopping Center, Inc. (NNSCI) is able to provide permits for mobile business operation. What authority does NNSCI have to conduct this purpose? This delegation is only restricted to fix trust property. Please clarify.

Memorandum to: Juanita Yazzie, Leasing Manager

RE: EOR No. 7416#2 - Review of the Navajo Nation Shopping Center's  
Administrative and Management Plan

January 31, 2018

Page 2 of 4

3. Management Plan, Section 2.1 regarding late charges is not consistent with the terms outlined in Part I(D) of the lease. It is recommended that either Section 2.1 or Part I(D) is amended.
4. Management Plan, Section 2.1 (3) regarding periodic review section may need some update. In reviewing this section, it is not clear whether the consumer price index and appraisal will be the method used to conduct the periodic review. If so, it is recommended that this section is clarified.
5. Management Plan, Section 2.3 (2) references the term "as applicable." It is not clear what this term is supposed to mean in reference to the sentence structure. Please clarify.
6. Management Plan, Section 10.0 references the NNSCI Collection Policy and specifically noted that "Policy may be amended periodically upon the Department's written recommendation and approval by the NNSCI Board of Director without RDC approval." In reviewing the collection policy, it outlines the process of how to collect on debt. However, Section 7.0 of the Management Plan also outlines the process for default. In addition, all enforcement needs to be consistent with the process outlined in Sections 502 and 503 of the Navajo Business Leasing Regulations of 2005 (Tribal Regulations). If the Collection Policy could be interpreted to not be consistent with Section 7.0 and Tribal Regulations. It is recommended that collection should be handled by the process outlined in Section 7.0 of the Management Plan.
7. Part 1 of the Business Site Lease, Section D(3) is not consistent with the Management Plan as noted in comment three above.
8. Part 1 of the Business Site Lease, Section O outlines exceptions. Why this section included? Please clarify.
9. Part II of the Business Site Lease has substantial changes. Please see the face of the document for comments. Pursuant to the Tribal Regulations Section 301



Memorandum to: Juanita Yazzie, Leasing Manager

RE: EOR No. 7416#2 - Review of the Navajo Nation Shopping Center's  
Administrative and Management Plan

January 31, 2018

Page 3 of 4

provides that Part II may only be modified with the approval of the Resource and Development Committee. While there are some areas that appear to be non-substantive changes, it is noted that NNSCI took out the "Regulated Substance" provision. I noted this in my June 2017 memorandum and also in our previous meeting and I was assured that Part II is the same version as the Navajo Nation. It is highly recommended that NNSCI re-evaluate all the changes that it is conducted to this document.

10. Revocable Use Permit: Paragraph 8 and the notice provision from the Navajo Nation's version were deleted. Why? Also, paragraph 12 is not consistent with the Administrative Plan, Section 11.1(3)(B). Please clarify.
11. Sublease: There are some provisions that were deleted or amended from the Navajo Nation's version. Please clarify.
12. Administrative Plan: Pursuant to Section 201(1.4) of the Economic Development Committee (EDC) Uniform Regulations of 2008 (2008 Regulations) provide that the Shopping Center shall establish a Committee, Commission, Board or other acceptable form by the Resource and Development Committee to grant final approval of leasing transactions. In this case, throughout the Administrative Plan, the NNSI Chief Executive Officer is serving as the Approving Entity. The intent of the above-mentioned requirement was to have more than one person grant approval to ensure there is an objective review rather than one person. It is recommended that NNSI re-evaluate the approving entity in light of the above-mentioned requirement. I have attached the 2008 Regulations to this memorandum for review.
13. Part II of the Business Site Lease: Pursuant to the 2008 Regulations, Section 401 (1.5) requires that a certain provision is added. This provision ensures that in the event that NNSCI's approval authority is rescinded, that there will be no interpretation of services. Please add the following provision to Part II of the lease.



Memorandum to: Juanita Yazzie, Leasing Manager

RE: EOR No. 7416#2 - Review of the Navajo Nation Shopping Center's  
Administrative and Management Plan

January 31, 2018

Page 4 of 4

"Upon determination by the Resources Development Committee that the Navajo Nation Shopping Center, Inc. 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 Resources Development Committee upon its decision."

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

LBJ/ah/18

xc: Jeanette Jones, EDS, Project Development Department  
Division of Economic Development

Nathaniel Begay, CEO, NNSCI  
Sampson Morling, Legal Counsel, NNSCI

**Economic Development Committee  
Uniform Business Leasing Regulations of 2008**

**AUTHORITY:**

The *Navajo Nation Business Leasing Regulations of 2005* (Tribal Regulations) allow the Navajo Nation to issue its own business site leases, without approval of the Secretary of Interior. Under 2 N.N.C. § 724 (B) (2) authorizes the Economic Development Committee of the Navajo Nation Council to delegate its approval or granting authority to Division of Economic Development, Navajo Nation Shopping Centers, Inc., an Entity, Chapters, or Townships.

**TITLE:**

These Regulations shall be referred to as the Economic Development Committee Uniform Business Leasing Regulations of 2008.

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## **Chapter 100. General Provisions**

### **§ 101. Definitions**

- 1.1 *Approving Entity* for the purpose of these Regulations means the governmental entity who the Economic Development Committee has delegated final approval authority for



business site leases. This Approving Entity shall be specifically established in the Administrative Management Plan.

- 1.2 *Assignment* means an agreement between the Lessee and an Assignee whereby the Assignee acquires all of the Lessee's rights and assumes all the Lessee's obligations under a business site lease.
- 1.3 *Best Interest of the Navajo Nation* means the balancing of interests in attaining the highest economic income, providing incentives to increase economic development, preserving and enhancing the value of Navajo Nation trust land, increasing employment and jobs on the Navajo Nation, and preserving the sovereignty.
- 1.4 *Delegation* means the authorization of one entity to exercise approval and management authority.
- 1.5 *Economic Development Committee of the Navajo Nation Council ("EDC")* means the Committee with the statutory authority to approve business site leases.
- 1.6 *Entity* means an entity of the Navajo Nation government.
- 1.7 *Executing Official* means the President of the Navajo Nation who has the final authority to execute business site leases, subleases, amendments, modifications, assignments and cancellation of leases and subleases, unless otherwise provided herein.
- 1.8 *Improvements* any structure erected on a site to enhance the value of the property or benefit the land, such as a building, fence, sidewalk or driveway.
- 1.8 *Local Government Unit* means a Navajo Nation governance certified local Chapter, with a certified land use plan, acting in conformance with these regulations and the regulations promulgated by the applicable standing committee of the Navajo Nation Council. A Local Government Unit includes governance-certified chapters, municipal form of governments, and alternative forms of governments. Additionally, it refers to townships that have been delegated the authority to approve business site leases.

- 1.9 *Managing Entity* means the governmental entity that has the authority to manage business site leases, in accordance with an approved business site leasing management plan.
- 1.10 *Sublease* means a written agreement by which a lessee grants a person a right of possession no greater than that held by the lessee under a business site lease.

## **§ 102. Purpose and Applicability**

- 2.1 The Purpose of these Regulations is to:
- 2.1.1 Implement uniform rules and regulations to delegate the authority of the EDC to the Division of Economic Development, an entity, Local Government Units, Shopping Centers or Townships.
  - 2.1.2 Promote self-determination, encourage economic self-sufficiency, and increase business activity and employment on lands of the Navajo Nation.
  - 2.1.3 Implement the *Local Governance Act, 26 N.N.C. §§ 101 et seq.*
  - 2.1.4 Implement enabling legislation of other Local Government Acts, including but not limited to *Kayenta Township Homerule Municipality*.
  - 2.1.5 Implement the *Division of Economic Development Master Plan of Operation ("DED")* to allow the Division to approve business site leases.
  - 2.1.6 Implement the enabling legislation for the *Navajo Nation Shopping Centers, Inc. ("Shopping Centers")*.
  - 2.1.7 Implement the enabling legislation for entities authorized to approve business site leases on the Navajo Nation.
- 2.2 These Regulations are applicable to those entities who can properly receive delegation of final approval authority for business site leases and agree to comply and be governed by the Tribal Regulations.

- 2.2.1 The Tribal Regulations mandate a business site leasing management plan be implemented. The business site leasing management plan must be approved by the EDC, including all amendments made to the management plan.

**§ 103. Scope**

- 3.1 These Regulations apply to business site leases approved by the Local Government Units, DED, Shopping Centers or an Entity and actions and decisions taken in connection with those leases.

**§ 104. Effective Date**

- 4.1 These Regulations shall take effect upon approval by the EDC.

**§ 105. Approval**

- 5.1 The Local Government Unit, Shopping Centers, DED or an Entity may approve a business site lease or permit so long as the business site lease is within the authority of the Approving Entity and it complies with these Regulations, the Administrative and Business Site Leasing Management Plan, the Tribal Regulations and is in the best interest of the Navajo Nation.

**§ 106. Choice of Law**

- 6.1 All disputes over business site leases or permits shall be resolved under the laws of the Navajo Nation. Nothing in these Regulations shall be construed to waive the Sovereign Immunity of the Navajo Nation, implicitly or explicitly.

**§ 107. Duration and Renewal**

- 7.1 No lease shall be approved more than 12 months prior to the commencement of the term of the business site lease. The term of the business site lease shall not exceed 25 years except that any such business site lease may include an option to renew for up to two (2) additional terms, each of which may not exceed 25 years. The Lessee shall notify the Managing Entity of the intent to renew, at least one (1) year before the business site lease is due to expire.



## **Chapter 200. Obtaining Business Site Leasing Authority**

### **§ 201. Approval Authority**

- 1.1 The Local Government Unit, DED, Shopping Centers or an Entity may receive a delegation of approval authority for business site leases from the EDC. This delegation will cause the Local Government Unit, DED, Shopping Centers or an Entity to have the authority to grant final approval of business site leases on Navajo Trust land, subject to limitations set forth within its authority, without seeking further approval from the EDC.
- 1.2 This delegation shall be in the form of a resolution authorizing the delegation from the EDC to the DED, Shopping Centers or an Entity.
- 1.3 This delegation for the Local Government Units shall be in the form of a resolution authorizing the delegation from the EDC to the Local Government Unit and approval of policies and procedures for such delegation which shall be the Administrative and Business Site Leasing Management Plan.
  - 1.2.1 This delegation of authority is given at the discretion of the EDC and such delegation is subject to the requirements set forth in 25 U.S.C. § 415(e), Tribal Regulations, these Regulations and other appropriate Navajo Nation law.
- 1.4 The Local Government Units, DED, Shopping Centers, or an Entity shall establish a Commission, Committee, Board, or other acceptable form by the EDC for granting final approval of business site leasing transactions. This shall be established in the Administrative Management Plan, which must be amended by DED, Shopping Centers or an Entity, upon receipt of Approval Authority. The Commission, Committee, Board or other acceptable form shall not consist of current public officials.

### **§ 202. Management Authority**

- 2.1 The Local Government Unit, DED, Shopping Centers or an Entity may have the authority to manage and negotiate business site leases or permits, provided, policies and

procedures are established, which must address accounting, collections, monitoring, enforcement, relief and remedies and any other policies the EDC requires. The policies and procedures shall be known as the Administrative and Business Site Lease Management Plan, which must be approved before the Local Government Unit, DED, Shopping Centers or an Entity can negotiate or undertake management of its own approved business site lease or permit.

- 2.2 The Local Government Unit, DED, Shopping Centers or an Entity must seek approval from the EDC for the Administrative and Business Site Lease Management Plan before negotiating or managing its own business site lease or permit or a business site lease or permit novated to the Local Government Unit, DED, Shopping Centers or an Entity.
- 2.3 The EDC shall approve the Administrative and Business Site Leasing Management Plan concurrently with the delegation of approval authority for Local Government Units. The EDC shall approve the Administrative and Business Site Leasing Management Plan separately from the delegation of approval authority for DED, Shopping Centers, or an Entity.

#### **§ 203. Rescinding of Authority**

- 3.1 The EDC may, at any time, based upon reasonable findings of adverse actions to an interested party may rescind its delegation of approval authority to the Local Government Unit, DED, Shopping Centers or an Entity.
  - 3.1.1 The decision to rescind approval authority shall be based on violations of 25 U.S.C. §415(e), Tribal Regulations, these Regulations and/or the Administrative and Business Site Leasing Management Plan or if deemed in the best interest of the Navajo Nation.
  - 3.1.2 The EDC shall base its decision on findings from the DED, Real Estate Department, Office of the Auditor General, and/or Department of Justice("DOJ").
  - 3.1.3 Before a decision to rescind is made, the EDC shall conduct a hearing with the appropriate parties, including the Local Government Unit, DED, Shopping Centers, or an Entity. The EDC shall establish policies for the administering

of the hearing and shall act in accordance with those policies.

3.1.4 The decision of the EDC shall be effective immediately and the EDC shall act in accordance with the policies established, pursuant to this Subchapter, 3.1.3. for the implementation of that decision.

3.1.5. If at any time the Local Government Unit, DED, Shopping Centers, or an Entity has the approval authority rescinded it shall not be able to reapply for this authority for three (3) years, beginning on the date the rescission is in effect, which is the date the Resolution to rescind is signed by the Chairperson of the EDC.

3.2 If the EDC decides to rescind approval authority for Local Government Units, that Local Government Unit shall automatically have its approved Administrative and Business Site Leasing Management Plan rescinded, simultaneously. The EDC shall give all interested parties to this action notice upon the date the rescission is effective.

3.3 If the Local Government Unit is sanctioned, the Local Government Unit shall notify the Chairperson of the EDC, upon de-certification of the Local Government Unit the EDC shall rescind approval authority without the need of conducting hearings.

## **Chapter 300. Obtaining a Business Site Lease**

### **§ 301. Information**

1.1 Information on obtaining a business site lease shall be available at the Local Government Unit, DED, Shopping Centers or Entity.

### **§ 302. Supporting Documents**

2.1 All applicants for business site leases shall submit the following documents to the Local Government Unit, DED, Shopping Centers, or an Entity:

2.1.1 Business plan;



- 2.1.2 Site survey and legal description;
- 2.1.3 Environmental review;
- 2.1.4 Corporate documents;
- 2.1.5 And any other documents required by the Administrative and Business Site Lease Management Plan.

**§ 303. Records**

3.1 The DED, Real Estate Department or successor shall record all business site leases, subleases, assignments, amendments, encumbrances, renewals, modifications and cancellations on behalf of the Local Government Unit, Shopping Centers, or Entity.

3.2 The Local Government Unit, Shopping Centers, or Entity shall file all the fully executed above-mentioned transactions at the DED. The DED, Real Estate Department or successor shall record the above-mentioned transactions with the:

Land Title and Records Office  
Southwest Regional Office  
Bureau of Indian Affairs  
P.O. Box 26567  
Albuquerque, NM 87125-6567

3.3 Real Estate Department, DED shall return the recorded documents to the Local Government Unit, Shopping Centers, or Entity, if applicable. At all times the Real Estate Department, DED shall maintain a copy of all such transactions.

3.4 The Local Government Unit, DED, Shopping Centers, or Entity shall disseminate the recorded documents as follows:

- 3.4.1 Local Government Unit:
  - a. Navajo Nation Division of Economic Development, Real Estate Department
  - b. Navajo Nation Records Management Department
  - c. Navajo Land Department
  - d. The Lessee
  - e. Local Government Unit Business Office

- 3.4.2 Division of Economic Development:
- a. Navajo Nation Division of Economic Development, Real Estate Department
  - b. Navajo Nation Records Management Department
  - c. Navajo Nation Office of the Controller
  - d. Navajo Land Department
  - e. The Lessee

- 3.4.3 Navajo Nation Shopping Centers, Inc.
- a. Navajo Nation Division of Economic Development, Real Estate Department
  - b. Navajo Nation Records Management Department
  - c. The Lessee
  - d. Navajo Nation Shopping Centers, Inc.

- 3.4.4 Entity:
- a. Navajo Nation Division of Economic Development, Real Estate Department
  - b. Navajo Nation Records Management Department
  - c. Navajo Nation Office of the Controller
  - d. Navajo Land Department
  - e. The Lessee
  - f. The Entity

- 3.5 A copy of the lease and all amendments and renewals, except Novation Lease Modifications, shall also be sent for information only to the Secretary of the Interior, Bureau of Indian Affairs, Navajo Regional Office, the respective Agency Real Estate Services Offices at the address provided below, pursuant to 25 U.S.C. § 415(e)(4)(A) and (B). The five agency offices are:

Chinle Agency Real Estate Services P.O. Box 7H Chinle, AZ 86503	Eastern Navajo Agency Superintendent Attention: Real Estate Services P.O. Box 328 Crownpoint, NM 87313
Fort Defiance Agency Real Estate Services P.O. Box 619 Ft. Defiance, AZ 86504	Shiprock Agency Real Estate Services P.O. Box 3538 Shiprock, NM 87420

Western Navajo Agency Real Estate Services P.O. Box 127 Tuba City, AZ 86045	
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#### **§ 304. Ownership of Records**

- 4.1 Records of activities taken pursuant to the Tribal Regulations and these Regulations are the property of the Navajo Nation its agents, which consist of the Local Government Units, DED, Shopping Centers, an Entity and the United States. Records compiled, developed, or received by the Navajo Nation in the course of business with the Secretary, are the property of the Navajo Nation.

#### **Chapter 400. Business Site Lease Requirements**

##### **§ 401. Terms and Conditions**

- 1.1 Business site leases shall be governed by the standard terms and conditions set forth in Part II of the Navajo Nation Business Site Lease, which must comply with the Administrative and Business Site Leasing Management Plan, Tribal Regulations, these Regulations and 25 U.S.C. § 415(e).
- 1.2 The Local Government Unit, DED, Shopping Centers and an Entity shall develop a separate Standard Part II Navajo Nation Business Site Lease which must be approved by the EDC.
- 1.3 Negotiations of the terms and conditions of Part I of the Navajo Nation Business Site Lease shall be in accordance with the Administrative and Business Site Leasing Management Plan, Tribal Regulations, these Regulations and 25 U.S.C. § 415(e).
- 1.4 Once approved by the EDC, any deviation or modification to Part II Navajo Nation Business Site Lease, including any minor changes, may be done only with the approval of the EDC. The Lessee is responsible for understanding these terms and conditions.
- 1.5 In this case of rescission of Approval Authority for Local Government Units, all Part II of the Standard Form Business Site Lease shall have the following language:



"Upon determination by the Economic Development Committee that \_\_\_\_\_ [Chapter/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."

**§ 402. Land Description**

- 2.1 Business site leases shall contain adequate site surveys and legal descriptions based on metes and bounds, rectangular, or lot and block systems.

**§ 403. Appraisal, Equivalent Procedure, Local Studies**

- 3.1 The fair annual lease value shall be determined by an appraisal of fair market value or equivalent procedure. This determination shall be based on improvement cost, replacement cost, earning capacity, sales and lease data of comparable sites. An appraisal or similar type of log reporting the methods of appraisal or value of trust land shall be attached to every business site lease.
- 3.2 If an appraisal is conducted it must be performed by a certified Appraiser and the appraisal must be in accordance with the *Uniform Standard Procedures of Appraisal Practice*
- 3.3 Any equivalent procedure must be set forth in the Business Site Lease Management Plan.

**§ 404. Fair Annual Lease Value**

- 4.1 No business site lease shall be approved for less than the present fair annual lease value as set forth in the appraisal or equivalent procedure, except as follows:
  - 4.1.1 Lessee is in the development period
  - 4.1.2 The Local Government Unit, DED, Shopping Centers or an Entity is providing an incentive for businesses to locate on the Navajo Nation and will provide lease concessions, lease improvement credits, and lease abatements to attract such businesses; or

- 4.1.3 The Local Government Unit, DED, Shopping Centers or an Entity determines such action is in the Best Interest of the Navajo Nation, which shall be set forth in the Business Site Lease Management Plan.
- 4.2 The business site lease may be a flat rate.
- 4.3 The business site lease may be structured at a flat lease rate plus a percentage of gross receipts, if the Lessee is a business located in a shopping center or mall, or the lease generates over \$1,000,000.00 in gross receipts.
- 4.4 The business site lease may be structured based on a percentage of gross receipts, or based on a market indicator.
- 4.5 The business site lease shall provide for a periodic review in five (5) year increments, subject to this Section 4.6. Such review shall give consideration to the local market and economic conditions, exclusive of improvements or development required by the contract or the contribution value of such improvements.
- 4.6 Business site leases for terms of less than five (5) years, may be structured to allow for shorter term lease rate adjustments. The business site lease shall specify how adjustments will be made, who will make such adjustments, when adjustments will go into effect, and how disputes shall be resolved.
- 4.7 Business site leases may be amended to allow for lease rate adjustments.
- 4.8 The Local Government Unit, DED, Shopping Centers or an Entity shall keep written records of the basis used in determining the fair annual lease value, as well as the basis for adjustments. These records shall be presented to the Lessee for its review and acceptance or non-acceptance and included in any lease file.

#### **§ 405. Security**

- 5.1 The Lessee shall obtain an appropriate security in an amount that reasonably assures performance of the lessee's obligation under its business site lease. The security includes, but not limited to, cash deposit, letter of

credit or certificate of deposit. Such security shall be for the purpose of guaranteeing:

- 5.1.1 The annual lease payment;
  - 5.1.2 The estimated development cost of improvements; and
  - 5.1.3 Any additional amount necessary to ensure compliance with the business site lease.
- 5.2 The Local Government Unit, DED, Shopping Centers or an Entity may waive the security requirement or reduce the amount, if doing so is in the Best Interest of the Navajo Nation. The Local Government Unit, DED, Shopping Centers or an Entity shall maintain written records of all waivers and reductions granted.

#### **§ 406. Insurance**

- 6.1 The Lessee shall secure insurance from a nationally accredited insurance company with a financial strength rating of "A" or equivalent, and authorized to do business in the state where the premises are located. Such insurance shall:
- 6.1.1 Cover property business interruption, liability and casualty.
  - 6.1.2 In an amount sufficient to cover improvements, personal injury or death.
- 6.2 The insurance shall expressly identify the Lessor and the United States as the insured parties.

#### **§ 407. Improvements**

- 7.1 Improvements to the premises shall become the property of the Local Government Unit, DED, Shopping Centers or an Entity, unless otherwise provided for in the Standard Form Business Site Lease. If improvements are to be removed, the Standard Form Business Site Lease shall specify the maximum time allowed for such removal.
- 7.2 Lessee may develop equity value in the improvements and sell its interest in the Standard Form Business Site Lease



based on equity value. The Local Government Unit, DED, Shopping Centers or an Entity has a right of first refusal to purchase the interest.

- 7.3 The Standard Form Business Site Lease may provide that upon expiration, cancellation or termination of the Standard Form Business Site Lease, the Local Government Unit, DED, Shopping Centers or an Entity shall purchase improvements at fair market value.

**§ 408. Subleases, Assignments, Amendments and Encumbrances**

- 8.1 Subleases, assignments, amendments or encumbrances of any business site lease shall be by written consent of the Lessor and Lessee, as well as the sureties, unless otherwise provided herein.
- 8.2 The business site leases may authorize subleases, in whole or in part, without approval from the Local Government Unit, DED, Shopping Centers or an Entity and execution from the Executing Official, provided a copy of the sublease is provided to the Local Government Unit, DED, Shopping Centers or an Entity. This does not relieve any party from carrying out their duties under the business site lease.
- 8.3 The business site lease may authorize encumbrances to the leasehold interest for the purpose of financing to develop and improve the premises.
- 8.3.1 Approval by the Local Government Unit, DED, Shopping Centers or an Entity and execution from the Executing Official is required.
- 8.3.2 If a sale or foreclosure occurs and the encumbrancer is the purchaser, the encumbrancer may assign the business site lease without approval from the Local Government Unit, DED, Shopping Centers or an Entity or Lessee, provided the Assignee agrees in writing to be bound by all the terms and conditions of the business site lease.
- 8.3.3 If the purchaser is a party other than the encumbrancer, approval by the Local Government Unit, DED, Shopping Centers or an Entity and execution from the Executing Official is required, provided the purchaser agrees in

writing to be bound by all the terms and conditions of the business site lease.

## **Chapter 500. Transfer of Business Site Leases**

### **§ 501. Transfer of Records**

- 1.1 The Local Government Unit, DED, Shopping Centers, or an Entity shall cooperate with DED, Real Estate Department, upon approval of the Administrative and Business Site Lease Management Plan, for purposes of transferring records.
- 1.2 The Local Government Unit, Shopping Centers, DED or an Entity may obtain contact information for business site leases within the boundaries and/or authority of the Local Government Unit, Shopping Centers, or an Entity from the DED, Real Estate Department. However, the original records of the documents shall remain with DED, Real Estate Department until a proper Novation Lease Modification is executed.

### **§ 502. Novation**

- 2.1 The Local Government Units or an Entity may transfer the management of existing business site leases, approved by the EDC and those managed by the DED, to the business site leasing authority of the Local Government Unit or an Entity.
- 2.2 The existing business site leases, tribal or federal, can be transferred only if the Lessee consents to be governed by the Local Government Unit or an Entity otherwise the existing business site leases will remain under the authority of the Bureau of Indian Affairs, EDC, DED or Shopping Centers.
- 2.3 Upon expiration or termination of an existing business site lease, the Local Government Unit or an Entity may begin negotiations for a new lease, with an interested party. Such new lease may be granted to the prior lessee so long as the Lessee is in compliance with Navajo law and will be in the best interest of the Navajo Nation.

## **Chapter 600. Business Site Lease Management**

### **§ 601. Administrative and Business Site Leasing Management Plan**

- 1.1 The Local Government Unit, DED, Shopping Centers, or an Entity shall manage, negotiate and approve business site leases executed under its approved Administrative and Business Site Leasing Management Plan. The Administrative and Business Site Leasing Management Plan shall be tailored to the particular needs of each Local Government Unit, DED, Shopping Centers or Entities, pursuant to the Purpose Section of these Regulations.
- 1.2 The Local Government Unit or an Entity shall submit the Administrative and Business Site Leasing Management Plan to the DED for review and DOJ for legal review to ensure it is developed in accordance with the 25 U.S.C. § 415(e), the Tribal Regulations and these Regulations. The Shopping Centers shall submit the Administrative and Business Site Leasing Management Plan to DOJ for legal review to ensure it is developed in accordance with the 25 U.S.C. § 415(e), the Tribal Regulations and these Regulations.
  - 1.2.1 The DED shall sign and concur on the Administrative and Business Site Leasing Management Plan recommending to the EDC approval, this shall also include a signature line for DOJ indicating the Administrative and Business Site Leasing Management Plan is legally sufficient.
  - 1.2.2 The Shopping Centers shall sign and concur on the Administrative and Business Site Leasing Management Plan recommending to the EDC approval. The DOJ shall also indicate by signature that the Administrative and Business Site Leasing Management Plan is legally sufficient.
  - 1.2.3 Non-compliance of this section shall deem the Administrative and Business Site Lease Management Plan null and void.



**§ 602. Administrative Management Plan**

2.1 The Administrative Management Plan shall address procedures for negotiation, limitations, and approval of business site leases.

2.2 The Administrative Management Plan shall consist of policies and procedures for the negotiation of the business site lease or permit from the point of advertisement to the execution of the business site leases. Such Administrative Management Plan shall include at least a new business site leases, renewal of business sites with a new business site lease, options to renew, subleases, assignments, modifications, collateral assignment of lease, revocable use permit.

2.3 Local Government Units shall also establish the approval process for business leasing transactions, including establishment of an Approving Entity, with final execution by the Executing Official.

2.4 DED, Shopping Centers or an Entity shall establish an approval process and Approving Entity for business leasing transactions, upon seeking Approval Authority from the EDC.

**§ 603. Business Site Leasing Management Plan**

3.1 The Business Site Leasing Management Plan shall address the procedure for the management of executed business site leases.

3.2 The Business Site Leasing Management Plan shall address lease compliance, environmental review, appraisals, financial management, enforcement, monitoring and collections, relief and remedies. It shall address the process from point of execution to the expiration or termination of the leases and legal remedies thereafter.

3.3 A section shall address appeals of the lessee or an interested party, pursuant to the Tribal Regulations.

**§ 604. Accounting**

4.1 The Local Government Unit, DED, Shopping Centers, and an Entity shall implement an accounting system that generates

invoices in advance of the due date, accounts for payments, and dates of when rate adjustments should be made.

- 4.2 The system shall include the following information: name of Lessee, business site lease number, due dates, amounts due, payments made, late charges, collection efforts, cancellation efforts, balance due, cumulative payments, and cumulative balance due.
- 4.3 The Local Government Unit, Shopping Centers, and an Entity shall provide an annual accounting to the Real Estate Department of DED on June 1 each year. The Real Estate Department shall coordinate with the Navajo Nation Office of the Controller for submittal of the documents to the Secretary.

#### **§ 605. Administrative Fees**

- 5.1 The Local Government Unit, DED, Shopping Centers, and an Entity may charge administrative fees for costs associated with issuing a Lease, sublease, assignment, amendment, mortgage or other administrative transaction.

#### **§ 606. Environmental Review**

- 6.1 The Local Government Unit, DED, Shopping Centers, and an Entity shall not approve a business site lease until the proposed business site lease has completed the NNER Process. Leases approved and executed without compliance with this section shall be null and void. The Lessee shall complete this Process pursuant to the Environmental Review Process established by the DED, Real Estate Department.
- 6.2 The Environmental Reviewer shall conduct training at least once a year for Local Government Units, DED, Shopping Centers and an Entity that has received delegation of final approval authority and has an approved Administrative and Business Site Leasing Management Plan.

### **Chapter 700. Enforcement**

#### **§ 701. Enforcement**

- 1.1 The Local Government Unit, DED, Shopping Centers and an Entity shall enforce the Lease terms, Ordinances, Regulations, Rules, Policies and Covenants, in accordance

with their Administrative and Business Site Leasing Management Plan.

- 1.2 The Local Government Unit, DED, Shopping Centers and an Entity may request the Office of Attorney General to assist in enforcement of the above mentioned.

#### **§ 702. Defaults**

- 2.1 Should a default occur, the Local Government Unit, DED, Shopping Centers or an Entity shall send a notice of default to the Lessee within a reasonable time of the determination of default. The notice of default shall be provided by certified mail, return receipt requested.

### **Chapter 800. Administrative and Business Office**

#### **§ 801. Establishment**

- 1.1 The Local Government Unit shall establish a Business Office for the administration and management of business site leases. Such Office must be operating before any business site leasing transaction can be approved.
- 1.2 The Business Office shall consist of a computer, printer and other necessary office supplies. The Staff shall consist of at least one individual with either an education primarily in a business related field or experience in a business related field. The Staff shall not consist of a public official and shall operate separate from any political influence.
- 1.3 The Local Government Unit shall establish the Business Office with Staff within 120 days of receiving the Approval and Management Authority. Upon expiration of the 120 day period the Local Government Unit may request from the EDC one extension not to exceed ninety (90) days, the granting of which shall be at the discretion of the EDC.
- 1.4 Any violation of this provision shall provide grounds for the Approval Authority and Management Authority to be rescinded immediately by the EDC, at its discretion.



## **Chapter 900      Miscellaneous, Amendments, Severability**

### **§901.   Reports**

- 1.1   The Local Government Unit, DED, Shopping Centers, and an entity shall provide an initial report to EDC not less than six (6) months from the date of receipt of Approval Authority and annually thereafter.

### **§902 Amendments**

- 2.1   The EDC may amend these Regulations from time to time, so long as the amendments are consistent with the Tribal Regulations, 25 U.S.C. §415(e), and Navajo law.

### **§903 Severability**

- 3.1   If a court of competent jurisdiction determines a provision in these Regulations is invalid, void or unenforceable, it shall be stricken and the remainder shall remain in full force and effect.



**NAVAJO NATION DEPARTMENT OF JUSTICE**  
**OFFICE OF THE ATTORNEY GENERAL**

ETHEL B. BRANCH  
ATTORNEY GENERAL

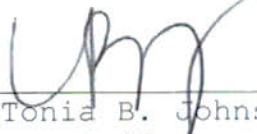
CHERIE ESPINOSA  
ACTING DEPUTY ATTORNEY GENERAL

Received

MEMORANDUM

JAN 31 2018

TO: Juanita Yazzie, Leasing Manager  
Navajo Nation Shopping Centers, Inc.

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

DATE: January 30, 2018

SUBJECT: **EOR No. 7416#2 - Review of the Navajo Nation Shopping Center's Administrative and Management Plan**

In reviewing the re-submitted document, there are some areas that require clarification or correction. Please see the face of the document for review. The following is a list of the substantive issues that I have noted:

1. Administrative Plan, Section 4.2 (f) refers to another section in the Administrative Plan. In reviewing that section, that section only outlines how rent will be determined, not how it will be adjusted. It is recommended that this area is clarified.
2. Administrative Plan, Section 11.0 outlines that Navajo Nation Shopping Center, Inc. (NNSCI) is able to provide permits for mobile business operation. What authority does NNSCI have to conduct this purpose? This delegation is only restricted to fix trust property. Please clarify.
3. Management Plan, Section 2.1 regarding late charges is not consistent with the terms outlined in Part I(D) of the lease. It is recommended that either Section 2.1 or Part I(D) is amended.

Memorandum to: Juanita Yazzie, Leasing Manager

RE: EOR No. 7416#2 - Review of the Navajo Nation Shopping Center's  
Administrative and Management Plan

January 30, 2018

Page 2

4. Management Plan, Section 2.1 (3) regarding periodic review section may need some update. In reviewing this section, it is not clear whether the consumer price index and appraisal will be the method used to conduct the periodic review. If so, it is recommended that this section is clarified.
5. Management Plan, Section 2.3 (2) references the term "as applicable." It is not clear what this term is supposed to mean in reference to the sentence structure. Please clarify.
6. Management Plan, Section 10.0 references the NNSCI Collection Policy and specifically noted that "Policy may be amended periodically upon the Department's written recommendation and approval by the NNSCI Board of Director without RDC approval." In reviewing the collection policy, it outlines the process of how to collect on debt. However, Section 7.0 of the Management Plan also outlines the process for default. In addition, all enforcement needs to be consistent with the process outlined in Sections 502 and 503 of the Navajo Business Leasing Regulations of 2005 (Tribal Regulations). If the Collection Policy could be interpreted to not be consistent with Section 7.0 and Tribal Regulations. It is recommended that collection should be handled by the process outlined in Section 7.0 of the Management Plan.
7. Part 1 of the Business Site Lease, Section D(3) is not consistent with the Management Plan as noted in comment three above.
8. Part 1 of the Business Site Lease, Section O outlines exceptions. Why this section included? Please clarify.
9. Part II of the Business Site Lease has substantial changes. Please see the face of the document for comments. Pursuant to the Tribal Regulations Section 301 provides that Part II may only be modified with the approval of the Resource and Development Committee. While there are some areas that appear to be non-substantive changes, it is noted that NNSCI took out the "Regulated Substance" provision. I noted this in my June



Memorandum to: Juanita Yazzie, Leasing Manager

RE: EOR No. 7416#2 - Review of the Navajo Nation Shopping Center's  
Administrative and Management Plan

January 30, 2018

Page 3

2017 memorandum and also in our previous meeting and I was assured that Part II is the same version as the Navajo Nation. It is highly recommended that NNSCI re-evaluate all the changes that it is conducted to this document.

10. Revocable Use Permit: paragraph 8 and the notice provision from the Navajo Nation's version was deleted. Why? Also, paragraph 12 is not consistent with the Administrative Plan, Section 11.1(3)(B). Please clarify.
11. Sublease: there are some provisions that were deleted or amended from the Navajo Nation's version. Please clarify.

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

LBJ/ck-14

xc: Jeanette Jones, EDS, Project Development/DED



☐ RESUBMITTAL

# NAVAJO NATION DEPARTMENT OF JUSTICE

## DOCUMENT REVIEW REQUEST FORM

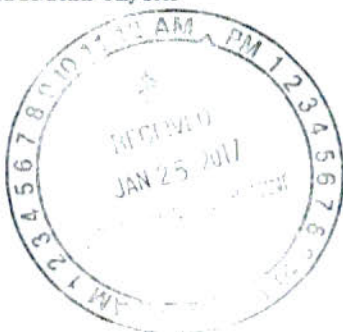


DOJ	
01-25-17	1125
DATE / TIME	
<input type="checkbox"/> 7 Day Deadline	
DOC #:	007416
SAS #:	
UNIT:	ECDU

\*\*\* FOR NNDJ USE ONLY - DO NOT CHANGE OR REVISE FORM. VARIATIONS OF THIS FORM WILL NOT BE ACCEPTED. \*\*\*

CLIENT TO COMPLETE			
DATE OF REQUEST: 1/25/17		ENTITY/DIVISION: T-ENTITY	
CONTACT NAME: Juanita Yazzie		DEPARTMENT: NPSCI	
PHONE NUMBER: 871-2218		E-MAIL: yazzie@npscinc.com	
TITLE OF DOCUMENT: Administrative and Management Lease Hon			
DOJ SECRETARY TO COMPLETE			
DATE/TIME IN UNIT: 1-25-17 12pm		REVIEWING ATTORNEY/ADVOCATE: Latoria Johnson	
DATE/TIME OUT OF UNIT:			
DOJ ATTORNEY / ADVOCATE COMMENTS			
Insufficient. See memo			
REVIEWED BY: (PRINT) LBS		DATE / TIME 6/27/17 438pm	
SURNAMED BY: (PRINT) LBS		DATE / TIME 6/27/17 438pm	
DOJ Secretary Called:		for Document Pick Up on at By:	
PICKED UP BY: (PRINT)		DATE / TIME:	

NNDJ/DRRF-July 2013





# THE NAVAJO NATION

RUSSELL BEGAYE PRESIDENT  
JONATHAN NEZ VICE PRESIDENT

## MEMORANDUM

TO: Crystal Deschinny, Division Director  
Division of Economic Development

FROM: Business Site Lease Plan Review Team  
Division of Economic Development

  
Jeanette Jones, Chairperson

DATE: January 9, 2017

SUBJECT: Business Site Lease Plan of the Navajo Nation Shopping Centers, Inc. (NNSCI)

The Navajo Division of Economic Development (DED), pursuant to the Economic Development Committee Uniform Business Leasing Regulations of 2008 § 600, is authorized to review Business Site Lease Plans that are submitted by Local Government Units (LGU) seeking leasing authority. The Division of Economic Development Business Site Lease Plan Review Team was established to conduct the review with the LGU and to make its recommendation to the Division Director.

The Review Team has completed the review of the Business Site Lease Administrative and Management Plan for Navajo Nation Shopping Centers, Incorporated (Plan) and made recommendations to provide clear guidance in the administration and management of business site leases. Several changes were made and incorporated into the Plan for compliance with the Navajo Nation Leasing Regulations of 2005 and the Economic Development Committee Uniform Business Leasing Regulations of 2008. Subject to the revisions, we believe that NNSCI can adequately exercise the business site lease management authority of the Division of Economic Development.

On behalf of the DED Business Site Lease Plan Review Team, approval is recommended to delegate the business site lease management authority from the Division of Economic Development to the Navajo Nation Shopping Centers, Incorporated.

ATTACHMENT: Recommendation, NNSCI Business Site Leasing Administrative & Management Plan

cc: Latonia Becenti-Johnson, Acting Assistant Attorney General, Navajo Department of Justice, EDU  
DED BSL Plan Review Team  
Sally Begay, Shiprock Regional Business Development Office, DED  
John Largo, Eastern Regional Business Development Office, DED  
Bertha Aguirre, Real Estate Department, DED





# THE NAVAJO NATION

RUSSELL BEGAYE PRESIDENT  
JONATHAN NEZ VICE PRESIDENT

A Recommendation to the Resources and Development Committee of the 23<sup>rd</sup> Navajo Nation Council to Delegate Business Site Leasing Authority to the Navajo Nation Shopping Centers, Incorporated.

For the Navajo Nation Division of Economic Development:

Crystal Deschinny 1-10-17  
Crystal Deschinny Date  
Division Director

Concurrence:

Jeanette Jones  
Jeanette Jones, Chairperson Date  
Division of Economic Development  
Business Site Lease Plan Review Team

For the Navajo Nation Department of Justice:

LaTonia B. Johnson Date  
Acting Assistant Attorney General  
Economic Development Unit



NAVAJO  
NATION  
SHOPPING  
CENTERS  
INCORPORATED

Think. Plan. Live. Shop Navajo!

November 30, 2016



Jeannette Jones, Chairperson  
Business Site Lease Plan Review Team  
NN Division of Economic Development  
Window Rock, Arizona 86515

Dear Ms. Jones:

Attached is the finalized Administrative and Management Plan for the Navajo Nation Shopping Centers, Inc. Please forward to the Division of Economic Development Executive Director for approval.

If there should be any questions, please contact Juanita Yazzie or myself at 928/871-2218. Thank you.

Sincerely,

Nathaniel Begay  
Chief Executive Officer

Attachment

CROWNPOINT

PINEHILL

NAVAJO PINE

WINDOW ROCK

ST. MICHAELS

PINON

DILKON

TUBA CITY

KAYENTA

SHIPROCK

# NAVAJO NATION SHOPPING CENTERS, INC.

EXHIBIT

C

tabbles®



## Administrative & Management Plan



Pine Hill Shopping Center  
Pine Hill, New Mexico



# Table of Contents

<b>1</b>	<b>NNSCI'S Resolution/ Certification</b>
<b>2</b>	<b>NNSCI'S Articles of Inc./Bylaws</b>
<b>3</b>	<b>NNSCI'S Organizational Chart</b>
<b>4</b>	<b>NNSCI'S Shopping Center Site Layouts</b>
<b>5</b>	<b>NNSCI'S Shopping Center Legal Tract Description</b>
<b>6</b>	<b>Business Site Leasing Administrative Plan</b>
<b>7</b>	<b>Business Site Leasing Management Plan</b>
<b>8</b>	

TAB 1

RESOLUTION OF THE  
BOARD OF DIRECTORS OF THE  
NAVAJO NATION SHOPPING CENTERS, INC.

No. NNSCI-215-16

APPROVING THE ADMINISTRATIVE PLAN AND THE MANAGEMENT PLAN  
FOR THE NAVAJO NATION SHOPPING CENTERS, INC. AND REQUESTING  
DELEGATION OF LEASING AND MANAGEMENT AUTHORITY FROM THE  
RESOURCE DEVELOPMENT COMMITTEE OF THE NAVAJO NATION COUNCIL

WHEREAS:

1. Pursuant to the Articles of Incorporation and the Bylaws of the Navajo Nation Shopping Centers Inc. (NNSCI), the Board of Directors of the NNSCI is authorized to adopt policies to govern and manage the leases of the NNSCI pursuant to section 4, Article VIII of the Bylaws; and
2. The Navajo Nation Trust Leasing Act of 2000, 25 U.S.C. § 415(e), authorized the Navajo Nation to issue leases without the approval of the Secretary of the Interior provided the Navajo Nation adopt leasing regulations; and
3. The Economic Development Committee of the Navajo Nation Council adopted the Navajo Nation Business Leasing Regulations of 2005 which was approved by the Secretary of the Interior; and
4. The Economic Development Committee of the Navajo Nation also adopted the Uniform Business Leasing Regulations of 2008 (Uniform Regulations) which allows for delegation of leasing and management authority to Local Governments, the Navajo Nation Shopping Centers, Inc., and other entities and implement the enabling legislation of the Navajo Nation Shopping Centers, Inc. Before receiving delegation of leasing and management authority, the Local Governments, Navajo Nation Shopping Centers, Inc. and other entities are required to adopt Administrative Plan and Management Plan for consideration and approval by the Economic Development Committee upon recommendation by the Review Team of the Division of Economic Development; and
5. The Business Site Lease Plan Review Team of Division of Economic Development is authorized by the Uniform Regulations to recommend approval of the Administrative and Management Plan, and on November 16, 2016, it unanimously approved the Administrative Plan and Management Plan developed by the Navajo Nation Shopping Centers, Inc.; and



6. It is in the best interest of the Navajo Nation Shopping Centers, Inc. to adopt the attached Administrative Plan (Exhibit "A") and Management Plan (Exhibit "B") and receive leasing and management authority from the Resources Development Committee of the Navajo Nation Council for the recommended purposes.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The Board of Directors of the Navajo Nation Shopping Centers, Inc. approves and adopts the attached Administrative Plan (Exhibit "A") and Management Plan (Exhibit "B"). The plans do not apply to the preexisting leases predating these plans.
2. The Board of Directors of the Navajo Nation Shopping Centers, Inc. recommends to the Resources Development Committee to approve the Administrative Plan (Exhibit "A") and Management Plan (Exhibit "B") and delegate the leasing and management authority to the Navajo Nation Shopping Centers Inc.

#### CERTIFICATION

I, hereby certify that the foregoing resolution was considered and approved by the Board at a duly called Special Board Meeting on December 03, 2016, at Twin Arrows Navajo Casino Resort VIP Board Room in Flagstaff, AZ, at which a quorum was present and that the same passed by a vote 4 in favor, 0 opposed and 0 abstained.

Peggy Scott  
Mrs. Peggy Scott, Chairperson

Dec. 3, 2016  
Date

**RESOLUTION OF THE  
BOARD OF DIRECTORS OF THE  
NAVAJO NATION SHOPPING CENTERS, INC.**

No NNSCI-49-10

**APPROVING THE ADMINISTRATIVE PLAN AND THE MANAGEMENT PLAN  
AND REQUESTING DELEGATION OF LEASING AND MANAGEMENT AUTHORITY  
FROM THE ECONOMIC DEVELOPMENT COMMITTEE OF THE  
NAVAJO NATION COUNCIL**

**WHEREAS:**

1. Pursuant to the Articles of Incorporation and the Bylaws of the Navajo Nation Shopping Centers Inc. (NNSCI), the Board of Directors of the NNSCI is authorized to adopt policies to govern and manage the leases of the shopping centers. See, Article III(a) of Incorporation, and section 4 of the Bylaws.
2. The Navajo Nation Trust Leasing Act of 2000, 25 U.S.C. § 415(e), authorized the Navajo Nation to issue leases without the approval of the Secretary of the Interior provided the Navajo Nation adopt leasing regulations.
3. The Economic Development Committee of the Navajo Nation Council adopted the Navajo Nation Business Leasing Regulations of 2005 which was approved by the Secretary of the Interior.
4. The Economic Development Committee of the Navajo Nation also adopted the Uniform Business Leasing Regulations of 2008 which allows for delegation of leasing and management authority to Local Governments, the Navajo Nation Shopping Centers, Inc., and other entities. Before receiving delegation of leasing and management authority, the Local Governments, Navajo Nation Shopping Centers, Inc. and other entities are required to adopt Administrative Plan and Management Plan for consideration and approval by the Economic Development Committee.
5. On November 18, 2008, the Board of Directors of the NNSCI adopted an Administrative and Business Site Leasing Management Plan which was presented to the Navajo Nation Department of Justice for review. On January 11, 2010, Ms. Karis N. Begay, Attorney with the Navajo Nation Department of Justice, wrote an opinion stating that the Navajo Nation Shopping Centers, Inc. was required to have its Administrative Plan and Management Plan reviewed by the Division of Economic Development. The new opinion forced the Navajo Nation Shopping Centers, Inc. to revise its plans.
6. Since the opinion, the Navajo Nation Shopping Centers, Inc. has been revising the NNSCI plans to comply with the proposed model of the Division of Economic Development. Many of the

provisions and policies contained in the Plans of the Division of Economic Development do not fit the leasing practice of the Navajo Nation Shopping Centers, Inc. As a consequence, the attached Administrative Plan (Exhibit "A") and Management Plan (Exhibit "B") have been designed to accommodate the need and practice of the Navajo Nation Shopping Centers, Inc.

7. It is in the best interest of the Navajo Nation Shopping Centers, Inc. to adopt the attached Administrative Plan (Exhibit "A") and Management Plan (Exhibit "B") and receive leasing and management authority from the Economic Development Committee.

**NOW, THEREFORE, BE IT RESOLVED THAT:**

1. The Board of Directors of the Navajo Nation Shopping Centers, Inc. approves and adopts the attached Administrative Plan (Exhibit "A") and Management Plan (Exhibit "B").
2. The staff of the Navajo Nation Shopping Centers, Inc. is directed to work with the review team and Economic Development Committee and authorizes to make amendments to the Administrative Plan and Management Plan for final approval by Economic Development Committee.
3. The Board of Directors recommends to the Economic Development Committee to approve the Administrative Plan (Exhibit "A") and Management Plan (Exhibit "B") allowing the Navajo Nation Shopping Centers Inc. to lease and manage its business leases.

**CERTIFICATION**

I, hereby certify that the foregoing resolution was considered and approved by the Board at a duly called meeting on November 5, 2010, at Window Rock, AZ, at which a quorum was present and that the same passed by a vote 5 in favor, 0 opposing and 0 abstaining.

Peggy L. Scott  
Mrs. Peggy Scott, Chairperson

11-5-10  
Date



EDCJN-52-02

RESOLUTION OF THE  
ECONOMIC DEVELOPMENT COMMITTEE  
OF THE NAVAJO NATION COUNCIL

Approving and Recommending To the Navajo Nation Council:  
1) the Establishment Of the Navajo Nation Shopping Centers As a  
Corporation Of the Navajo Nation, and 2) the Adoption Of Its  
Articles Of Incorporation and Bylaws

WHEREAS:

1. Pursuant to 2 N.N.C. §§721, 722 and 724(E), the Economic Development Committee of the Navajo Nation Council was established and duly authorized to regulate, enforce and foster policies pertaining to economic development and to serve as the oversight committee of enterprises with specific authority to recommend creation of enterprises; and
2. Since the adoption of the original Plan of Operation in February 1982, the Navajo Nation Shopping Centers Management Program has progressively and successfully made significant improvements in the management of its shopping centers, and with the assistance of the Division of Economic Development completed the construction of nine shopping centers with the tenth shopping center currently under construction; and
3. The Navajo Nation Shopping Centers Management Program is continuing to be a key economic thrust in economic development initiatives for the Navajo Nation; creating employment, providing goods and services, generating revenue, creating business opportunities and promoting the development of the local commerce; and
4. The growth in the number of shopping centers has placed increased demands and responsibilities upon the Navajo Nation Shopping Centers Management Program in the management and maintenance of its shopping centers; in order to address such demands and responsibilities, it is necessary for the Navajo Nation to establish the Navajo Nation Shopping Centers Management Program as an independent Corporation and to adopt the Articles of Incorporation consistent to that Corporation, incorporated herein as Exhibit "A" and recommends approval and adoption of its Bylaws, incorporated herein as Exhibit "B"; and

5. The Navajo Nation Shopping Centers Management Program and the Division of Economic Development, having reviewed the need to establish a Corporation of the Navajo Nation to better manage and maintain its shopping centers, recommends to the Economic Development Committee of the Navajo Nation Council, the establishment of the Navajo Nation Shopping Centers as a Corporation of the Navajo Nation and recommends approval and adoption of its Articles of Incorporation and Bylaws.

**NOW THEREFORE BE IT RESOLVED THAT:**

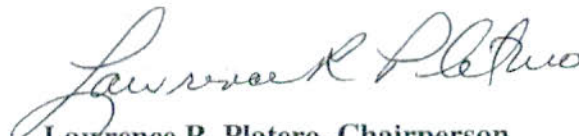
1. The Economic Development Committee of the Navajo Nation Council hereby approves and recommends that the Navajo Nation Council take the following actions: 1) the establishment of the Navajo Nation Shopping Centers as a Corporation of the Navajo Nation and 2) Adoption of Its Articles of Incorporation and Bylaws, incorporated herein as Exhibit "A" and Exhibit "B".

2. The Economic Development Committee of the Navajo Nation Council further approves and recommends that the Navajo Nation investment of Navajo Nation and Navajo Nation Shopping Centers Corporation be capitalized with existing assets and liabilities of the Corporation.

3. The Economic Development Committee of the Navajo Nation Council further requests the Division of Economic Development and the President of the Navajo Nation to do any and all things necessary, advisable or incidental to carry out the purpose of this resolution consistent with Navajo Nation and applicable laws.

**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 in Window Rock, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 6 in favor, 0 opposed and 0 abstained, this 5th day of June 2002.

  
Lawrence R. Platero, Chairperson  
Economic Development Committee

Motion: Kenneth Maryboy  
Second: Wilford Lane



**PROPOSED RESOLUTION OF THE  
GOVERNMENT SERVICES COMMITTEE  
OF THE NAVAJO NATION COUNCIL**

Approving and Recommending to the Navajo Nation Council, 1) the Establishment of the Navajo Nation Shopping Centers as a Corporation of the Navajo Nation, 2) the Adoption of its Articles of Incorporation and Bylaws, and 3) the Amendment of Resolution No. GSCF-13-96 by Deleting the Navajo Nation Shopping Centers Plan of Operation from the Division of Economic Developments Plan of Operation.

**WHEREAS:**

1. Pursuant to 2 N. N. C. Section 343 (B) (2), the Government Services Committee of the Navajo Nation Council is authorized to create any division or department of the Executive Branch of the Navajo Nation Government by adoption of its plan of operation and to amend or rescind that plan or the existing plan of operation for any division or department; and
2. Since the adoption of its original Plan of Operation in February, 1982, the Navajo Nation Shopping Centers Management Program has progressively and successfully made significant improvements in the management of its shopping centers, and with the assistance of the Division of Economic Development completed the construction of nine shopping centers with the tenth shopping center currently under construction; and
3. The Navajo Nation Shopping Centers Management Program is continuing to be a key economic thrust in economic development initiatives for the Navajo Nation by creating employment, providing goods and services, generating revenue, creating business opportunities and promoting the development of the local commerce; and
4. By Economic Development Committee Resolution No., EDCJA-10-96, attached hereto and incorporated herein as Exhibit "A", the Economic Development Committee of the Navajo Nation Council recommended approval of the Plan of Operation of the Division of Economic Development and rescission of prior inconsistent plan of operation, including Resolution No. ACMA-21-82 which approved a plan of operation for the Navajo Nation Shopping Centers; and
5. By Government Services Committee Resolution No. GSCF-13-96, attached hereto and incorporated herein as Exhibit "B", the Government Services Committee of the Navajo Nation Council approved and adopted a Plan of Operation for the Division of Economic Development, which includes the Navajo Nation Shopping Centers Management Program; and
6. The Economic Development Committee by Resolution No. EDCJN-52-02, the Economic Development Committee of the Navajo Nation Council approved the establishment of the Navajo Nation Shopping Centers as a Corporation and adopted the Articles of Incorporation and Bylaws, attached as Exhibit "C"; and



7. The Navajo Nation Shopping Centers Management Program and the Division of Economic Development, having reviewed the need to establish a Corporation of the Navajo Nation to better manage and maintain its shopping centers, recommends to the Government Services Committee of the Navajo Nation Council to 1) establish the Navajo Nation Shopping Centers as a Corporation of the Navajo Nation, 2) recommends approval and adoption of its Articles of Incorporation and Bylaws, and 3) approve the deletion of the Navajo Nation Shopping Centers Plan of Operation from the Division of the Economic Development Plan of Operation.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The Government Services Committee of the Navajo Nation Council hereby approves and recommends that the Navajo Nation Council, 1) establish the Navajo Nation Shopping Centers as a Corporation of the Navajo Nation; and 2) recommends the adoption of its Articles of Incorporation and By-laws, attached hereto and incorporated herein as Exhibit "B" and Exhibit "C".
2. The Government Services Committee of the Navajo Nation Council further approves and recommends that the investment of the Navajo Nation and Navajo Nation Shopping Centers Corporation be capitalized with existing assets and liabilities of the Corporation.
3. The Government Services Committee of the Navajo Nation Council further requests the Speaker of the Navajo Nation Council, and the President of the Navajo Nation to do any and all things necessary, advisable or incidental to carry out the purpose of this resolution consistent with Navajo Nation and applicable laws.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Government Services Committee of the Navajo Nation Council at a duly called meeting at Window Rock, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 0 in favor, 4 opposed, and 0 abstained, this 23<sup>rd</sup> day of Sept 2002.

Chairperson  
Government Services Committee.

Motion:  
Second:

FAILED





# NAVAJO NATION CORPORATION CODE

## CERTIFICATE OF INCORPORATION

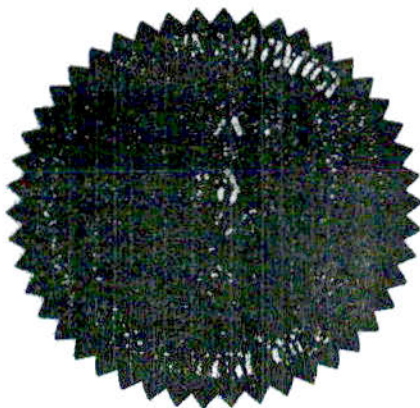
*To all to Whom these Presents Shall Come, Greeting:*

I, the Director of the Business Regulatory Department, DO HEREBY CERTIFY that

\*\*\*NAVAJO NATION SHOPPING CENTERS, INC.\*\*\*  
File Number 100732

a corporation organized under the laws of the jurisdiction of the Navajo Nation, was on the \_\_\_\_\_ 15th \_\_\_\_\_ day of \_\_\_\_\_ January, 2003 \_\_\_\_\_, authorized to transact business within the Navajo Nation as a Domestic Corporation.

I FURTHER CERTIFY that this corporation has filed all affidavits and annual reports and paid all annual filing fees required to date and, therefore, is in good standing within the Navajo Nation.



IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the Navajo Nation Corporation Code at Window Rock, Arizona, this \_\_\_\_\_ 15th \_\_\_\_\_

day of \_\_\_\_\_ January \_\_\_\_\_, 2003 \_\_\_\_\_ A.D.

*Frank D. King, Jr.*  
Director, Business Regulatory Department

TAB 2



# ARTICLES OF INCORPORATION

of

Navajo Nation Shopping Centers, Inc. (NNSCI)

**FILED**

File Number 100732

**JAN 15 2003**

Navajo Nation Corporation Act  
By Frank D. [Signature]  
Department Director

I, the undersigned natural person, being over the age of twenty-one years acting as incorporator of a corporation under the Navajo Nation Corporation Act, adopt the following Articles of Incorporation for such Corporation.

## I

The name of the corporation is Navajo Nation Shopping Center, Inc. (NNSCI)

## II

The period of its duration is perpetual.

## III

The purposes for which the corporation is organized are:

- (a) To own and operate, directly or through subsidiary corporations, joint ventures, associations, partnerships or otherwise, any shopping center and commercial development with property and asset management and related business.
- (b) To form subsidiary corporations and to enter into and form partnerships, joint ventures, associations, and other business arrangements.
- (c) To conduct activities in all phases of the shopping center development and management (property and asset) industry either within or outside of the jurisdiction of the Navajo Nation.
- (d) To engage in any lawful business with the powers permitted to a corporation organized under the Navajo Nation Corporation Code.
- (e) To pursue the above purposes for the benefit of the Navajo Nation government, and to return all dividends and distributions of profit to the Navajo Nation government to be devoted to essential governmental functions.

#### **IV**

The character of business which the corporation initially intends to conduct, is management and development of Navajo Nation Shopping Center properties and assets which includes marketing, leasing and maintenance of the shopping centers.

#### **V**

The aggregate number of shares of common stock which the corporation shall have authority to issue is 100,000 shares with a par value.

#### **VI**

All of the stock of the corporation shall be owned by the Navajo Nation and administered as part of the Business and Industrial Development Fund. In all matters other than the selection of Directors, the Economic Development Committee of the Navajo Nation Council shall serve as the shareholder's representative with the powers to vote the Nation's shares.

#### **VII**

Provisions for the regulation of the internal affairs of the corporation shall be set forth in the By-Laws, as adopted by the Board of Directors and as amended from time to time in conformity with these Articles.

#### **VIII**

The address of the initial registered office of the corporation is Navajo Nation Department of Justice, P.O. 2010, Window Rock, Navajo Nation (AZ) 86515, and the name of its initial registered agent at such address is Nathan Begay, General Manager, Navajo Nation Shopping Centers, Inc.

## IX

The number of directors constituting the initial Board of Directors of the corporation is five persons shall be nominated from Tuba City, Chinle, Shiprock, Crownpoint and Ft. Defiance communities, and concurred by the President of the Navajo Nation who are to serve as directors until the first annual meeting of shareholders or until their successors are selected.

A successor Board of Directors of five members shall be selected within twelve months of the date of incorporation as follows: Five (5) persons from the five different communities shall be nominated and concurred by the President of the Navajo Nation. The list of the Five nominees shall then be presented to the Economic Development Committee of the Navajo Nation Council ("Committee") for its final confirmation at a duly scheduled meeting of the Committee at which a quorum is present; the Committee shall consider each nominee and vote on them individually; a majority vote in favor of any such nominee shall constitute confirmation of such nominee as a director; the Committee may table for any reason any nomination for consideration of that nomination at the next duly scheduled meeting of the Committee; and, if any nominee is rejected by vote of the Committee, the Committee shall so notify the President of the Navajo Nation as appropriate who shall make a new nomination for consideration by the Committee in conformity with the above procedures; *provided*, that two of the directors first selected by the Committee shall be confirmed for terms of three year each, that two of the directors first selected by the Committee shall be confirmed for terms of two years each; that the remaining directors first selected by the Committee shall be confirmed for terms of one year, and after the expiration of such terms the successor directors shall be confirmed for terms of three years; and, *provided further*, that upon the resignation, removal, death, expiration of term or other vacancy, any such vacancy in the Board of Directors shall be filled at the time of such vacancy in conformity with the above procedures and for such terms as are appropriate to preserve the staggered terms established above; and *provided further*, that all times the majority of the directors shall be enrolled members of the Navajo Nation, and that the other directors shall be respected individuals with substantial experience in positions of responsibility of at least Ten years of recognized business expertise in a business law, real estate, economic, and substantial management experience in the shopping center industry and *provided further* that one of the directors shall be an officer of



the corporation and *provided further*, that all directors whose position or credentials are not specified hereinabove shall all have substantial experience in positions of responsibility of at five (5) years of recognized business experience.

## X

The corporation shall be capitalized initially by transfers of all existing assets and existing liabilities of the Navajo Nation Shopping Centers, a quasi-enterprise of the Navajo Nation, to Navajo Nation Shopping Centers, Inc. (N. N. S. C. I.).

## XI

The name and address of the incorporator is Nathan Begay, General Manager, Navajo Nation Shopping Centers, Inc., P.O. Box 478, Window Rock, Navajo Nation (AZ) 86515. The initial directors of the corporation shall be:

- Tony Skrelunas
- Wilson Yellowhair
- James Pullaro
- James Henry
- Calvin McKerry

These directors shall serve until new directors are selected under the procedures outlined in Article IX. As new directors are approved, they will replace the initial directors in the sequence in which they are listed above.

## XII

An affidavit signed by each director stating that he consents to being a director shall be on file with the corporation.

### XIII

The corporation agrees to abide by all criminal, civil, and regulatory laws of the Navajo Nation.

### XIV

The corporation shall indemnify any person who was or is a party, or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such person is or was a director, officer, employee or agent of the corporation if such person acted in good faith and in a manner such person reasonably believed to be in, or not opposed to, the best interests of the corporation, but, with respect to any criminal action or proceeding, the corporation shall not pay criminal fines for which such person is personally liable.

By action of the Board of Directors, notwithstanding any interest of the directors in the action, the corporation may purchase and maintain insurance, in such amounts as the Board of Directors deems appropriate, on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against such a person and incurred by such a person in any such capacity, or arising out of that person's status as such, whether or not the corporation would have the power or would be required to indemnify that person against such liability under the provisions of this article or of the Navajo Nation Corporation Code.

### XV

Immediately upon the approval of these Articles of Incorporation by the Navajo Nation Council, the corporation may commence doing business as a wholly owned corporation of the Navajo Nation.

  
Incorporator

DATED THIS 14<sup>th</sup> DAY OF Jan, 2003



NAVAJO NATION SHOPPING CENTERS INC. (NNSCI)

ACKNOWLEDGMENT OF THE REGISTERED AGENT

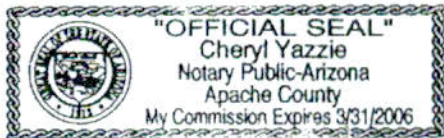
I, Nathan Begay, having been designated to act as Registered Agent, hereby consent to act in that capacity until a resignation is submitted in accordance with the Navajo Nation Corporation Act.

Nathan Begay  
(Signature of Registered Agent)

Department of Justice  
P.O. Drawer 2010  
Window Rock, Az. 86515

STATE OF Arizona,  
COUNTY OF Apache,

Nathan Begay, Registered Agent for Navajo Nation Shopping Centers, Inc., (NNSCI), acknowledged the foregoing instrument before me this 14<sup>th</sup> day of Jan, 2003.



Cheryl Yazzie  
(Notary Public)  
My Commission Expires: 3/31/06

NAVAJO NATION CORPORATION CODE

I hereby certify this to be a true and complete copy of the document filed in this office and admitted to record in

File No. 100 732, on 15 Jan 2003.

By: Frank D. Ray, Jr.  
Date: 1-15-03



BYLAWS  
FOR THE  
NAVAJO NATION SHOPPING CENTERS INC., (NNSCI)

July 29, 2010  
(Amended)

GOVERNING BY-LAWS  
OF  
NAVAJO NATION SHOPPING CENTERS, INC.

ARTICLE I.  
Name

Section 1: Name: The name of this corporation shall be Navajo Nation Shopping Centers, Inc. (herein referenced to as "NNSCI").

ARTICLE II.  
Purpose and Objectives

Section 2: Purpose: The NNSCI shall be organized for the purpose of planning, developing, managing, operating and maintaining all Navajo Nation-owned or assigned shopping centers within or near the Navajo Nation's Shopping Centers; including but not limited to the Window Rock, Tuba City, Kayenta, Shiprock, Crownpoint, St. Michaels, Navajo Pine, Pine Hill, Pinon, Dilkon and other shopping centers those commercial developments to be developed within or near the Navajo Nation.

Section 3: Objectives: The objectives for the establishment of the NNSCI are to stimulate and facilitate the economic growth of the Navajo Nation by:

- A. Establishing a sound and productive corporation.
- B. Retention and re-circulation of monetary currency within the borders of the Navajo Nation.
- C. Delivery of more goods and services.
- D. Generation of revenues.
- E. Generation of employment and income for citizens of the Navajo Nation.
- F. Creation of business opportunities for qualified entrepreneurs.

The NNSCI is hereby duly organized and established as an independent Corporation owned by the Navajo Nation as Shareholders.

NNSCI shall be administered, governed, managed and operated under the laws, ordinances and authority of the Navajo Nation and in conformity with the By-Laws herein provided.

**ARTICLE III.**  
**Method of Operation**

The NNSCI's method of operation in the management of all shopping centers shall be as a profit-making corporation.

**ARTICLE IV.**  
**Board of Directors; Composition, Officers, Qualification, Terms,**  
**Removal and Vacancies**

Section 1: Powers: The activities, affairs and property of the corporation shall be managed, directed and controlled, and its powers exercised by, and vested in, the Board of Directors (hereinafter "Board").

Section 2: Board of Directors; Officers:

- A. The NNSCI Board of Directors shall consist of five (5) members; three (3) of whom shall serve as officers of the Board, and two (2) of whom shall serve as regular Board members. All Board members shall be appointed by the President of the Navajo Nation and confirmed by the Economic Development Committee of the Navajo Nation Council. The NNSCI's Board of Directors shall, during its annual meeting, elect the following officers from its own membership:
- a. Chairperson
  - b. Vice Chairperson
  - c. Secretary/Treasurer
- B. The Chairperson of the Board of Directors shall preside at all Board meetings and shall perform all duties and responsibilities required by that office. The Vice Chairperson of the Board shall act in the capacity of the Chairperson of the Board in his/her absence and shall, if deemed necessary, perform all duties delegated to the Vice Chairperson of the Board.
- C. Each Board member shall have voting rights and privileges to vote on issues and matters brought before the Board.



- D. No employee of the federal or Navajo Nation government or elected Navajo Nation official, shall be a member of the Board. No Board member shall be an employee of the corporation.

Section 3: Board Qualifications:

- A. The Board shall have at least three (3) members who are enrolled members of the Navajo Nation. All Board members must have at least ten (10) years of recognized business expertise in business law, finance, real estate or economics and substantial management experience in the shopping center industry or business management.
- B. A prospective Board member who has been convicted of a felony or any misdemeanor or infraction in any court involving deceit, untruthfulness and dishonesty, including but not limited to extortion, embezzlement, bribery, perjury, fraud, false pretense, theft and conversion, shall not qualify for membership on the Board.

Section 4: Board of Directors Term of Office: The term of office for the Board shall be staggered, as established with the initial Board, three (3) years for each seat.

Section 5: Board Removal; Forfeiture; and Resignation:

- A. Any member of the Board may be removed by a majority vote at a duly called Board meeting for one (1) or more of the following reasons:
- a. Failure to attend three (3) consecutive, duly-called Board in a one (1) year period unless there is a justifiable reason, such as illness or extreme emergency; or
  - b. Conduct which tarnishes, distorts, discredits or damages the integrity, credibility or reputation of NNSCI, including but not limited to unauthorized use of NNSCI property or services.
- B. Any member of the Board shall automatically forfeit his or her position if one or more of the following events occur:
- a. Conviction of a felony; and/or
  - b. Conviction of any misdemeanor or infraction in any court involving deceit, untruthfulness and dishonesty, including but not limited to extortion, embezzlement, bribery, perjury, fraud, false pretenses, theft and conversion.
- C. Any member may resign from the Board effective upon acceptance by the Board.

Section 6: Board Vacancy:

- A. A vacancy in the membership of the Board shall exist when the Board declares a vacancy.
- B. Any and all vacancies of the Board shall be filled on a temporary basis by the Board until such time as the position is filled for the remainder of the term of the vacancy or until by confirmation of the Economic Development Committee of the Navajo Nation Council upon recommendation by the President of the Navajo Nation for the terms that expired.
- C. In the event the office of the Chairperson of the Board becomes vacant, the Vice Chairperson of the Board shall act and perform all the duties of the Chairperson of the Board until such time as a new Chairperson of the Board is elected by the Board.

**ARTICLE V.**  
**Authority of the Board**

Subject to all applicable laws, the NNSCI Board of Directors shall exercise the following authority:

Section 1: Capacity to Act: Authority to act on behalf of the NNSCI in planning, financing, development, management and maintenance of all shopping centers within or near the Navajo Nation.

Section 2: To Act as Agent: Authority to act as agent for the NNSCI as a Corporation.

Section 3: To Adopt NNSCI Seal: Authority to adopt the official SEAL of NNSCI. The official SEAL of NNSCI shall be a seal that is symbolic of the NNSCI's commitment to greater economic growth and prosperity throughout the establishment of shopping centers within the Navajo Nation.

Section 4: Operations Management:

- A. Authority to manage and direct the physical operation of the NNSCI to accomplish the purpose of the NNSCI as set forth in Article II (Section 2) hereof.
- B. Authority to manage and direct the financial operations of the NNSCI to accomplish the objective of the Navajo Nation Shopping Centers, Inc., as set forth in Article II (Section 3) hereof.



- C. Authority to conduct comprehensive market and feasibility studies in the planning and development, financing, design and shopping centers within or near the Navajo Nation.
- D. Authority to initiate and implement the planning and research for the development, financing, design, and construction of all shopping centers within or near the Navajo Nation.

Section 5: Facilities and Real Property: Authority to utilize, improve, retain and assume custody, management and maintenance of all NNSCI facilities and real property and all other facilities and real property that may become the property of or assigned to the NNSCI.

Such authority shall not be construed as authorizing the NNSCI to mortgage or encumber other Navajo Nation Trust land, except on such encumbrances as are made in conformance with applicable federal and Navajo Nation Laws.

The Board shall give the authority to purchase, pledge, exchange and dispose of all NNSCI personal property as deemed necessary to effectively and efficiently manage the operation of the NNSCI.

Section 6: To Retain Legal Counsel: The Board shall have the authority to retain Legal Counsel to provide legal services on all matters that affect NNSCI, including but not limited to, tenant leases, loan guarantees, contracts, agreements, claims, disputes and suits.

Section 7: Shopping Center Tenant Lease Agreements: The Board is authorized to approve Leasing Management Plan and tenant leases. It has delegated the leasing approval authority to the CEO through the Leasing Management Plan and through these Bylaws. The CEO has the authority to execute tenant leases.

Section 8: To Execute Guaranties: Authority to borrow funds and execute any with respect to indebtedness, interest, contracts or other obligations lawfully entered into by or on behalf of the NNSCI to the extent that such guaranty is made and subject to the express limitations that NNSCI shall not incur obligations in excess of its ability to pay as required and that the liability for such obligations be limited to the available assets of the NNSCI. Property otherwise subject to restrictions on alienation or held in trust status or not owned by the NNSCI may not be used as security of any sort except as done in accordance with applicable federal and Navajo Nation laws

Section 9: Depository: Authority to select and approve all depositories used for the deposit of funds by the NNSCI.



Section 10: Investment of Funds: To make investment decisions, subject to the limitations contained herein, and to provide for the establishment and maintenance of effective investment policies and procedures.

Section 11: To Make Contracts: Authority to enter into, make, perform, carryout, cancel or receive any and all contractual agreements as the Board deems necessary to accomplish the purposes set forth in Article II (A) hereof. The Board shall not enter into contractual agreements wherein the obligation incurred is in excess of its ability to repay and satisfy the obligation as required. Contractual authority may be delegated to the CEO of NNSCI, provided that, in the aggregate, the contract amount does not exceed \$50,000.00, and/or is subject to the adopted budget of the board for such expenditures. This amount may be either lowered or increased by board resolution.

Section 12: To Make Recommendations: Authority to amend or revise the Corporation By-Laws whenever deemed necessary or appropriate to improve upon the operation and management of NNSCI.

Section 13: Copyright, Trademarks and Patents: Authority to purchase, hold, own, use license, lease and sell NNSCI copyrights, trademarks, patents, licenses and inventions, provided that all such transactions shall be conducted in the name and on behalf of the Navajo Nation.

Section 14: Ancillary Power: Subject to applicable laws, powers to initiate and exercise all other authority necessary, appropriate, incidental or advisable or accomplish the purposes for which the NNSCI is organized and established.

## ARTICLE VI.

### Board Indemnification

Section 1. NNSCI shall indemnify any officer, employee or any Director of the Corporation for reasonable expenses actually and necessarily incurred by him/her in connection with the defense of any action, suit, or proceeding in which he/she is made a party by reason of being, or having been such officer, employee, or Director of the Corporation except in relation to matters as to which such person shall adjudged on such action, suit or proceeding to be liable for negligence or misconduct in the performance of duty, or except in relation to matters in which such person was acting beyond the scope of his/her employment or authority. The corporation shall also reimburse to any officer, employee or CEO of the corporation reasonable cost of settlement of any such action, suit, or proceeding if it shall be found by a majority of the Board, other than Board members involved in the matter of controversy (whether or not a quorum exists), that it is in the best interest of the corporation that such settlement be made and that such person was not guilty of negligence or misconduct, the above rights of indemnification and reimbursement shall not be deemed

exclusive of any other rights that affected persons may be entitled to receive, but shall be subject to any applicable limitation otherwise imposed by law.

Section 2. The NNSCI shall indemnify and hold the Navajo Nation harmless if the Nation or any of its entities is made or is threatened to be made a party to any threatened, pending or completed action or suit, or from any other claim or loss suffered by the Navajo Nation as the result of any action or inaction by the corporation of its Board members, officers, agents or employees, including all expenses and attorney's fee actually or reasonably incurred in connection with the defense or settlement of any such action, claim or loss.

## **ARTICLE VII.**

### **Operation of the Board**

Section 1: Rules and Procedures: The Board shall adopt rules, policies and procedures, as it may deem necessary for the orderly conduct of its Board meetings with adherence to the Robert's Rules of Order, to the most recent Edition.

Section 2: Regular Meetings: The Board shall meet at least on a quarterly basis upon proper written notice of the time, date, place and agenda. The Board may hold other meetings as deemed necessary to conduct corporate businesses.

Section 3: Special Meetings: Subject to the paragraph B above, special meetings may be called by the Chairperson of the Board with prior written notice.

Section 4: Annual Meeting: The first Board meeting held at the beginning of the calendar year in the month December shall be recognized as the Annual Meeting of the Board. Regular meeting procedure shall apply.

Section 5: Notices Requirements:

- A. Notice of Board meeting, time place, date and agenda shall be prepared in writing and delivered personally or sent by regular mail or e-mail to member of the Board no later than ten (10) days prior to the next Board meeting, except in cases where a special meeting is called by the Chairperson of the Board.
- B. Actions taken by the Board at any meeting held without complying with the above notice requirements shall be termed void, null, of no force or effect and beyond the Board's authority.

Section 6: Board Quorum: At least three (3) members of the Board one (1) of whom shall be an officer shall constitute a quorum. A quorum shall at all time, act in the best interest of



the NNSCI. The majority actions taken by the quorum shall be the act of the Board. The presiding Chairperson shall have the right to vote.

Section 7: Board Minutes/Reports:

- A. The Secretary/Treasurer of the Board, in coordination with the CEO shall make arrangements for the recording of minutes of each Board meeting. Such Board meeting minutes shall be made available prior to the next regular Board meeting to each member of the Board and the CEO of the NNSCI. The Secretary/Treasurer, in conjunction with the CEO, shall coordinate the financial reporting to the Board.
- B. The Chairperson of the Board shall, at its Regular Meeting in coordination with the CEO, present a formal Management Report of the NNSCI. The Report shall include the following:
  - a.. Status on the physical operations of NNSCI.
    - 1. Facilities Management at all shopping centers.
    - 2. Real Property Management of all existing and planned shopping center development tracts.
  - b. Status on the financial management of NNSCI.
  - c. Current year operating budget.
    - 1. Statistical data on the current financial performance and position of NNSCI.
    - 2. Disclosure of any and all major expenditures from the NNSCI budget.
    - 3. Disclosure of any and all transfer of funds from any line item account.
- C. Disclosure of all contract agreements entered into with vendors, contractors and subcontractors and disclosure of all associated contract expenditures.
- D. Disclosure of all financial agreements entered into with financial institutions and disclosure of all associated outstanding accounts.
- E. All operating budgets prior to each fiscal year.

Section 8: Conflicts of Interest: Any contract agreements or transaction conducted between the NNSCI and any employee of the NNSCI, any member of the Board, or any partnership, corporation, firm or legal entity in which any NNSCI employee or Board member has an interest, shall be considered a direct conflict of interest and shall be prohibited.



Section 9: Reimbursement and Board Fee: The Board shall be reimbursed for any and all reasonable expenses incurred for meetings or any other business on behalf of the corporation. Mileage shall not exceed the federal maximum mileage rate. For duly-called board meetings, Board members will be given a fee of \$500.00 per day for in-person attendance; \$500.00 per day for conferences, trainings, and events (subject to the Board President's approval), and \$250.00 for board meetings conducted by a conference call. At the discretion of the Board, the amounts for reimbursement can be amended if the circumstances and conditions warrant such amendment.

## ARTICLE VIII Navajo Nation Shopping Centers, Inc. CEO

Section 1: The Board shall employ and negotiate the terms of an employment contract, including the annual salary, and provide policy direction and supervision to the CEO of the NNSCI including annual evaluation. The CEO shall report and be directly responsible to the Board.

Section 2: The CEO shall be subject to removal or termination of employment contract for the following reasons:

- A. Insubordination, poor performance as a CEO, or negligence in his or her duties and responsibilities as a CEO, as determined in the sole discretion of the Board.
- B. Conduct which tarnishes, distorts, discredits or damages the integrity, credibility or reputation of NNSCI, including but not limited to, unauthorized use of NNSCI property or services.
- C. Conviction of a felony.
- D. Conviction of any misdemeanor or infraction in any court involving deceit, untruthfulness and dishonesty, including but not limited to, extortion, embezzlement, bribery, perjury, fraud, false pretense, theft and conversion.
- E. Failure to perform duties and responsibilities that are prescribed in the Bylaws, strategy plans, other plans, policies or regulations of the NNSCI.
- F. The above is not an exhaustive list of reasons for removal or termination; other reasons may be included in the employment contract.

Section 3: The CEO shall have the following duties, responsibilities and authority.

- A. Establish, prepare and present an annual plan to include an operating budget, a strategic, business and marketing plan and to comply herewith upon Board's approval.
- B. Execute the operating policies adopted by the Board and administratively manage the day-to-day operation of NNSCI. The CEO will formulate policies for Board consideration.
- C. Plan, organize, administer and implement appropriate programs and projects to accomplish the purposes and objectives.
- D. Be managerially responsible for all contractual obligations entered into and created by the executed tenant lease agreements.
- E. Monitor and enforce to the extent allowable by applicable laws, the contractual obligations of the Tenants as created by the lease agreements.
- F. Collect rental and other payments on behalf of NNSCI according to the terms of the tenant lease agreements and deposit said receipts into a commercial bank account according to NNSCI accounting procedures outlined in the By-Laws hereto.
- G. Solicit, negotiate and process for approval lease agreements for any vacant space or any space to become vacant in accordance with established leasing policies and procedures of NNSCI as follows:
  - a As to Leasing of Shopping Center Space, the CEO is authorized to lease to tenants (individuals, partnerships, corporate entities or other appropriate entities) space within the shopping center for the express purpose of conducting retail and service business and other businesses of the type ordinarily found in shopping center developments and enforce the terms of the lease.
  - b As to Leasing Shopping Center Space, the CEO is authorized to assess and collect rental from tenants and any and all other applicable charges as deemed appropriate and necessary to adequately and reasonably provide a financial return to NNSCI for use of space within the shopping centers and enforce the terms of the lease.
  - c As to Leasing of Shopping Center Commercial Undeveloped Pad Sites, the CEO is authorized to lease to tenants (individual, partnerships, corporate entities or other appropriate entities) shopping center commercial pads within the shopping center development tracts for the express purpose of conducting commercial business and enforce the terms of the lease.



d As to Leasing of Shopping Center Commercial Undeveloped Pad Sites, the CEO is authorized to assess and collect rental from tenants and any and all other applicable charges as deemed appropriate and necessary to adequately and reasonably provide a financial return to NNSCI for use of commercial pads within the shopping center development tracts, and enforce the terms of the lease.

- H. Maintain an aesthetically pleasing, tidy, clean and safe shopping environment.
- I. Be responsible for monitoring and protecting the capital investments and to ensure that the investments receive a reasonable return.
- J. With the approval of the Board, negotiate and enter into any contracts necessary for the professional and profitable operation of the NNSCI including contracts for professional services, supplies and repairs. The contract will comply with the Navajo Nation Business Opportunity Act.
- K. Maximize the profitability of the NNSCI by sound business advertising, promotion and marketing management
- L. Ensure that leasing, promotion, advertising and operation will maintain a high standard of efficiency, performance and profit. Remit not less than quarterly, earnings from minimum annual rental and not less than annually earnings from percentage rental and all other receipts of as a return on capital investment in accordance with the provisions in the Corporation By-Laws.
- M. Be responsible for the daily finances of NNSCI including the collection of receivable, deposits of receipts in a commercial bank account, purchases for the business, processing of payroll, payment of all expenses due on the activities of the business, and all other financial transactions of NNSCI.
- N. Be responsible for monitoring and reporting of the internal accounting systems of NNSCI to the Board. Submit monthly, quarterly or annual financial reports as required to the Board.
- O. Be responsible for the development of NNSCI's Human Resource Manual.
- P. Pursuant to NNSCI Human Resource Manual pertaining to employment of employees, be responsible for establishing staff positions, hiring and terminating employees, and daily personnel management for the efficient operation of NNSCI giving preference to qualified Navajos who apply for such positions.



- Q. Oversee the preparation and disbursement of the payroll for all employees. Payroll for employees shall have priority in disbursement of expenses for the NNSCI.
- R. Implement and enforce a security system for the protection of NNSCI's property and premises.
- S. Maintain a high quality maintenance level for a safe and clean working and shopping center environment and to maximize the useful life of NNSCI property and premises.
- T. Make recommendation to the Board on all matters related to improving the operation of NNSCI and perform all other functions and duties as may be advised, directed or recommended by the Board in accordance with the Corporation By-Laws.

Section 4: In the event a vacancy occurs as a result of resignation, removal or termination from the office of the CEO, the Board may immediately appoint an interim or acting CEO. The Board shall proceed promptly to advertise, recruit and employ a permanent CEO; if the CEO cannot physically perform the duties and responsibilities of the CEO, the CEO may appoint a temporary CEO to carry out the duties of the CEO, and such appointment should not exceed three (3) months without Board approval.

- E. The CEO shall possess the education, skills, and experience required to enable him/her to successfully carry out the duties herein described to manage the operations of NNSCI as a corporation of the Navajo Nation. Specifically, the CEO shall meet the following requirements:
  - a. A Master's degree in Business Administration or Business Management or related field with ten (10) years comprehensive experience in administering business development projects, planning and budgeting. The requirement of having a master's degree shall become effective for all applicants after July 30, 2009.
  - b. Possess strong management skills to plan, develop, administer and implement programs and projects to accomplish the objectives of NNSCI.
  - c. Possess working knowledge and experience in coordinating effective media advertisement, developing marketing strategies and organizing promotional activities on behalf of NNSCI.
  - d. Demonstrate strong professional interpersonal and communication skills.

## ARTICLE IX

### Accounting

Section 1: The CEO shall be responsible for the establishment, management and maintenance of an accounting system, which serves to control the physical operations and assets of NNSCI and ensures accountability in the financial management of NNSCI. All expenses shall be governed by the annual budget of the NNSCI.

Section 2: The Controller shall have the following authority:

A. Controller shall have full authority to approve or disapprove expenditures per the annual budget and such authority shall not be unreasonably ~~wielded or~~ executed.

B. Before a purchase order, contract or similar instrument is executed, the Controller shall approve the purchase order, contract or similar instrument upon determining if funds have been earmarked for the contract, and such authority shall not apply in the case of an emergency.

Section 3: Accounting System:

The NNSCI accounting system shall be in conformity with Generally Accepted Accounting Principles and practices commonly used by the Governmental Accounting Standards Board, Statement 34 (GASB 34).

Section 4: Deposit of Funds:

All funds to be collected hereunder are to be deposited and managed by the CEO or his/her authorized representative in a commercial bank account as established in the name of Navajo Nation Shopping Centers, Inc.

Section 3: Income Accounting:

A. The income accounting structure shall represent the various sources of income from rent and other sources for each of the shopping centers including, but not limited to the following:

- a. Rental Income – Minimum Rent
- b. Rental Income – Overages
- c. Rental Income – Rent Escalation Charges
- d. Income for – Common Area Charges
- e. Income Interest
- f. Other categories for Income Received on a regular basis
- g. Miscellaneous Income

B. Daily and Annual records and accounts shall be maintained for each lease to readily furnish the amounts due and paid in relation to the following elements of data:

- a. Gross Annual Sales
- b. Rate of Percentage Rent
- c. Minimum Annual Rent
- d. Charges for Common Area Service
- e. Miscellaneous Charges
- f. Total Rent and Charges

#### Section 4: Expense Accounting:

- A. The Expense accounting structure shall represent the various functional categories and natural divisions of expenses including, but not limited to the following:
- B. Functional Categories
  - a. Building Maintenance
  - b. Common Area (CAM), such as parking lot/sidewalks, etc.
  - c. Control Utility System
  - d. General and Administrative, such as, Management and Marketing
  - e. Depreciation and Amortization
- C. Divisions of Expenses
  - a. Payroll and Fringe Benefits
  - b. Contractual Services
  - c. Professional Services
  - d. Materials and Supplies
  - e. Utilities
  - f. Equipment Lease
  - g. Travel and Per Diem
  - h. Communications
  - i. Advertising and Promotion
  - j. Insurance
  - k. Navajo Sales Tax
- D. Each functional category and Natural division shall be coded to provide readily available information on all expense of each shopping center.

#### Section 5: Responsibility of Funds:

- A. The CEO's authority to spend funds is subject to Controller's approval.
- B. All income and revenues and expenses from all shopping center operations shall be deposited and withdrawn from the commercial account by and upon the sole authority of



the CEO, utilizing banking deposit slips and checks. All such accounts shall be subject to audit by the Navajo Nation at any time, but in no event less than annually. Cost for the annual audit shall be paid from the NNSCI account. Each person authorized to make expenditures may be held personally responsible for any discrepancy discovered through the audit and may be subject to prosecution.

- C. All checks, expenditures, and withdrawals to and from the NNSCI commercial bank account less than \$10,000.00 shall be the responsibility of the CEO and a staff who will have signature authority. All checks for expenditures in excess of \$10,000.00 shall require the signature of the CEO and the Chairperson of the Board or as designated by the Board. This amount may change at the discretion of the Board. All such accounts shall be subject to an audit any time, but in no event less than annually. Cost for the annual audit shall be paid from the NNSCI Professional Services Account.

Section 6: Earnings: For the purpose of this Corporation profit will be defined as revenues less expenses. Earnings are defined as the excess of receipts over expenditures for a given period of operation and are to be used for capital investment and working capital.

Section 7: Quarterly Deposits: Annual profits from minimum annual rental, when achieved, may be paid the Navajo Nation as dividends on an annual basis within thirty (30) days of the close of each calendar year. If a shopping center does not realize a profit or suffers loss for any quarter, the CEO shall prepare a full report with a financial statement on the condition of the business for presentation to the NNSCI Board.

Earnings from Minimum Annual Rentals, Common Area Maintenance charges, and other income received on a regular basis, shall be credited by the CEO or his/her authorized representative on a quarterly basis within ten (10) days of the close of each calendar year. If a shopping center does not realize a profit or suffers a loss for any year, the CEO shall prepare a summary report with a financial statement on the conditions of the business for presentation to the NNSCI Board.

Section 8: Deposits: Earnings from Rental Income, and Overages, when achieved, shall be credited by the CEO or his/her authorized representative when received. If a shopping center does not realize a profit or suffers a loss for any calendar year, the CEO shall prepare a full report with a financial statement on the condition of the business for presentation to the NNSCI Board.

Section 9: Capital Improvement Funds: The NNSCI Board shall establish a special fund for deposit or earnings derived from the operation of NNSCI. Said earnings shall be considered a Capital Improvement Fund and shall be utilized at the discretion of the NNSCI Board for future shopping center projects or other investment by the NNSCI.

Earnings remaining at the end of the fiscal year will be carried over the subsequent fiscal year in the same special account.

Section 10: Reporting:

- A. In order to effectively manage a shopping center, the NNSCI Board must receive timely and accurate operation information in a form, which summarizes the data contained in the Accounting records in a meaningful manner. The CEO shall prepare annual financial records of the operating income or loss and cash flow for presentation to the NNSCI Board. Said report shall include:
- a. Budgeted amounts of income and expense for the current month and year to date.
  - b. Actual amounts of income and expense for the current month and year to date.
  - c. Deviations from the plan for each item of income and expense for the current month and year to date.
  - d. Net income or loss for bookkeeping purposes for the current month and the year to date.
  - e. Net cash flow for the current month and the year to date.
- B. At the end of the calendar year, the CEO shall prepare an annual report and financial statement of the shopping centers.

**ARTICLE X**

**Audits**

The accounts and records of the NNSCI shall be audited independently by a Certified Public Accounting firm, which shall be approved by the Board prior to the close of each calendar year. Copies of such audit reports shall be furnished to the Board, staff of NNSCI and Economic Development Committee.

**ARTICLE XI**

**Insurance**

The NNSCI Board shall determine and fund the insurance requirements of NNSCI upon recommendation of the CEO and all applicable federal and Navajo laws.

**ARTICLE XII**

**Navajo Preference in Employment and Training Act, Navajo Business Opportunity Act**

Section 1: NNSCI shall comply with the Navajo Preference in Employment Act, Title 15 N.N.C. §§601 - 619, in the hiring, training, advancement and retention of all Navajo Nation Shopping Center's employees.

Section 2: NNSCI shall comply with the Navajo Nation Business Opportunity Act of the Navajo Nation Title 5 N.N.C. §§201 et seq. (CJA-07-05), in the management of NNSCI.

### ARTICLE XIII

#### Forum for Dispute Resolutions

All Disputes involving the NNSCI shall be resolved in the courts of the Navajo Nation or through arbitration, provided however, the NNSCI at the discretion of its CEO, in consultation with legal counsel, may institute legal proceedings in any forum which the CEO may deem appropriate to best protect the legal interest of the NNSCI.

### ARTICLE XIV

#### Amendment of By-Laws

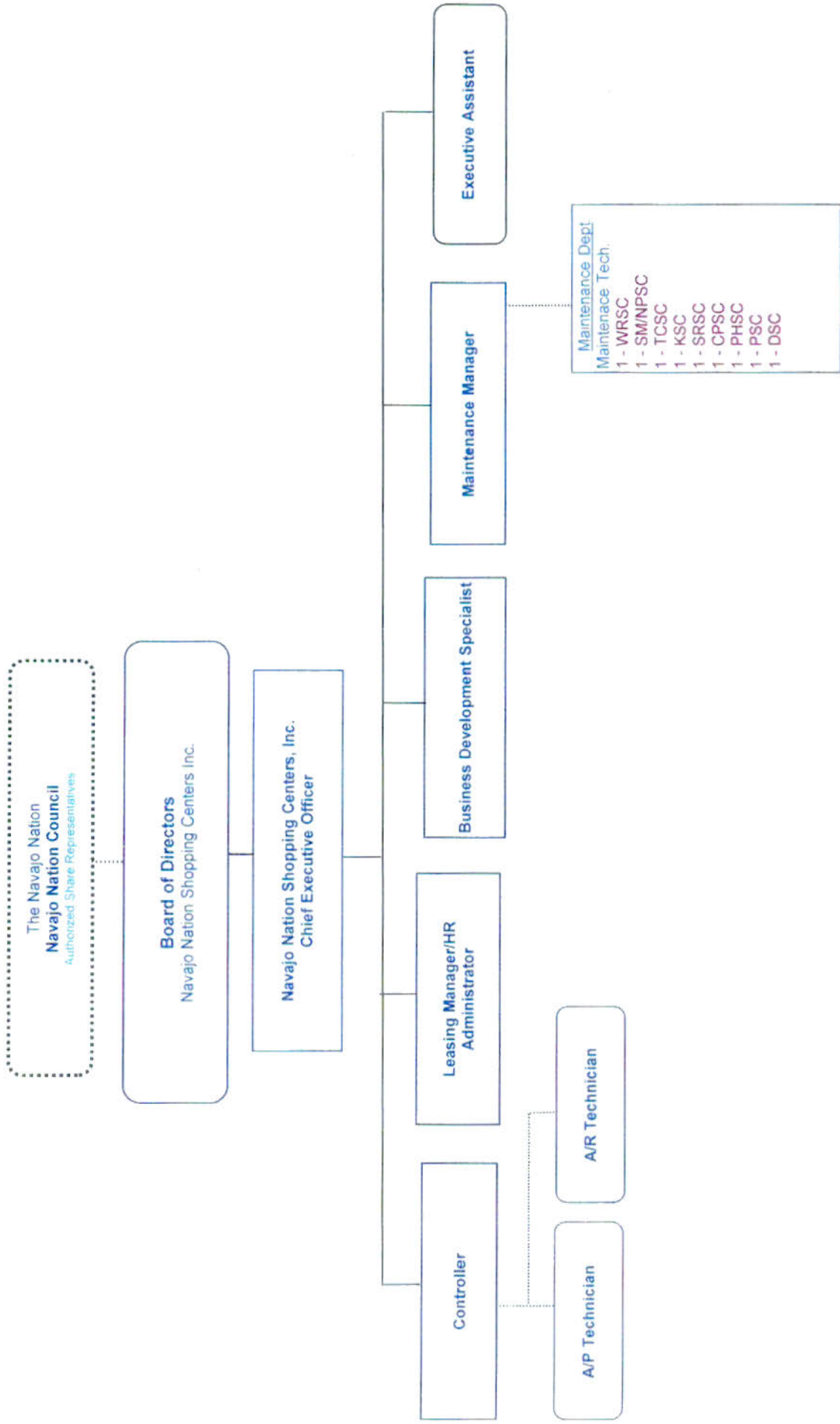
The Corporation By-Laws for NNSCI shall be amended from time to time by the Board of Directors as necessary for the proper management and operation of NNSCI.



TAB 3

# Navajo Nation Shopping Centers, Incorporated

## Organizational Chart



TAB 4



Window  
Rock



NAVAJO  
NATION  
SHOPPING  
CENTERS  
INCORPORATED

## LIST OF TENANTS

Space 1	Mikasa 2 Restaurant	3,200 SF
Space 2-A	WR Cinema	6,624 SF
Space 3-A	NNSCI Management Office	3,900 SF
Space 3-B	Cellular One	2,500 SF
Space 5	NN Behavioral Health Services	2,700 SF
Space 6	Oops a Daisy	1,020 SF
Space 7	Hozho Laundry	2,680 SF
Space 8	Lowe's	32,000 SF
Space 9	Navajo Health Education Program	1,500 SF
Space 10	ApexNetwork Therapy	920 SF
Space 11-A	Oasis Insurance	500 SF
Space 11-B	AFLAC	1,000 SF
Space 12	Dineh Optical	1,000 SF
Space 13-A	NN Head Start Program	1,000 SF
Space 13-B	NN-WIC Program	1,000 SF
Space 13-C	H&R Block	1,000 SF
Space 14	True Value	12,000 SF
Pad 15	U.S. Post Office	12,000 SF
Pad 16	Cocina De Dominguez	3,390 SF
Pad 17	Wells Fargo Bank	4,000 SF
Pad 18	Chevron C-Store	6,160 SF
Pad 19	Taco Bell/Pizza Hut	3,900 SF
Pad 20	Vacant	4,783 SF
Pad 21	NN Judicial Administration	7,650 SF

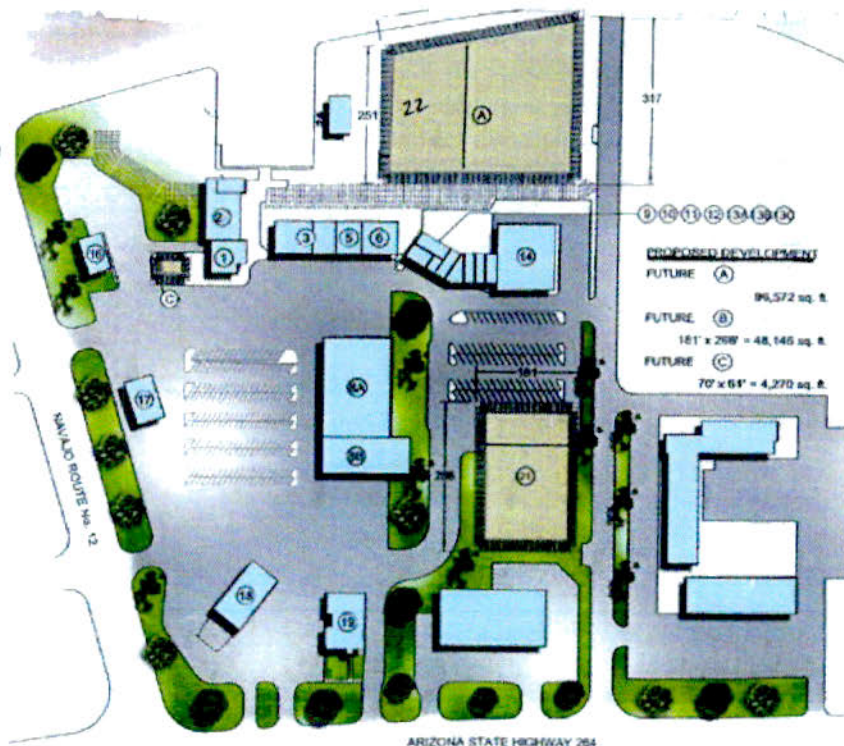
GRAND TOTAL:

116,427 SF

### Proposed Development

Future A  
96,572 SF

Future C  
70' x 61' = 4,270 SF



WINDOW ROCK SHOPPING CENTER  
Window Rock, Arizona

Tunba  
City





NAVAJO  
NATION  
SHOPPING  
CENTERS  
INCORPORATED

## LIST OF TENANTS

Space 1	Bashas	28,000 SF
Space 2	China Star Restaurant	2,600 SF
Space 3	Cellular One	1,000 SF
Space 4	H&R Block	1,000 SF
Space 5-A	Navajo Arts & Crafts Enterprise	2,100 SF
Space 5-B	Just a Buck	7,660 SF
Space 6	Goen Cinemas	6,371 SF
Space 7	Super "K" Chevron	1,800 SF

**Phase I Total: 50,531 SF**

Space 8	Laundry	3,500 SF
Space 9	Fabric Plus	1,500 SF
Space 10	Dahl Chiropractic Clinic	2,000 SF
Space 11	Studio 11	1,000 SF
Space 12	Child Care Development Fund Office	1,000 SF
Space 13	Focal Point Eyewear	1,000 SF
Space 14	Pizza Edge	2,000 SF

**Phase II Total: 12,000 SF**

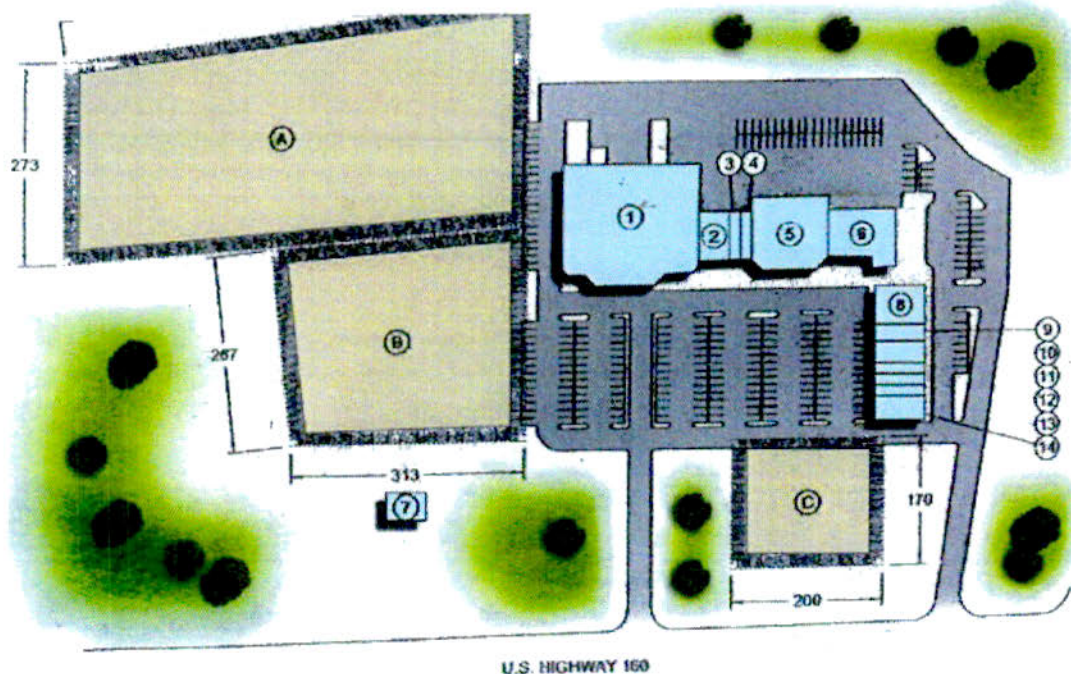
**GRAND TOTAL: 62,531 SF**

## Proposed Development

Future A  
180,000 SF

Future B  
91,170 SF

Future C  
200' x 170' = 34,000 SF



TUBA CITY SHOPPING CENTER  
Tuba City, Arizona

Kayenta





NAVAJO  
NATION  
SHOPPING  
CENTERS  
INCORPORATED

## LIST OF TENANTS

Space 1	Bashas	29,980 SF
Space 2	Cellular One	1,000 SF
Space 3	H&R Block	970 SF
Space 4	Videos Plus	1,712 SF
Space 5-A	Golden Rice Bowl	1,000 SF
Space 5-B	The Beauty Way	1,000 SF
Space 6	Navajo Westerners ACE Hardware	9,792 SF
Space 7	OSERS	829 SF
Space 8	Pizza Edge	2,600 SF
<b>Phase I Total:</b>		<b>49,001 SF</b>

Space 9	Subway	1,680 SF
Space 10	Kayenta Laundry	3,200 SF
Space 11	Black Mesa Theater	7,612 SF
<b>Phase II Total:</b>		<b>12,492 SF</b>

Pad 12	Taco Bell	9,230 SF
Pad 13	Wells Fargo Bank	3,000 SF
Pad 14	Super Splash Carwash	2,300 SF
Pad 15	McDonalds	5,060 SF
<b>GRAND TOTAL:</b>		<b>81,567 SF</b>

## Proposed Development

Future A  
277' x 130' = 36,010 SF

Future B  
110' x 220' = 24,200 SF

Future C  
59' x 168' = 9,912 SF



KAYENTA SHOPPING CENTER  
Kayenta, Arizona



Shiprock



NAVAJO  
NATION  
SHOPPING  
CENTERS  
INCORPORATED

## LIST OF TENANTS

Space 1	Vacant (Grandma's Restaurant)	3,000 SF
Space 2	Regional Business Development Office	2,000 SF
Space 3-A,B	NN Child Care Development Fund	2,000 SF
Space 4	Navajo Arts & Crafts Enterprise	12,000 SF
Space 5	NN Special Diabetes Program	1,300 SF
Space 6	Shiprock Clinic, Ltd.	1,000 SF
Space 7-A	Shiprock Clinic, Ltd.	1,000 SF
Space 7-B	Cellular One	1,000 SF
Space 8	Southwestern Home Health Care	1,000 SF
Space 9	Vacant	1,000 SF
Space 10	Sun Loan	2,000 SF
Space 11	City Market	42,108 SF
Space 12	Little Caesars Pizza	2,317 SF
Space 13	Child Support Enforcement Program	3,017 SF
Space 14	4-Corners Salon	475 SF
Space 15	Healthy Habits Nutrition Club	225 SF
Pad 16	Quik Mart/Citgo	9,832 SF
Pad 17	Taco Bell	1,472 SF
Pad 18	Shiprock Express Lube	3,000 SF
Pad 19	Post Office	7,400 SF
Pad 20	Sonic Drive-in	1,400 SF
<b>Grand Total:</b>		<b>98,546 SF</b>

## Proposed Development

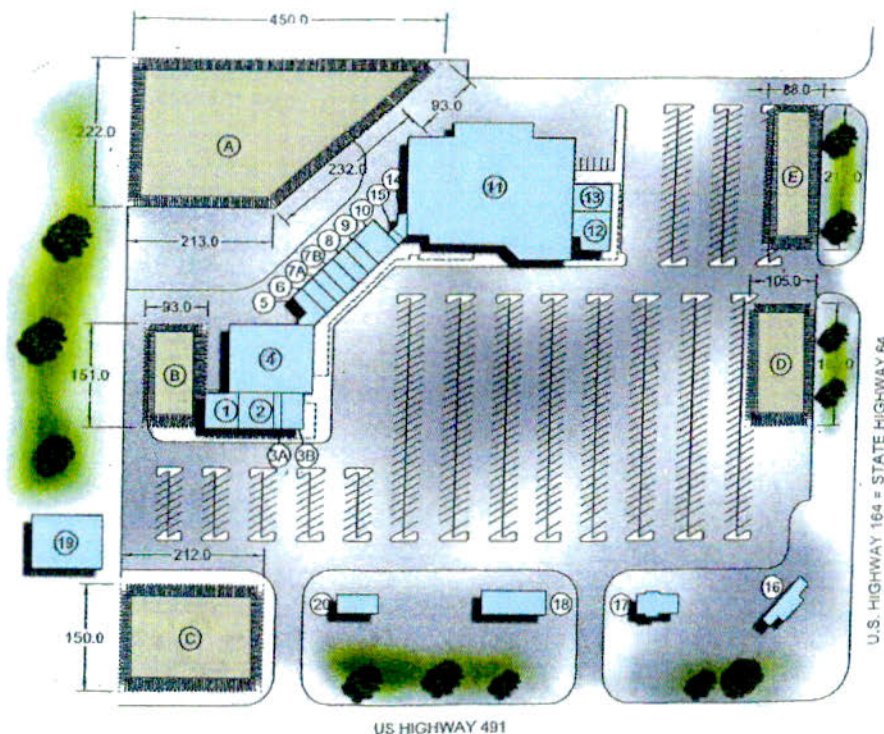
Future A  
73,593 SF

Future B  
 $93' \times 151' = 14,043 \text{ SF}$

Future C  
 $212' \times 150' = 31,800 \text{ SF}$

Future D  
 $105' \times 180' = 18,900 \text{ SF}$

Future E  
 $88' \times 217' = 19,096 \text{ SF}$



SHIPROCK SHOPPING CENTER  
Shiprock, New Mexico

Crownpoint





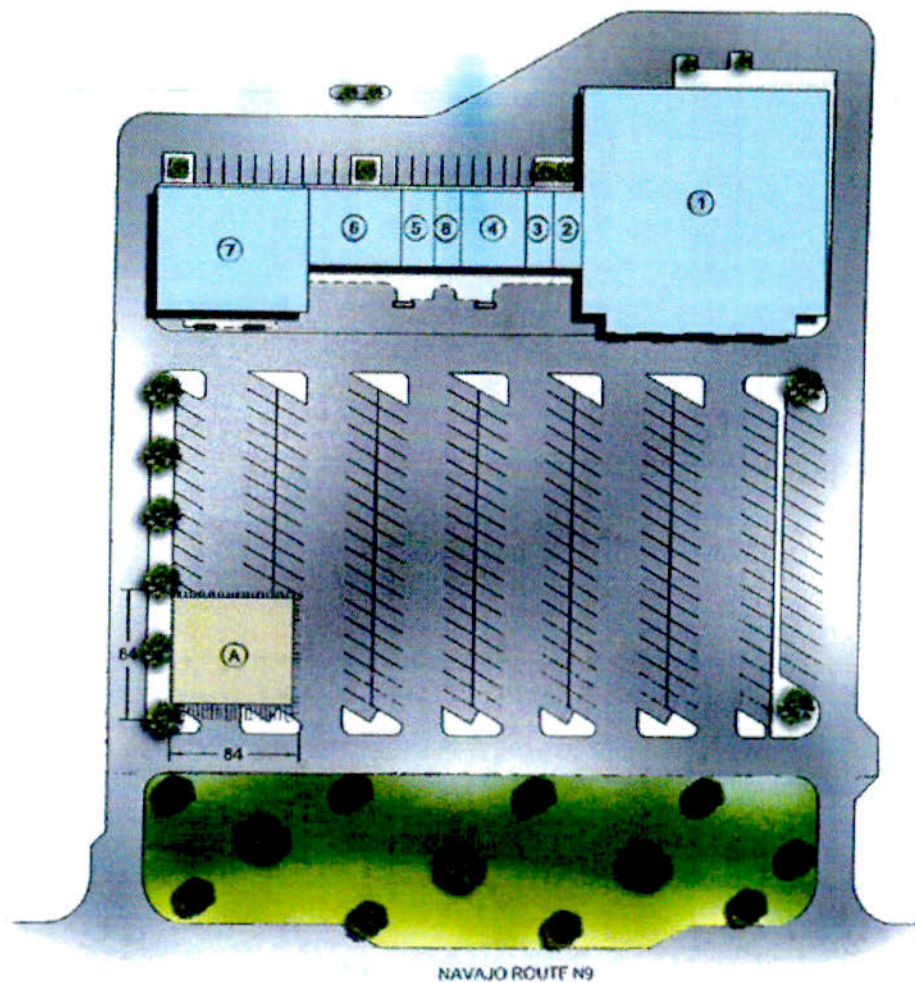
NAVAJO  
NATION  
SHOPPING  
CENTERS  
INCORPORATED

#### LIST OF TENANTS

Space 1	Bashas	26,902 SF
Space 2	Navajo Treatment Center for Children	1,000 SF
Space 3,4,8	Red Rocks Dialysis Center	4,000 SF
Space 5	Navajo Arts & Crafts Enterprise	1,000 SF
Space 6	Grandma's Restaurant	3,000 SF
Space 7	Child Support Enforcement Office	7,936 SF
Total:		43,838 SF

#### PROPOSED DEVELOPMENT

Future A Vacant 84' x 84' Pad Site = 7,056 SF



CROWNPOINT SHOPPING CENTER  
Crownpoint, New Mexico

St. Michaels





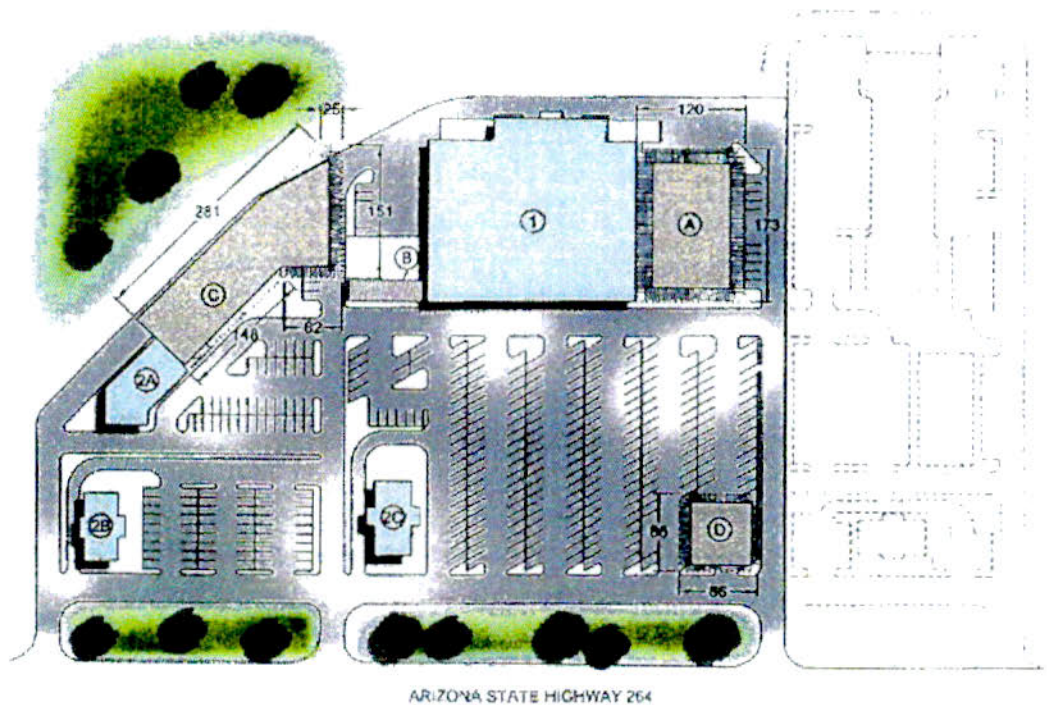
NAVAJO  
NATION  
SHOPPING  
CENTERS

## LIST OF TENANTS

Pad 1	Bashas	44,000 SF
Pad 2-A1, A2	NN Head Start	4,808 SF
Pad 2-B	Church's Chicken	2,142 SF
Pad 2C	McDonalds	2,400 SF
<b>Total:</b>		<b>53,350 SF</b>

## PROPOSED DEVELOPMENT

Future A	120' x 173' = 20,760 SF
Future B	89' x 23' = 2,047 SF
Future C	23,747 SF
Future D	86' x 86' = 7,396 SF



ARIZONA STATE HIGHWAY 264

ST. MICHAELS SHOPPING CENTER  
St. Michaels, Arizona



Navajo  
Pine



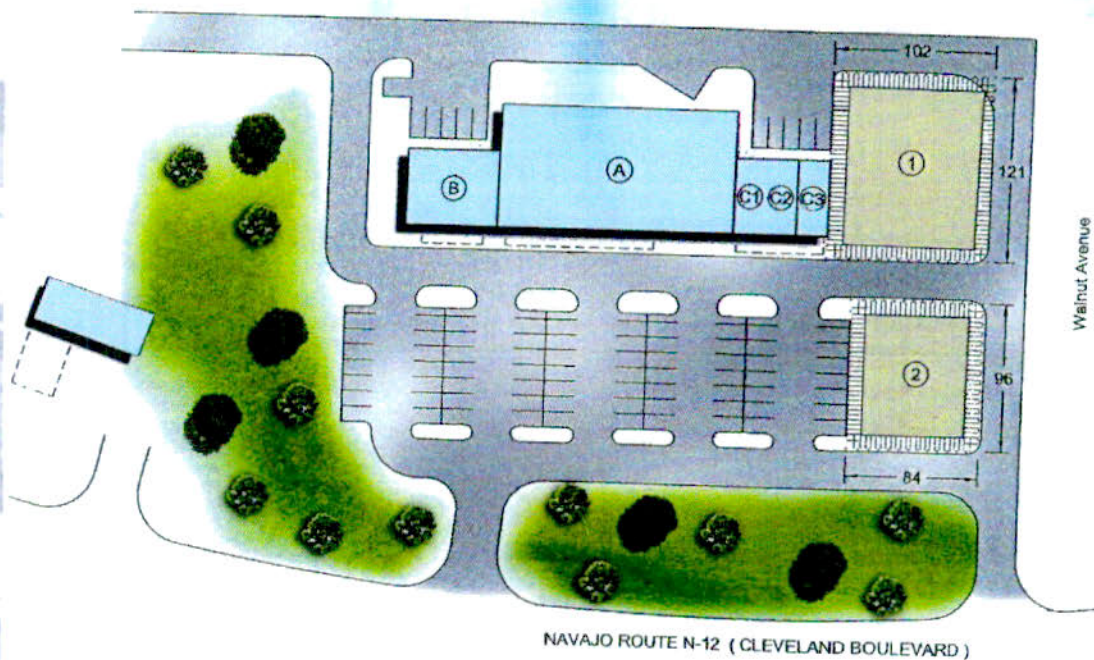
NAVAJO  
NATION  
SHOPPING  
CENTERS  
INCORPORATED

## LIST OF TENANTS

Space A	Vacant	12,000 SF
Space B	Grandma's Restaurant	3,000 SF
Space C-1	Phase II RSE Trust, LLC	1,000 SF
Space C-2	Post Office	1,000 SF
Space C-3	CKP Insurance	1,000 SF
<b>Total:</b>		<b>18,000 SF</b>

## PROPOSED DEVELOPMENT

Future 1	102' x 121' = 12,342 SF
Future 2	84' x 96.5' = 8,106 SF



NAVAJO PINE SHOPPING CENTER  
Navajo, New Mexico

Pinehill

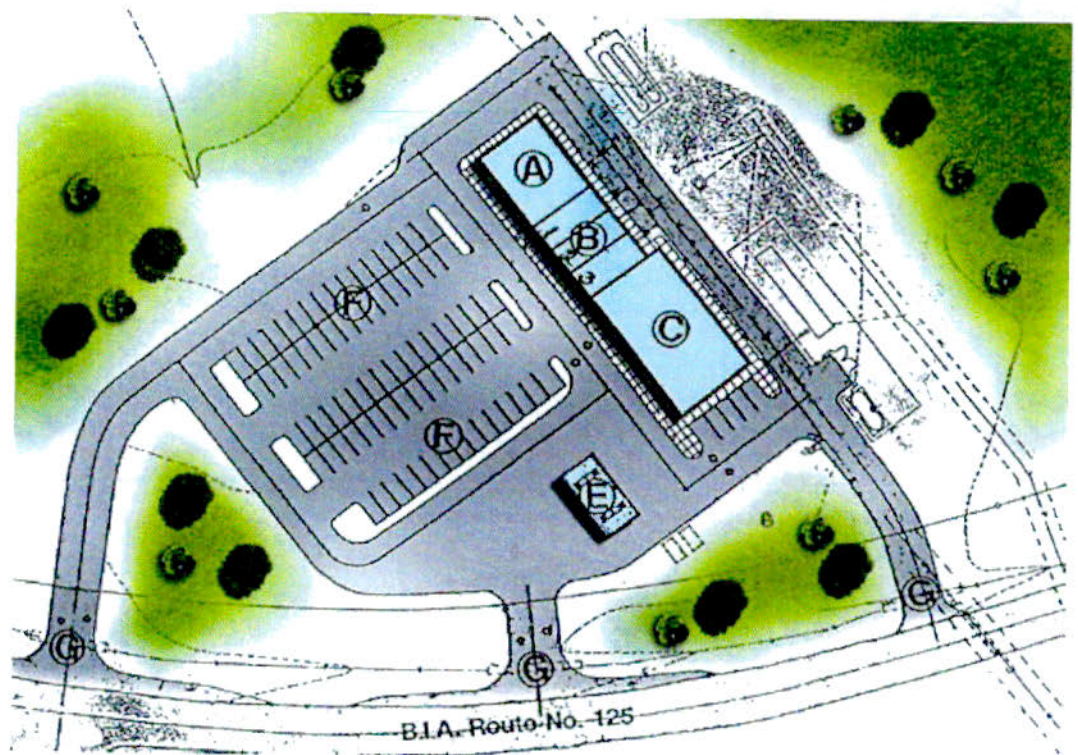




NAVAJO  
NATION  
SHOPPING  
CENTERS  
INCORPORATED

#### LIST OF TENANTS

Space A	Elite Laundry	2,630 SF
Space B 1,2	RNUA	2,000 SF
Space B-3	Vacant	1,000 SF
Space C	Pinehill Market	6,000 SF
Space D	Maintenance Office	370 SF
Space E	Fina Gas Station	
Total:		12,000 SF



PINEHILL SHOPPING CENTER  
Pinehill, New Mexico

Pinon





NAVAJO  
NATION  
SHOPPING  
CENTERS

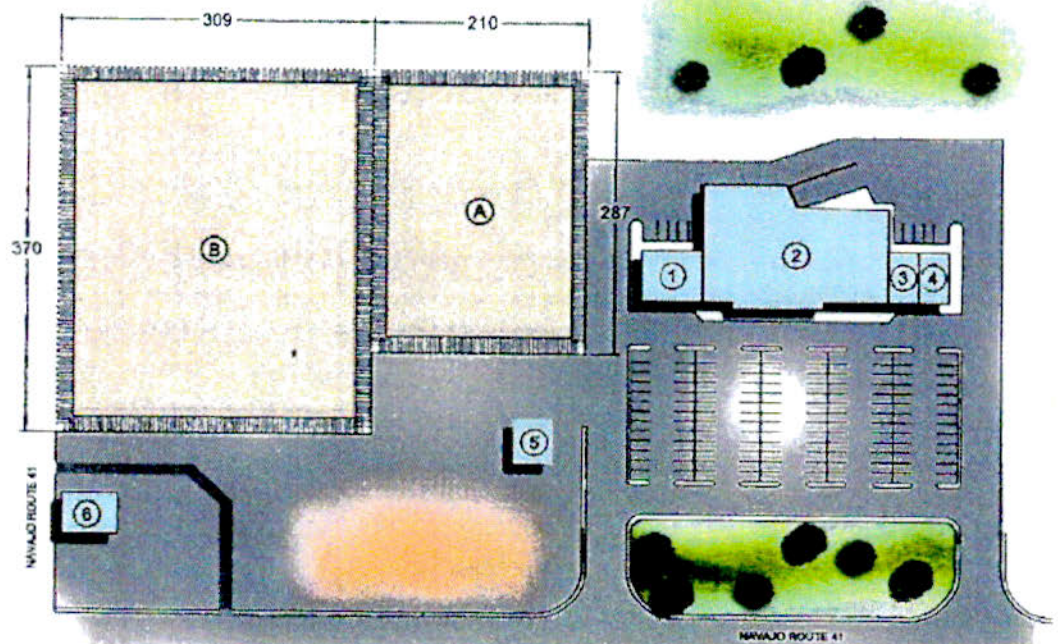
### List of Tenants

Space 1	Pinon Laundromat	3,000 SF
Space 2	Bashas' #17	19,550 SF
Space 3	Pizza Edge	1,500 SF
Space 4	Subway	1,304 SF
Space 5	Pinon Carwash	18,075 SF
Space 6	Conoco C-Store	1,800 SF

**Total:** 45,229 SF

### Proposed Development

Future A	210' x 287' = 60,270 SF
Future B	309' x 370' = 114,330 SF



PINON SHOPPING CENTER  
Pinon, Arizona



Dil Kon



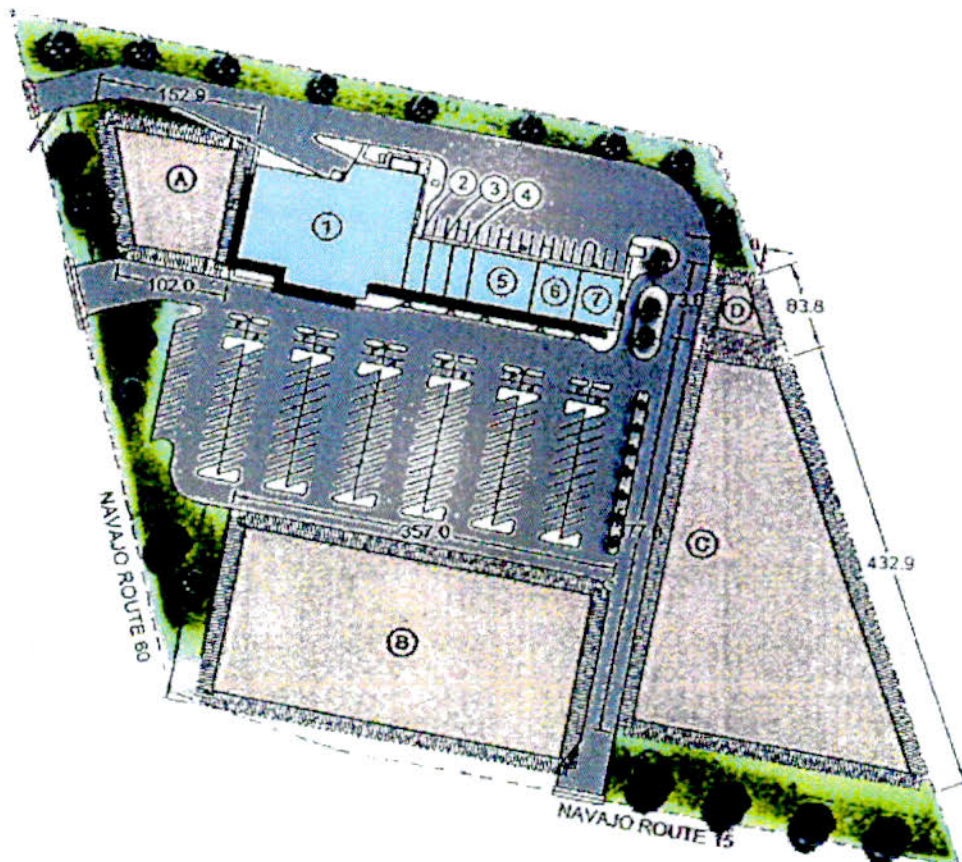
NAVAJO  
NATION  
SHOPPING  
CENTERS

### LIST OF TENANTS

Space 1	Bashas	16,170 SF
Space 2	Assoc. of Indigenous Pioneers Office	1,000 SF
Space 3,4	WIHCC - Dilkon Fitness Center	2,000 SF
Space 5	Redd's Laundry	3,000 SF
Space 6	Magic G's Mattress & Furniture	2,000 SF
Space 7	Pizza Edge	2,000 SF
<b>Total:</b>		<b>26,170 SF</b>

### Proposed Development

Future A	17,435.16 SF
Future B	357' x 186' = 66,402 SF
Future C	72,630 SF
Future D	4,789 SF



**DILKON SHOPPING CENTER**  
Dilkon, Arizona

TAB 5



Navejo Housing Authority  
Housing

WINDOW ROCK COMMERCIAL CENTER  
26.80± AC.

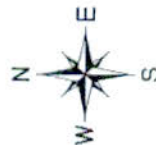
Former Fed Mart Lease Area

**SURVEYOR'S NOTE ON REVISION**

 $(R-1)$ 

Navajo Nation Inn

ARIZONA STATE HIGHWAY 4000A



Found USBM  
Brose cog  
1/4 Corner

2710.62  
FILM PLAT BEARING  
BASIS OF BEARING

Found USB.M

PROPERTY CORNER TO BE A  
THIS SURVEYOR WILL BE SET  
SO THAT OTHER SURVEY

REV 01 Revised Area 11-18-03

RVS#03-20

## RED VALLEY SURVEY

VALLEY SURVEY  
P.O. BOX 2827, Shiprock New Mexico 87420  
505-320-0471

A Survey for a Masterplan for  
the Navajo Nation Shopping Center of the  
Window Rock Commercial Center

26.B0 ± Ac.  
Navajo Indian Reservation  
S1/2 Sec. 8, T26N, R31E, G&SRM  
Window Rock, Apache County, Arizona

**Local Description.** A parcel of land located in the South Cove-801 (S1/2) of Section 8, Township 26 North, Range 31 East, Oak and Soil River land, Apache County, Arizona. The parcel is located in the middle tract east and facing north, particularly described as follows:

beginning at the southeast corner of said parcel, a point of intersection (a round right-of-way Brass Cap) of the eastern right-of-way line of Nevada Service Road #12 and the northern right-of-way line of Arizona State Hwy #156 from which the South Quarter Corner of said Section 8 bears South 71°53' East, a distance of 545.12 feet.

thence North 13°27'41" West, a distance of 1099.82 feet along the easterly right-of-way line of said Newco Service Route #12 to the northerly right-of-way line of the loop road for the Windsor Rock Commercial Center, thence North 76°15'24" East, a distance of 725.56 feet along the northerly right-of-way line of said loop road to the beginning of a curve having

to and from:  
thence easterly a distance of 485.53 feet along the curve clockwise to the point having a radius of 980.00 feet and a central angle of  $27^{\circ}3'01''$  to a point of curve;  
thence North  $30^{\circ}10'57''$  East, a distance of 400.64 feet along the westerly line of the U.S. Post Office Tract.

1. Section 36, Township 36S, Range 35E, East, 6 distance of 410.00 feet along the northerly line of said U.S. Post Office tract.  
 2. Section 36, Township 36S, Range 35E, East, 6 distance of 419.54 feet to the southerly line of Loop Road.  
 3. Section 36, Township 36S, Range 35E, East, 6 distance of 21.22 feet along the southerly right-of-way line of Loop Road.

distance North  $54^{\circ}13'37''$  West, a distance of 103.65 feet along the solid southern right-of-way line of Loop Road;

thence northeasterly along the southerly right-of-way line of said loop road a distance of 349.36 feet along the curve entrance to the southwest, bearing a radius of 820.00 feet and a central angle of  $21^{\circ}45'30''$ ;

thence South  $03^{\circ}11'17''$  West, a distance of 688.76 feet along said eastern right-of-way line of Loop Road;

Base North 86°18'45" West, a distance of 82.57 feet;  
Base South 03°41'15" West, a distance of 134.18 feet  
line of an access road to the northeast corner of the Nuncio Arts Center  
Base North 86°17'48" West, a distance of 342.30 feet along the northern line

Service Arts and Crafts tract.  
Service South 03-04-28" West, a distance of 203.31 feet along the westerly line to the intersection of the line of the  
Newjo Arts and Crafts tract to the beginning of a curve concave to the west having a radius of 3,165.13 feet and a central angle of 57°32'28" and by a chord which bears S39°18'30" West 315.65 feet.  
Service westerly along said curve, a distance of 315.77 feet to the Point of Beginning of the Service Arts and Crafts tract.  
Service South 03-04-28" West, a distance of 55.80 feet along the westerly line to the intersection of the line of the  
Newjo Arts and Crafts tract to the beginning of a curve concave to the west having a radius of 3,165.13 feet and a central angle of 57°32'28" and by a chord which bears S39°18'30" West 315.65 feet.  
Service westerly along said curve, a distance of 315.77 feet to the Point of Beginning of the Service Arts and Crafts tract.  
Service South 03-04-28" West, a distance of 55.80 feet along the westerly line to the intersection of the line of the  
Newjo Arts and Crafts tract to the beginning of a curve concave to the west having a radius of 3,165.13 feet and a central angle of 57°32'28" and by a chord which bears S39°18'30" West 315.65 feet.  
Service westerly along said curve, a distance of 315.77 feet to the Point of Beginning of the Service Arts and Crafts tract.

This is to certify that this print was prepared from field notes of actual surveys made under my supervision. The survey complies with the minimum standards of property surveys of Michigan and is a legally correct representation of the same.



**REFERENCES:**

(R-1) Windo Risk Development Corp.  
as surveyed by US #9224 on 3-10-89

(R-2) A Survey Plot by Azale #2684 for Nevada  
Nation Oil And Gas

(R-3) A Survey Plot by Azale #2684 for Nevada  
Nation Oil And Gas

(R-4) A Survey Plot by Azale #1487 for CTRON on  
3-14-85

(R-5) A Survey Plot by Azale #1487 for Norward  
Bank on 6-8-85

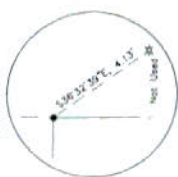
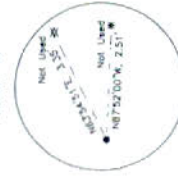
Map Records furnished by the Nevada Nation Shopping

[illegible]

ΔΕΛΤΑ Π. Γ.

-8. TIVL30

DETAIL "A"



TUBA CITY SHOPPING CENTER  
19.29± Ac.

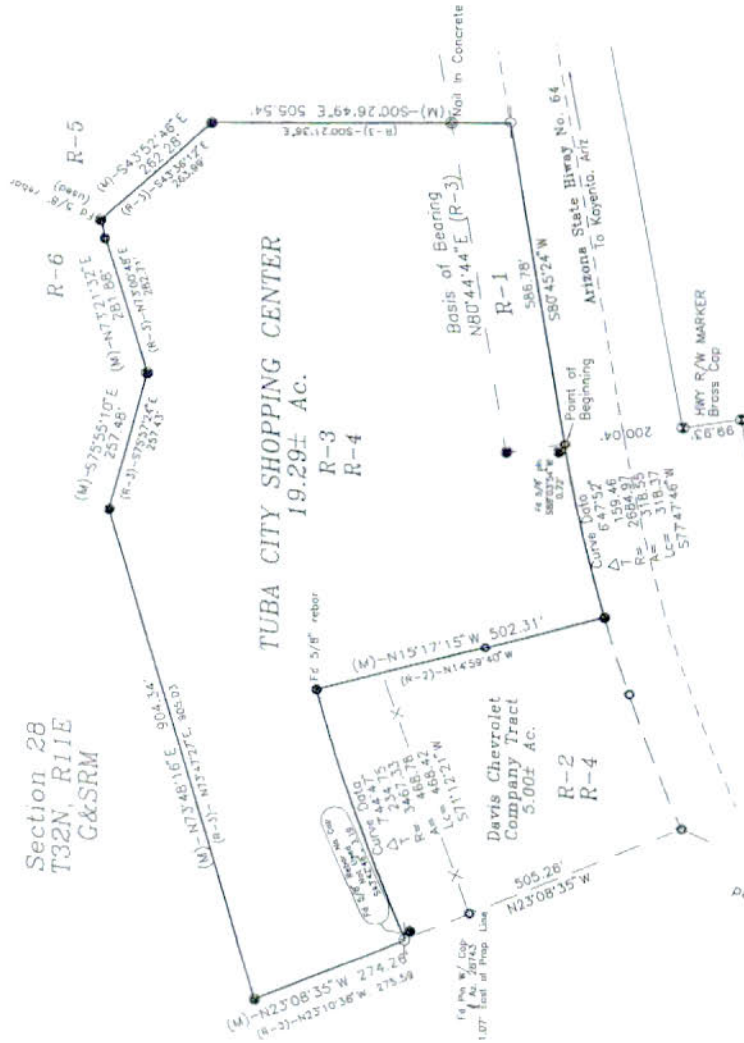
thence South 80°28'49" East, a distance of 503.34 feet to a point on the Northern Right of Way line of Arizona State Hiway No. 84;  
thence along said Northern Right of Way line South 80°45'24" West, a distance of 586.78 feet to the Point of Beginning. Containing 19.29 Acres, more or less.

Henry Thombs  
Registered P.L.S. # 29894



(R-X)- Recorded Data

<p><b>FRED VALLEY</b>  <b>SURVEY</b>          PO BOX 2728          Shupena, NM 87420          (505)320-0478</p>	<p>Drawn By          Approved By          Scale 1" = 200'          Date 11/16/00</p>	<p>19.29± Ac.          District 3, Western Navajo Agency          Navajo Indian Reservation          Section 28, T32N, R11E, G4SRM          Tuba City, Coconino County, Arizona</p>
<p><b>TUBA CITY COMMUNITY DEVELOPMENT          BUSINESS SITE TRACT RESURVEY</b></p>		



dated 8-03-88 by Navajo Land Dept./Tuba City Office

 $\gamma = 200^\circ$

### Legal Description

A parcel of land located in Section 28, Township 32 North, Range 11 East, Gila and Salt River Meridian in Tuba City, Coconino County, Arizona more particularly described as follows:

Commencing at the Point of Beginning a point on the Northerly Right of Way line of Arizona State Hiway No. 64 (U.S. Hiway 160) said point being Hiway Station 22+45.43;

Thence along said Northerly Right of Way line on a curve to the left with a Central angle of  $6^{\circ} 47' 52''$  and a radius of 2684.97 feet having a chord bearing and chord distance of South  $77^{\circ} 47' 46''$  West, a distance of 318.37 feet;

Thence North  $15^{\circ} 17' 15''$  West, a distance of 502.31 feet;

Thence along a curve to the left a distance of 468.78 feet with a Central angle of  $7^{\circ} 44' 47''$  and a radius of 3467.33 feet having a chord bearing and chord distance South  $71^{\circ} 12' 21''$  West, a distance of 468/42 feet;

Thence North  $23^{\circ} 08' 35''$  West, a distance of 274.26 feet;

Thence North  $73^{\circ} 48' 16''$  East, a distance of 904.34 feet;

Thence South  $75^{\circ} 55' 10''$  East, a distance of 257.48 feet along an existing fence line;

Thence North  $73^{\circ} 21' 32''$  East, a distance of 281.88 feet along an existing fence line;

Thence South  $43^{\circ} 52' 46''$  East, a distance of 262.28 feet;

Thence South  $00^{\circ} 26' 49''$  East, a distance of 505.54 feet a point on the Northerly Right of Way line of Arizona State Hiway no. 64;

Thence along said Northerly Right of Way line South  $80^{\circ} 45' 24''$  West, a distance of 586.78 feet to the Point of Beginning. Containing 19.29 Acres, more or less.



NOTES:

Basis of Bearing: True North by Real Time Kinematic Global Positioning

Describes Set 1/2" x 1/2" Rebar with Plastic Cap

Other Found Pin are as Shown and Identified

Most of the Records Used were furnished by Kayenta Township Office and Navajo Nation Shopping Center

Window Rock Office

(M) - Measured Field Data

(R) - Recorded Data from Navajo Land Office Survey as surveyed on 10-3-80.

Navajo Nation Shopping Center/ Window Rock was notified of the Area of Question.

REFERENCES:

(R-1) BLM Township Plot - T38N, R18E G&SRM

(R-2) Kayenta Quad Map

(R-3) Kayenta Airport Tract

(R-4) Kayenta Shopping Center Tract

Legal Description.

A parcel of land located in the Southwest Quarter (SW1/4) of Section 12 and in the Northwest Quarter (NW1/4) of Section 13, Township 38 North, Range 18 East, Gila and Salt River Meridian, Navajo County, Arizona sitsuate in the Kayenta area and being more particularly described as follows:

Commencing at the Point of Beginning a point on the South line of said Section 12 which bears North 89°59'57" East, a distance of 513.94 feet from the Southwest Corner of said Section 12;

thence North 10°47'06" West, a distance of 497.35 feet to a reset 1/2" Rebar; thence North 79°11'35" East, a distance of 942.52 feet to a 5/8" Rebar a point on the Westerly Right-of-Way line of U.S. Hwy #163;

thence South 27°05'43" East, along said Westerly Right-of-Way line, a distance of 562.19 feet to a 5/8" Rebar;

thence South 79°11'57" West, a distance of 417.32 feet; thence South 27°03'48" East, a distance of 97.23 feet to a point on the south line of said Section 12 from which the South Quarter Corner (SW1/4) of said Section 12 bears North 89°59'57" East, a distance of 1402.82 feet;

thence South 27°03'48" East, a distance of 320.08 feet to a 5/8" Rebar a point on the Northerly Right-of-Way line of Arizona Route #160;

thence South 79°12'18" West, along said Northerly Right-of-Way line, a distance of 800.08 feet to a 5/8" Rebar;

thence North 10°47'06" West, a distance of 442.70 feet to the Point of Beginning.

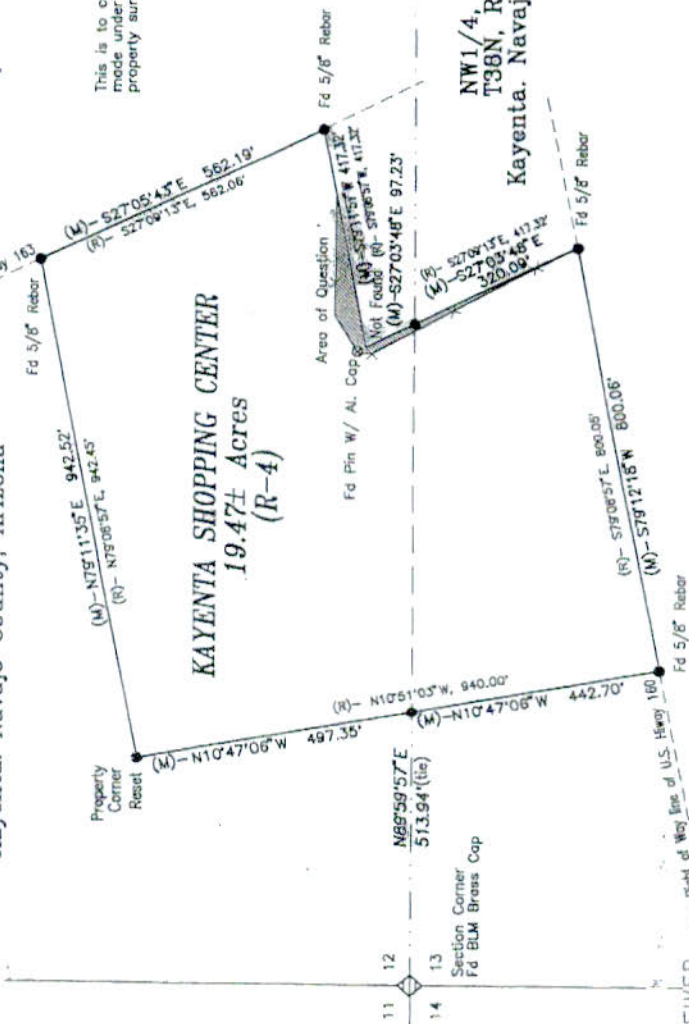
solid parcel containing 19.47± Acres more or less in area and being subject to any restrictions, reservations and assessments of record.

SW1/4, Section 12  
T38N, R18E G&SRM  
Kayenta, Navajo County, Arizona

This is to certify that this plot was prepared from field notes of actual survey made under my supervision. This survey complies with the minimum standards of property surveys in Arizona and is accurately represented on the plot.



KAYENTA SHOPPING CENTER  
19.47± Acres  
(R-4)



NW1/4, Section 13  
T38N, R18E G&SRM  
Kayenta, Navajo County, Arizona

RED VALLEY SURVEY	29894	29894	29894
PLAT NO.	29894	29894	29894
DATE	10/3/80	10/3/80	10/3/80
BY	Henry Thomas	Henry Thomas	Henry Thomas
FOR	Kayenta Shopping Center	Kayenta Shopping Center	Kayenta Shopping Center
ACRES	19.47±	19.47±	19.47±
SECTION	SW1/4-Sec. 12 & NW1/4-Sec. 13	SW1/4-Sec. 12 & NW1/4-Sec. 13	SW1/4-Sec. 12 & NW1/4-Sec. 13
TOWNSHIP	T38N, R18E, G&SRM	T38N, R18E, G&SRM	T38N, R18E, G&SRM
COUNTY	Kayenta, Navajo County, Arizona	Kayenta, Navajo County, Arizona	Kayenta, Navajo County, Arizona

RYS #02-10

RECEIVED

FEB 28 2001

### Legal Description

A parcel of land located in the Southwest Quarter (SW1/4) of Section 12 and in the Northwest Quarter (NW1/4) of Section 13, Township 38 North, Range 18 East, Gila and Salt River Meridian, Navajo County, Arizona situate in the Kayenta area and being more particularly described as follows:

Commencing at the Point of Beginning a point on the South line of said Section 12 which bears North 89° 59' 57" East, a distance of 513.94 feet from the Southwest Corner of said Section 12;

Thence North 10° 47' 06" West, a distance of 497.35 feet a reset ½" Rebar;

Thence North 79° 11' 35" East, a distance of 942.52 feet to a 5/8" Rebar a point on the Westerly Right-of-Way line of U.S. Hiway #163;

Thence South 27° 05' 43" East along said Westerly Right-of-Way line, a distance of 562.19 feet to a 5/8" Rebar;

Thence South 79° 11' 57" West, a distance of 417.32 feet;

Thence South 27° 03' 48" East, a distance of 97.23 feet to a point on the south line of said Section 12 from which the South Quarter Corner (S1/4) of said Section 12 bears North 89° 59' 57" East, a distance of 1402.82 feet;

Thence South 27° 03' 48" East, a distance of 320.09 feet to a 5/8" Rebar a point on the Northerly Right-of-Way line of Arizona Route #160;

Thence South 79° 12' 18" West, along said Northerly Right-of-Way line, a distance of 800.06 feet to a 5/8" Rebar;

Thence North 10° 47' 06" West, a distance of 442.70 feet to the Point of Beginning, said parcel containing 19.47± acres, more or less in area and being subject to any restrictions, reservations and easements of record.

SHIPROCK SHOPPING CENTER  
TRACT DESCRIPTION

A parcel of land situated within Land Management District No. 12 of the Navajo Reservation, in the vicinity of Shiprock, San Juan County, State of New Mexico, and is being more particularly described as follows:

COMMENCE at the Northeast Corner of Section 25, Township 30 North, Range 18 West, New Mexico Principal Meridian.

THENCE run S 41 degrees 08' 07" W, 5, 182.72 feet;

THENCE S 27 degrees 42' 20" W, 1,798.21 feet to the POINT OF BEGINNING of the herein described parcel of land;

THENCE S 09 degrees 14' 00" W, 1,202.63 feet;

THENCE N 80 degrees 44' 03" W, 1,048.97 feet;

THENCE N 09 degrees 19' 39" E, 899.09 feet;

THENCE S 80 degrees 46' 15" E, 302.80 feet;

THENCE N 09 degrees 13' 47" E, 302.86 feet;

THENCE S 80 degrees 46' 18" E, 744.71 feet to the Point of Beginning.

Being 26.82 acres, more or less, in area, and being subject to any, and all existing easements for underground utilities located therein.

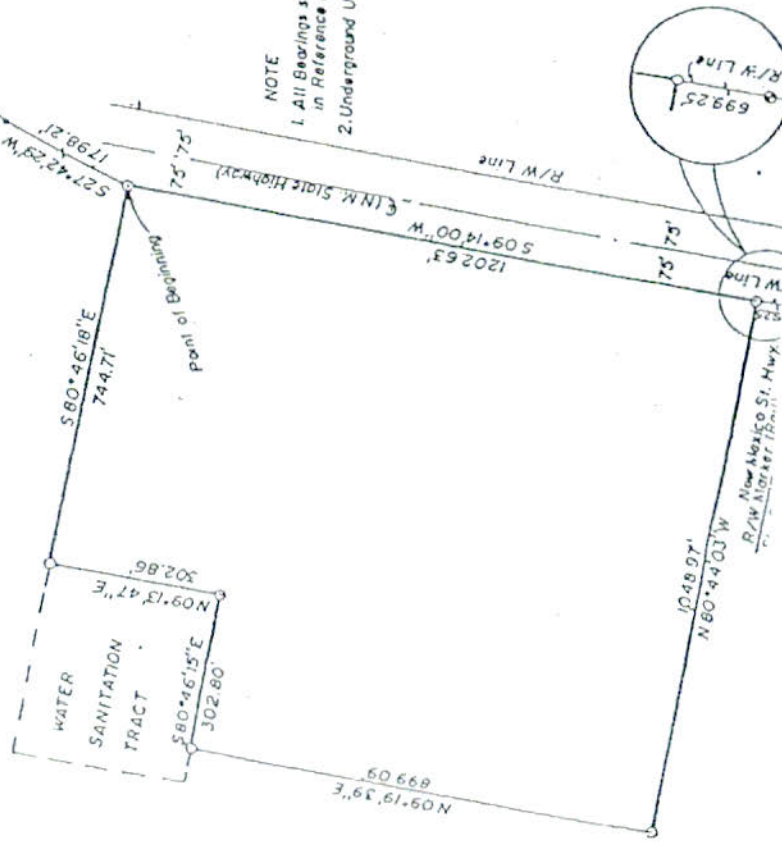
Surveyed July 02, 1985 by the Office of Navajo Land Development, The Navajo Tribe, Window Rock, Navajo Nation, Arizona.



# CERTIFICATION OF SURVEY

I HEREBY CERTIFY THAT THE PLAT WAS PREPARED FROM NOTES OF ACTUAL SURVEYS MADE IN THE FIELD, AND THAT THE REPRESENTATION SHOWN HEREON IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

*Melvin J. Bautista*  
MELVIN J. BAUTISTA, R.L.S. NO. 7437, STATE OF NEW MEXICO



NOTE  
1. All Bearings shown hereon are in Reference to TRUE NORTH  
2. Underground Utilities not Located

## TRACT DESCRIPTION

A PARCEL OF LAND SITUATED WITHIN LAND MANAGEMENT DIST. NO. 12 OF THE NAVAJO RESERVATION, IN THE VICINITY OF ROCK, SAN JUAN COUNTY, STATE OF NEW MEXICO, AND IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE at the Northeast Corner of Section 25, Towns 30 North, Range 18 West, New Mexico Principal Meridian

THENCE run S 41° 08' 07" W. 5,182.72 feet;

THENCE S 27° 42' 29" W. 1,798.21 feet to the POINT OF BEGINNING of the herein described parcel of land;

THENCE S 09° 14' 00" W. 1,202.63 feet;

THENCE N 80° 44' 03" W. 1,048.97 feet;

THENCE N 09° 19' 39" E. 899.09 feet;

THENCE S 80° 46' 15" E. 302.80 feet;

THENCE N 09° 13' 47" E. 302.86 feet;

THENCE S 80° 46' 18" E. 744.71 feet to the Point of Beginning.

Being 26.82 acres, more or less, in area, and being subject to any and all existing easements for underground utilities located therein.

Surveyed July 02, 1985 by the Office of Navajo Land Development, The Navajo Tribe, Window Rock, Navajo Nation, Arizona.

**onid**

SHIPROCK SHOPPING CENTER

26.82 AC. ±

DISTRICT 12-NAVAJO INDIAN RESERVATION

Partly in NE 1/4 OF SEC. 35 & NW 1/4 OF SEC. 36, T30N, R1E  
SHIPROCK, SAN JUAN COUNTY, NEW MEXICO

SURVEYED BY	T.C.
DRAWN BY	K.R.J.
APPROVED BY	M.J.B.
FIELD BOOK NO.	378.30
JOB NUMBER	7437

1. All Bearings shown hereon are derived from B.L.A. Rept.-O.T. Hwy map for Route # 9 Project at NSRBI and refer to TRUE NORTH.
2. ROAD NOT TO SCALE.

A PARCEL OF LAND SITUATED WITHIN THE SOUTHWEST QUARTER (SW/4) OF SECTION 17 TOWNSHIP 17 NORTH, RANGE 12 WEST NEW MEXICO PRINCIPAL MERIDIAN, IN THE VICINITY OF CROWNPOINT, MCKINLEY COUNTY, STATE OF NEW MEXICO AND IS BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMITTEE at a Navajo Control System Brass Cap. St-  
armed 1184-3; Found Limbaugh Aerial Survey. Monogram

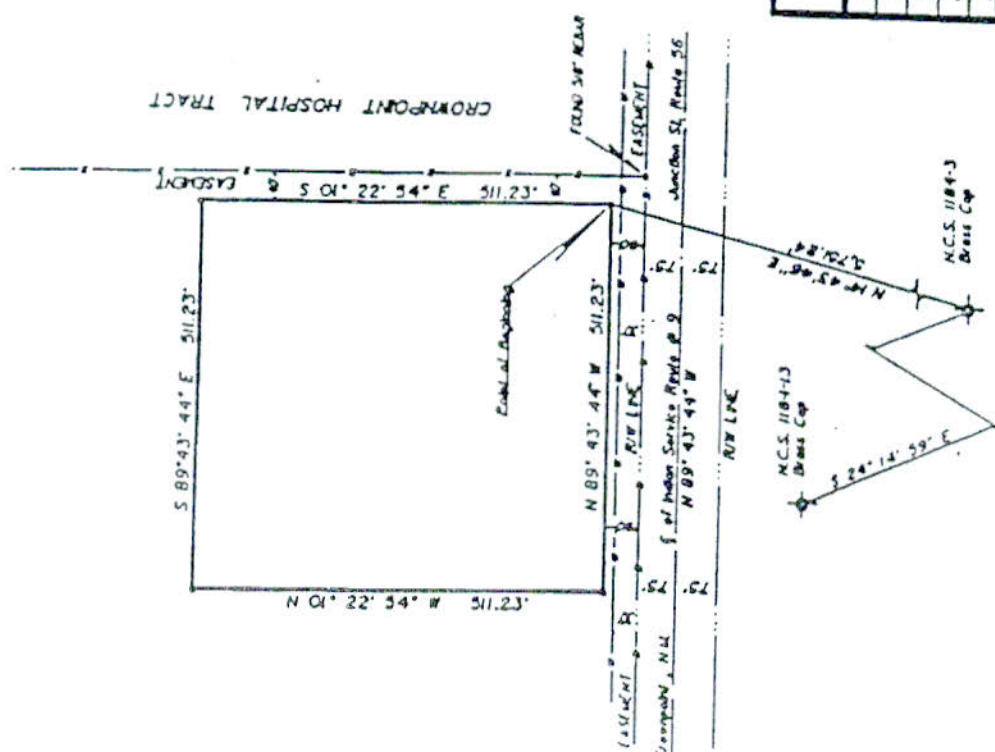
THENCE run N 14° 43' 46" E. 5.751.24 feet to the POINT OF BEGINNING of the herein described parcel of Land;

QUINCE	N 89° 43' 44" W,	511.23 feet.
QUINCE	N 01° 22' 54" W,	511.23 feet.
QUINCE	S 89° 43' 44" E,	511.23 feet.
QUINCE	S 01° 22' 54" E.	511.23 feet.

Point of Beginning

ing 6.00 acre(s), more or less, in area, and subject to any and all existing easements for underground utilities located therein.

Surveyed May 21, 1967 by the Office of Navajo Land Administration, The Navajo Tribe, Window Rock, Navajo Nation, Arizona.



<b>old</b>	SURVEYED BY	R.J.
	DRAWN BY	J.B.
	APPROVED BY	
	FIELD BOOK No.	LFI-100
	JOB NUMBER	.006
	SCALE 1" =	200'

**CROWNPOINT SHOPPING CENTER**

---

6.00 AC. ±

**DISTRICT 15-NAVAJO INDIAN RESERVATION  
SW/4 of Sec. 17, T17N, R12W, N.M.P.M.  
CROWNPOINT, MCKINLEY CO., NEW MEXICO.**

THE UNIVERSITY OF CHICAGO

also Fence Line      --- Fence Row      O Denotes Powerline      O Denotes Section Corner

## TRACT DESCRIPTION

A PARCEL OF LAND SITUATED WITHIN THE SOUTHWEST QUARTER (SW/4) OF SECTION 17 TOWNSHIP 17 NORTH, RANGE 12 WEST NEW MEXICO PRINCIPAL, MERIDIAN, IN THE VICINITY OF CROWNPOINT, MCKINLEY COUNTY, STATE OF NEW MEXICO AND IS BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE at a Navajo Control System Brass Cap, Stamped 1184-3; Found Limbaugh Aerial Survey Monument.

THENCE run N 14°43' 46" E, S, 751.24 feet to the POINT OF BEGINNING of the herein described parcel of land;

THENCE N 89°43' 44" W, 511.23 feet;

THENCE N 01°22' 54" W, 511.23 feet;

THENCE S 89°43' 44" E, 511.23 feet;

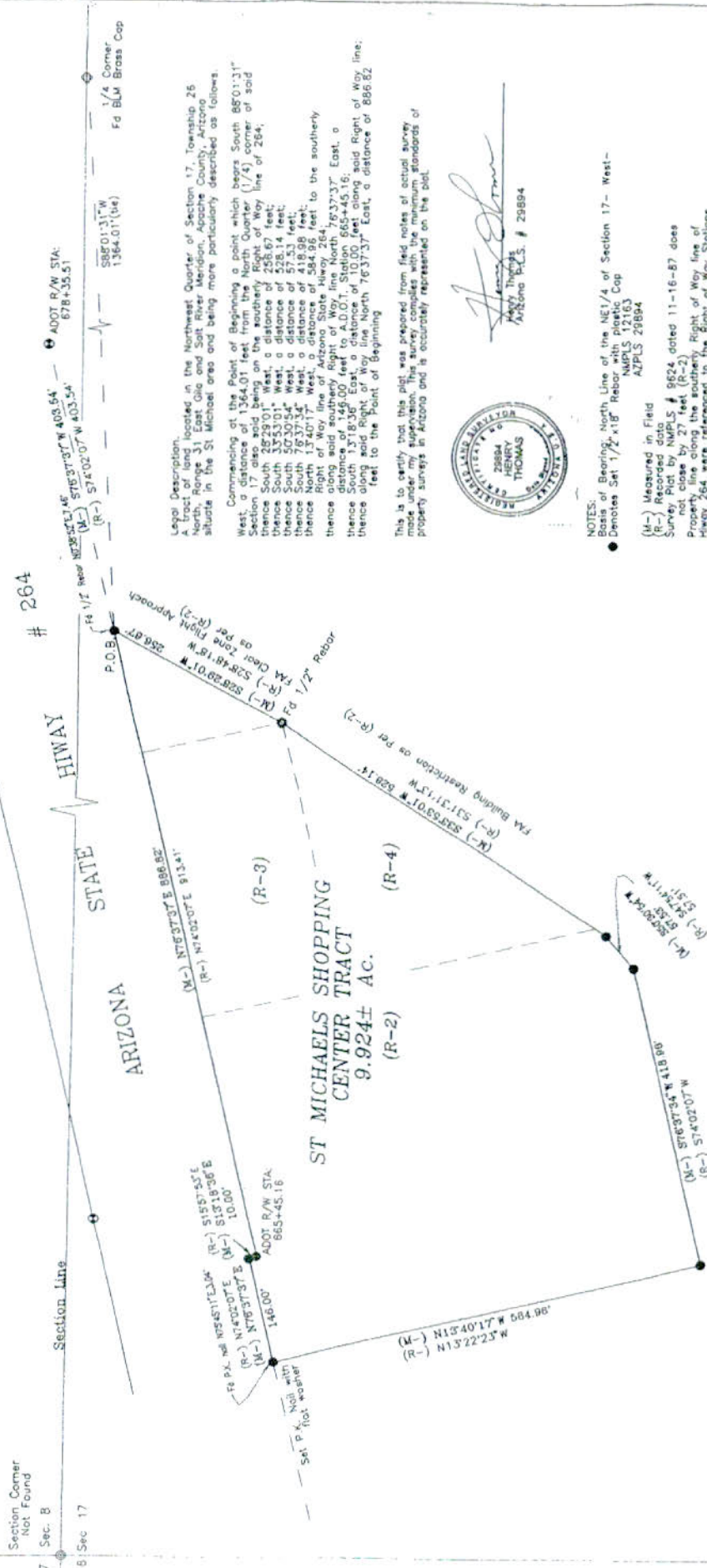
THENCE S 01°22' 54" E, 511.23 feet;

to the Point of Beginning.

Being 6.00 acre(s), more or less, in area, and subject to any and all existing easements for underground utilities located therein.

Surveyed May 21, 1987 by the Office of Navajo Land Administration, The Navajo Tribe, Window Rock, Arizona.





**Legal Description.**  
 A tract of land located in the Northwest Quarter of Section 17, Township 26 North, Range 31 East Gila and Salt River Meridian, Apache County, Arizona situated in the St Michael area and being more particularly described as follows:  
 Commencing at the Point of Beginning a point which bears South 85°01'31" West, a distance of 1364.01 feet from the North Quarter (1/4) corner of said Section 17 also said being on the southerly Right of Way line of 264, thence South 25°29'01" West, a distance of 256.67 feet; thence South 50°30'14" West, a distance of 528.14 feet; thence South 76°37'37" West, a distance of 513.98 feet; thence South 76°37'37" West, a distance of 584.86 feet to the southerly Right of Way line of Arizona State Hwy 264, thence along said southerly Right of Way line North 76°37'37" East, a distance of 663+45.16 feet to the Point of Beginning, said Right of Way line, thence South 13°18'35" East, a distance of 10.00 feet to the Point of Beginning, thence along said Right of Way line North 76°37'37" East, a distance of 886.82 feet to the Point of Beginning.

This is to certify that this plat was prepared from field notes of actual survey made under my supervision. This survey complies with the minimum standards of property surveys in Arizona and is accurately represented on the plat.



*Henry Thomas*  
 Henry Thomas  
 Arizona P.L.S. # 29894

**NOTES:**  
 Basis of Bearing: North Line of the NE1/4 of Section 17 - West - Denotes Set 1 1/2" x 18" Rebar with plastic Cap  
 NMPLS 12163  
 AZPLS 29894

(M-) Measured in Field  
 Survey Plat by NMPLS # 9624, dated 11-16-87 does not close by 27 feet (R-2)  
 Property line along the southerly Right of Way line of Hwy 264 were referenced to the Right of Way Stations mentioned in Plat by NMPLS 9624

**REFERENCES:**  
 (R-1) USBLM Township Plat T26 N, R31 E G&SRM  
 (R-2) A Survey Plat for Navajo Nation Shopping Center  
 (R-3) A Survey for Churches Chicken Tract by NMPLS #9624  
 (R-4) Survey for the Window Rock Tire Center by NMPLS #9624  
 (R-5) Corner of the Window Rock Area  
 (R-6) Right of Way Map of Arizona Hwy # 264

NW1/4 of Section 17  
 Township 26 North, Range 31 East G&SRM  
 Apache County, Arizona



<b>RED VALLEY SURVEY</b>		App'd By	DATE
P.O. BOX 2827, Shiprock NM 87420	1/1/88	HT	8-04-03
<b>ST MICHAELS SHOPPING CENTER</b>		Drawn By	
A Resurvey of the		SCALE	1"=100'
9.924± AC.			
Fort Defiance Agency			
Navajo Indian Reservation			
NW1/4 Sec. 17			

### Legal Description

A tract of land located in the Northwest Quarter of Section 17, Township 26 North, Range 31 East Gila and Salt River Meridian, Apache County, Arizona situate in the St. Michael area and being more particularly described as follows:

Commencing at the Point of Beginning a point which bears South  $88^{\circ} 01' 31''$  West, a distance of 1364.01 feet from the North Quarter ( $1/4$ ) corner of said Section 17 also said being on the southerly Right of Way line of 264;

Thence South  $28^{\circ} 29' 01''$  West, a distance of 256.67 feet;

Thence South  $33^{\circ} 53' 01''$  West, a distance of 528.14 feet;

Thence South  $50^{\circ} 30' 54''$  West, a distance of 57.53 feet;

Thence South  $76^{\circ} 37' 34''$  West, a distance of 418.98 feet;

Thence North  $13^{\circ} 40' 17''$  West, a distance of 584.96 feet to the southerly Right of Way line of Arizona State Hiway 264;

Thence along said southerly Right of Way line North  $76^{\circ} 37' 37''$  East, a distance of 146.00 feet to A.D.O.T. Station 665+45.16;

Thence South  $13^{\circ} 18' 36''$  East, a distance of 10.00 feet along said Right of Way line;

Thence along said Right of Way line North  $76^{\circ} 37' 37''$  East, a distance of 886.82 feet to Point of Beginning.

PARCEL 'B'

LEGAL DESCRIPTION

A certain tract of land situate in Land Management District No. 18 of the Navajo Indian Reservation at Navajo, McKinley County, New Mexico, being more particularly described as follows:

Commence at Mile Post No. 76, a found Bureau of Land Management brass cap monument, dated 1988, on the Arizona and New Mexico State Line;

Thence N.65°13'05"E., 3,297.80 feet;

Thence N.87°01'16"E., 607.66 feet to the Point of Beginning of Parcel B, a point on a curve of the easterly right-of-way line of Indian Service Route No. N12;

Thence on said right-of-way line and on the arc of a curve concave to the northeast, having a radius of 1,834.86 feet, run a chord distance of 546.59 feet, the bearing of said chord being N.13°38'20"W.;

Thence S.88°13'51"E., 211.97 feet;

Thence S.88°13'51"E., 129.33 feet;

Thence S.16°04'20"E., 441.53 feet;

Thence S.73°55'40"W., 348.09 feet to the Point of Beginning of the herein described Parcel B containing 4.000 acres more or less.

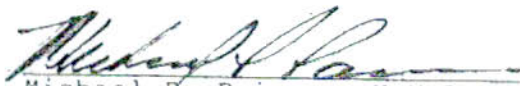
LEGEND

- ⊙ Right-of-way brass cap monument
- ⊙ Found rebar
- Rebar set w/cap stamped R.L.S. 9624
- Calculated corner

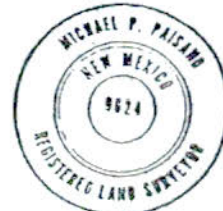
SURVEYOR'S CERTIFICATE

I Michael P. Paisano, New Mexico Registered Land Surveyor No. 9624, licensed and registered under the laws of the State of New Mexico, do hereby certify that this plat was prepared by me, or under my direct supervision by notes taken in the field, and that the survey is true and correct to the best of my knowledge and belief.

The word "certify" as used herein is understood to be an expression of professional opinion by the surveyor, based on my best knowledge, information and belief. As such, it constitutes neither a guarantee nor warranty, expressed or implied.



Michael P. Paisano, N.M.R.L.S. No. 9624







Found Rebar  
w/ Alum. cap

CHEVRON  
TRACT

SHEPHERD

SPRINGS

BOULE

CI

PARCEL 'A'

9.281 Ac.

(13.281 Ac. Total)

EXISTING  
CONCRETE PAD

NEIGHBORHOOD  
FACILITIES  
BUILDING

PARCEL 'B'

4.000 Ac.

NAVAJO

INDIAN

CLEVELAND

SERVICE

BOULEVARD

ROUTE

R.O.W.

N12

N 13° 38' 20" W

R.O.W.

CI

546.59'

N 01° 46' 09" E

168.82'

S 88° 13' 51" E

211.97'

129.33'

S 16° 04' 20" E

441.53'

348.09'

S 73° 55' 40" W







TRACT 'A'

Pinon Shopping Center Tract

TRACT DESCRIPTION

A PARCEL OF LAND SITUATED WITHIN LAND MANAGEMENT DISTRICT NO. 4 OF THE NAVAJO INDIAN RESERVATION IN THE VICINITY OF PINON, NAVAJO COUNTY, STATE OF ARIZONA, AND IS BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE at the Intersection of Indian Service Route No. 4 and Indian Service Route No. 41 at Centerline Point on Tangent Station 1919+81.82 of Indian Service Route No. 4;

THENCE run N 08° 00' 15" W, 144.69 feet to the POINT OF BEGINNING of the herein described parcel of land;

THENCE N 53° 20' 00" W, 289.92 feet;

THENCE N 62° 55' 47" W, 228.36 feet;

THENCE N 64° 46' 23" W, 223.87 feet;

THENCE N 67° 44' 42" E, 446.74 feet;

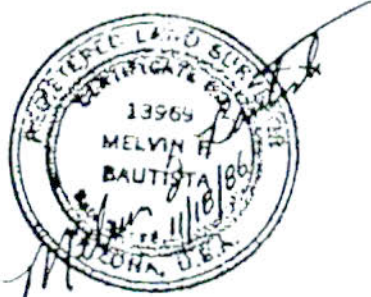
THENCE N 12° 54' 43" E, 652.06 feet;

THENCE S 53° 19' 15" E, 766.54 feet;

THENCE S 36° 39' 57" W, 896.79 feet to the Point of Beginning.

Being 13.16 acres, more or less, in area, and being subject to any and all existing easements for underground utilities located therein.

Surveyed October 22, 1986 by the Office of Navajo Land Administration, The Navajo Tribe, Window Rock, Navajo Nation, Arizona.



790-973-92

TRACT 'B'

Pinon Shopping Center Tract

TRACT DESCRIPTION

A PARCEL OF LAND SITUATED WITHIN LAND MANAGEMENT DISTRICT NO. 4 OF THE NAVAJO INDIAN RESERVATION IN THE VICINITY OF PINON, NAVAJO COUNTY, STATE OF ARIZONA, AND IS BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE at the Intersection of Indian Service Route No. 4 and Indian Service Route No. 41 at Centerline Point on Tangent Station 1919+81.82 of Indian Service Route No. 4;

THENCE run N 08° 00' 15" W, 144.69 feet;

THENCE N 53° 20' 00" W, 289.92 feet;

THENCE N 62° 55' 47" W, 228.36 feet;

THENCE N 64° 46' 23" W, 223.87 feet to the POINT OF BEGINNING of the herein described parcel of land;

THENCE N 67° 50' 05" W, 140.61 feet;

THENCE N 69° 43' 13" W, 283.03 feet;

THENCE N 79° 47' 08" W, 732.75 feet;

THENCE N 10° 12' 03" E, 179.93 feet;

THENCE S 79° 48' 04" E, 644.60 feet;

THENCE N 10° 12' 21" E, 617.44 feet;

THENCE S 80° 44' 06" E, 912.14 feet;

THENCE S 12° 54' 43" W, 652.06 feet;

THENCE S 67° 44' 42" W, 446.74 feet to the Point of Beginning.

Being 19.18 acres, more or less, in area, and being subject to any and all existing easements for underground utilities located therein.

Surveyed October 22, 1986 by the Office of Navajo Land Administration, The Navajo Tribe, Window Rock, Navajo Nation, Arizona.



CERTIFICATION OF SURVEY  
I HEREBY CERTIFY THAT THE PLAT WAS PREPARED FROM NOTES OF  
ACTUAL SURVEYS MADE IN THE FIELD, AND THAT THE REPRESENTATION  
P.O.T. Sta. 555+25.15 SHOWN HEREON IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND  
BELIEF.  
P.O.T. Sta. 555+25.15 SHOWN HEREON IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND  
BELIEF.  
P.O.T. Sta. 555+25.15 SHOWN HEREON IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND  
BELIEF.

TRACT DESCRIPTION  
A PARCEL OF LAND SITUATED WITHIN LAND MANAGEMENT DISTRICT NO  
07 OF THE NAVAJO INDIAN RESERVATION IN THE VICINITY OF  
DILCON, NAVAJO COUNTY, STATE OF ARIZONA, AND IS BEING MORE  
PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE at the Bureau of Indian Affairs Right of Way Brass  
cap situated on the Easterly Line of Indian Service Route  
No. 60 at Centerline Point of Tangent Station 555+25.15;

THENCE run S 13° 43' 40" E, 63.75 feet to the  
POINT OF BEGINNING of the herein described parcel of land;

THENCE S 79° 52' 40" E, 660.00 feet;

THENCE S 19° 19' 42" E, 717.02 feet;

THENCE N 80° 11' 34" W, 585.14 feet;

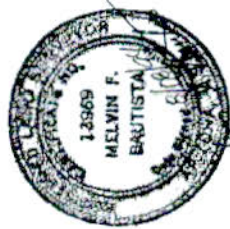
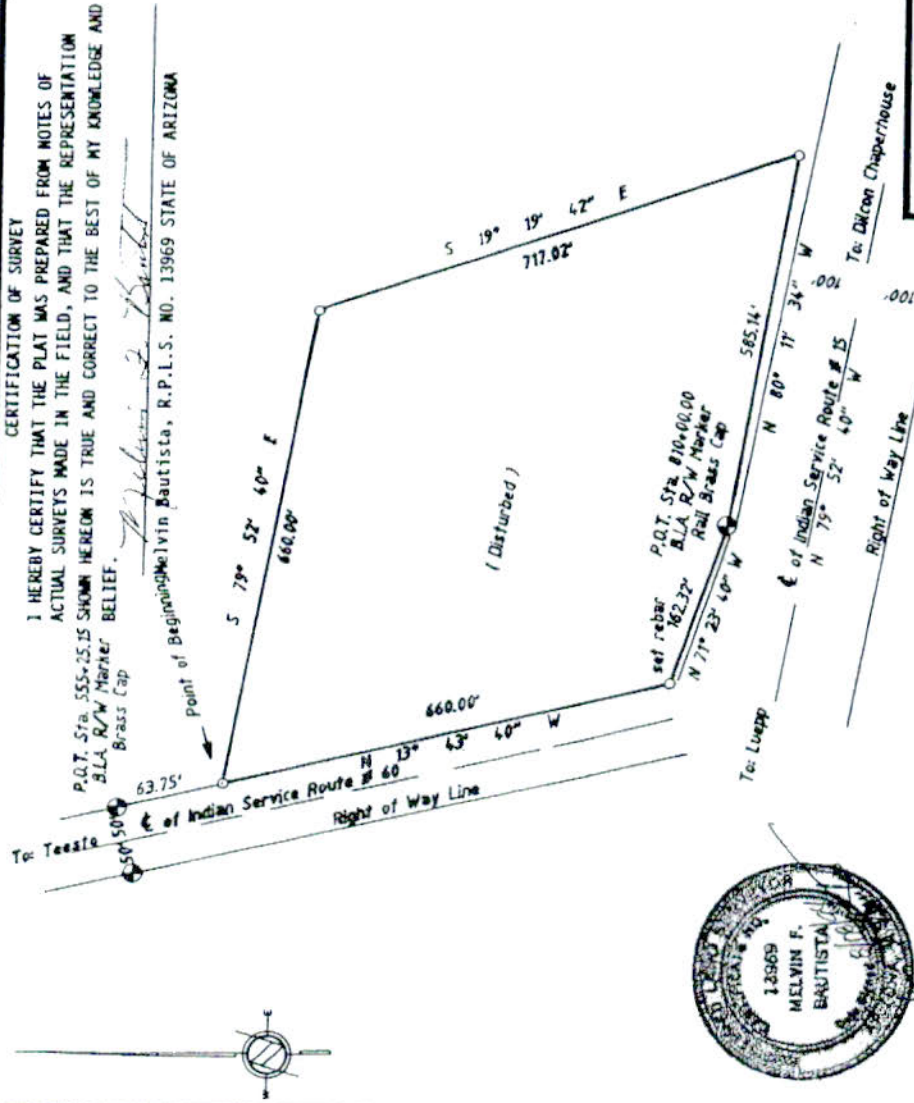
THENCE N 71° 23' 40" W, 162.32 feet;

THENCE N 13° 43' 40" W, 660.00 feet to the  
Point of Beginning.

Being 10.00 acre(s), more or less, in area, and being subject  
to any and all existing easements for underground utilities  
located therein.

Surveyed July 05, 1994 by the Navajo Land Department  
The Navajo Tribe, Window Rock, Navajo Nation, Arizona.

EXHIBIT "A"



NOTES:  
1. All bearings shown hereon are derived from B.L.A. Right of Way Map  
for Indian Service Route No. 15, Project NIS 161 and refer  
to TRUE NORTH.  
2. Underground utilities not located.

Dilcon Land Development Tract	
10.00 Acre±	
District-07, Navajo Indian Reservation	
Dilcon, Navajo County, Arizona	
SURVEYED BY	AM
DRAWN BY	BB
APPROVED BY	LJS
FIELD BOOK NO.	556.36
JOB NUMBER	203
SCALE	1" = 200'



**TAB 6**



NAVAJO  
NATION  
SHOPPING  
CENTERS  
INCORPORATED

**LEASE  
ADMINISTRATIVE  
PLAN**

## ADMINISTRATIVE PLAN

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## **1.0 Executive Summary**

The Navajo Nation Council (NNC) by Resolution CO-63-02 approved Articles of Incorporation and Bylaws for the Navajo Nation Shopping Centers, Inc. (NNSCI) on October 24, 2002, thereby established the NNSCI as a Corporation.

This Administrative Plan (Admin Plan) applies to pad sites. This Admin Plan is in compliance with the Uniform Business Leasing Regulations of 2008 (Uniform Regulations) and Navajo Nation Business Leasing Regulation of 2005 (Tribal Regulations).

### **1.1 Legal Framework:**

1. 25 U.S.C. § 415(e), Tribal Regulations:
2. Uniform Regulations.
3. The NNC Resolution Number CO-63-02, the Articles of Incorporation and the Bylaws of the NNSCI.

### **1.2 Amendment/Recession**

1. The Admin Plan may be amended by written recommendation from the NNSCI and Navajo Nation Division of Economic Development and to be approved by the Resources and Development Committee (RDC) of the NNC.
2. Upon determination by the RDC that the NNSCI 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 RDC its decision.

### **1.3 Reports:**

The NNSCI shall provide an initial report to the RDC not less than six (6) months from the date this Admin Plan is approved by the RDC. Subsequent reports are due annually thereafter.

### **1.4 Administrative Framework:**

NNSCI is established for the purpose of creating an environment that is conducive to promoting and developing businesses within the communities of the Navajo Nation.

1. Objectives:

- a. Lease spaces on pad sites to individuals and businesses wishing to operate on the Navajo Nation.
- b. Provide products and services to the Navajo Nation communities.
- c. Promote and create employment and business opportunities for Navajos in the commercial, industrial, tourism and other private sectors of the Navajo economy.
- d. Maintain and strengthen landlord-Lessee relationship and promote open-door communication.
- e. Develop and manage a comprehensive plan to expand current shopping centers and/or develop new shopping centers.

1.5 Severability:

If a court of competent jurisdiction or a tribunal of Navajo Nation determines a provision in the Admin Plan is invalid, void or unenforceable, it shall be stricken and the remainder shall remain in full force and effect.

1.6 Organization:

The NNSCI Leasing Department is responsible for business site leasing.

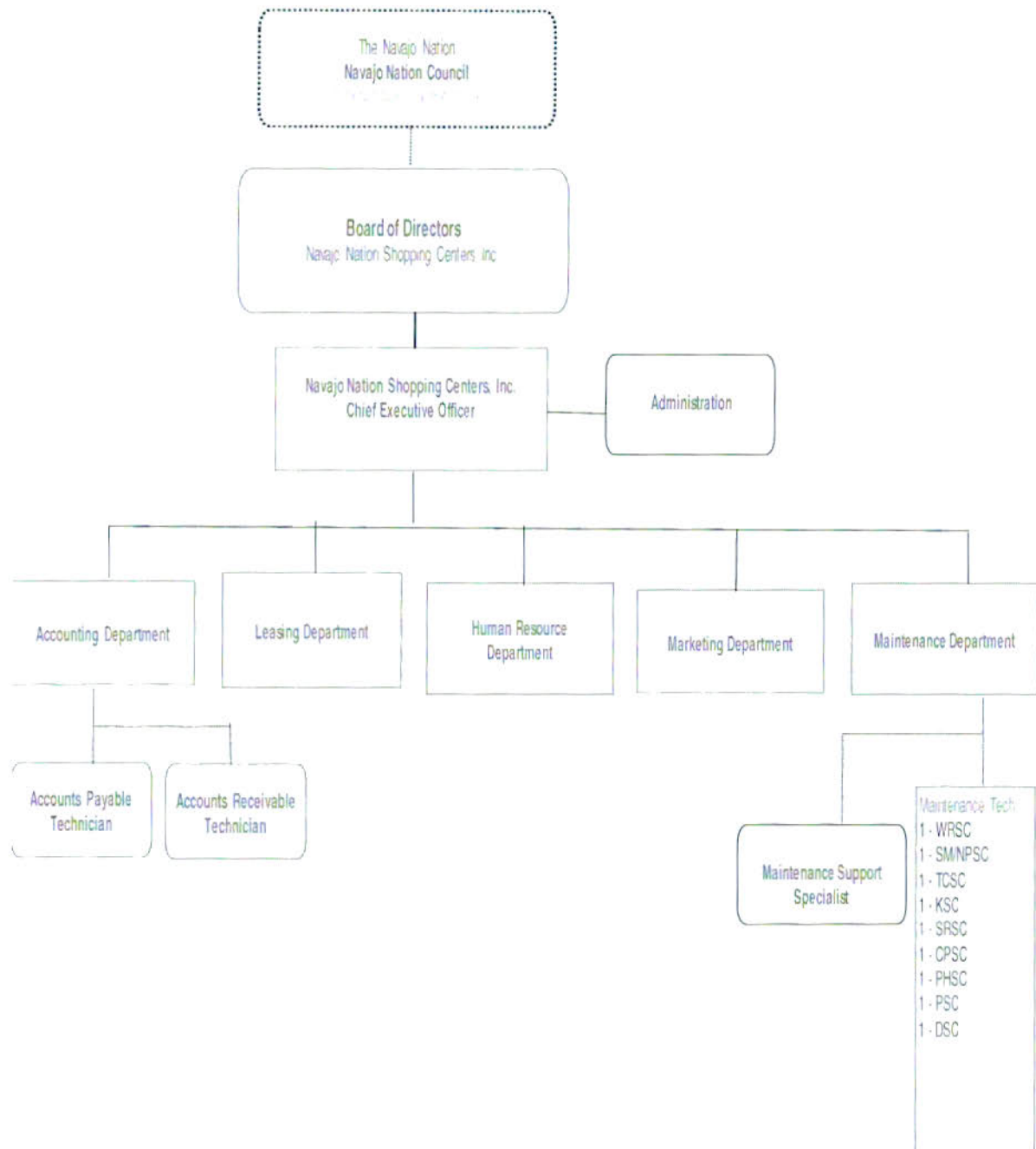
1.7 Navajo Nation Privacy and Access to Information Act

Information or documentation requested shall be available to the extent provided by the Navajo Nation Privacy and Access to Information Act, 2 N.N.C. § 81 *et Seq.*



# Navajo Nation Shopping Centers, Incorporated

## Organizational Chart



## 1.8 Services

There shall be an open line of communication with potential, new, and existing lessee.

### 1. Literature:

Brochures shall be available to provide general information to obtain a lease.

### 2. Technical Assistance:

Assistance shall include but not limited to obtaining a business site lease and marketing.

## 1.9 Professional Development:

Staff responsible for business site leasing shall attend workshops/seminars periodically to enhance their knowledge on business, real estate, finance, or other courses related to the objectives of the Admin Plan.

## 1.10 Approving Entity:

1. The Approving Committee shall be established as provided in the Uniform Regulations.
2. The Approving Committee shall consist of the following:
  - a. Chief Executive Officer;
  - b. Controller;
  - c. Leasing Manager
3. The Approving Committee shall not have terms.

## 2.0 Pre-Business Site Lease

### 2.1 General Information:

The Leasing Department (Department) is the contact for prospective lessees. A prospective lessee can be an individual (sole proprietorship) or any legally recognized business entity or organization. A legally recognized entity or organization (LRE) must register with the Business Regulatory Department, Division of Economic Development (BRD) and be in good standing under the Navajo Nation laws.

### 2.2 Definitions for purposes of the Admin Plan and Management Plan (Mgmt Plan). Other definitions may be included in the actual Lease or tribal regulations:

1. *Approving Entity*: the NNSCI Leasing Approval Committee consist of CEO, Leasing Manager, and Controller.
2. *Assignment*: an agreement between a Lessee and an Assignee whereby the Assignee acquires all of the Lessee's rights and assumes all the Lessees obligations under a Lease.
3. *Bond*: security interest providing security for the performance of a duty or the payment of a debt. The bond can be furnished by the Lessee or by a third-party surety.
4. *Business Site Lease ("Lease")*: any agreement granting the Lessee a right to possess Navajo Nation Trust Land under the authority of this Admin Plan.
5. *Business Leasing Transactions*: Lease, Sublease, Renewal, Modification, Novation, Assignment, Collateral Assignment, Revocable Use Permit, Amendments or Emergency Operating Agreement, and Mutual/Unilateral Termination.
6. *Complex assignments*: an assignment of rights, duties and liabilities.
7. *Consumer Price Index*: An indicator of rising prices or inflation used to measure the impact of inflation upon consumers.
8. *Construction Bond*: Security interest providing security for the completion of improvements and/or construction. The bond can be furnished by the lessee, contractor, or by a third-party surety.
9. *Department*: The NNSCI Leasing Department.



10. *Development Period*: the time period from when a Lease is executed to when improvements are expected to be substantially completed.
11. *Emergency Operating Agreement*: An Agreement between the NNSCI and the Operator for emergency use of shopping center land for a specified purpose. An Agreement conveys no possessory interest and may be revoked at will.
12. *Environmental Reviewer*: an individual that has the authority set forth in the Tribal Regulations.
13. *Exigent Circumstance*: a situation that is beyond the control of the applicant.
14. *Lease Package*: all required documents necessary to grant a Lease, Permit or Agreement.
15. *Modification*: a change in the terms and conditions of the Lease transactions.
16. *Mortgage of Leasehold Interest*: the collateralization of the leasehold interest in the Lessee's lease as security for payment of a specified debt upon approval by NNSCI and execution of the leasehold mortgage instrument by the appropriate authority of the Navajo Nation.
17. *Nominal Rent*: insignificant rent.
18. *Non-Profit*: an entity that has committed legally not to distribute any net earnings (profit) to individuals with control over it, such as members, officers, directors, or trustees, except for services rendered and goods provided.
19. *Novation*: a modification of the Lease that permits the Lessee to voluntarily consent to the leasing jurisdiction of the Tribal Regulations.
20. *Pad site*: standalone tract of land.
21. *Primary Term*: the initial term of the Lease, Permit or Agreement.
22. *Revocable Use Permit*: a written agreement for the revocable privilege to use shopping center land and is not a vested possessory interest in the land.

23. *Security*: a Certificate of Deposit ("CD"), Letter of Credit ("LOC"), cash or Bond providing security for the payment of the rental and may include performance of duty.
24. *Simple assignments*: an assignment of rights and duties.
25. *Sublease*: a written agreement by which the lessee grants a person a right of possession no greater than that held by the Lessee under the Lease.
26. *Termination of lease*: The Lease would be terminated before the expiration of the Lease term. The term cancellation would also mean termination.

### 2.3 Advertisement

Department may advertise available commercial land for leasing.

### 2.4 Administrative Fees

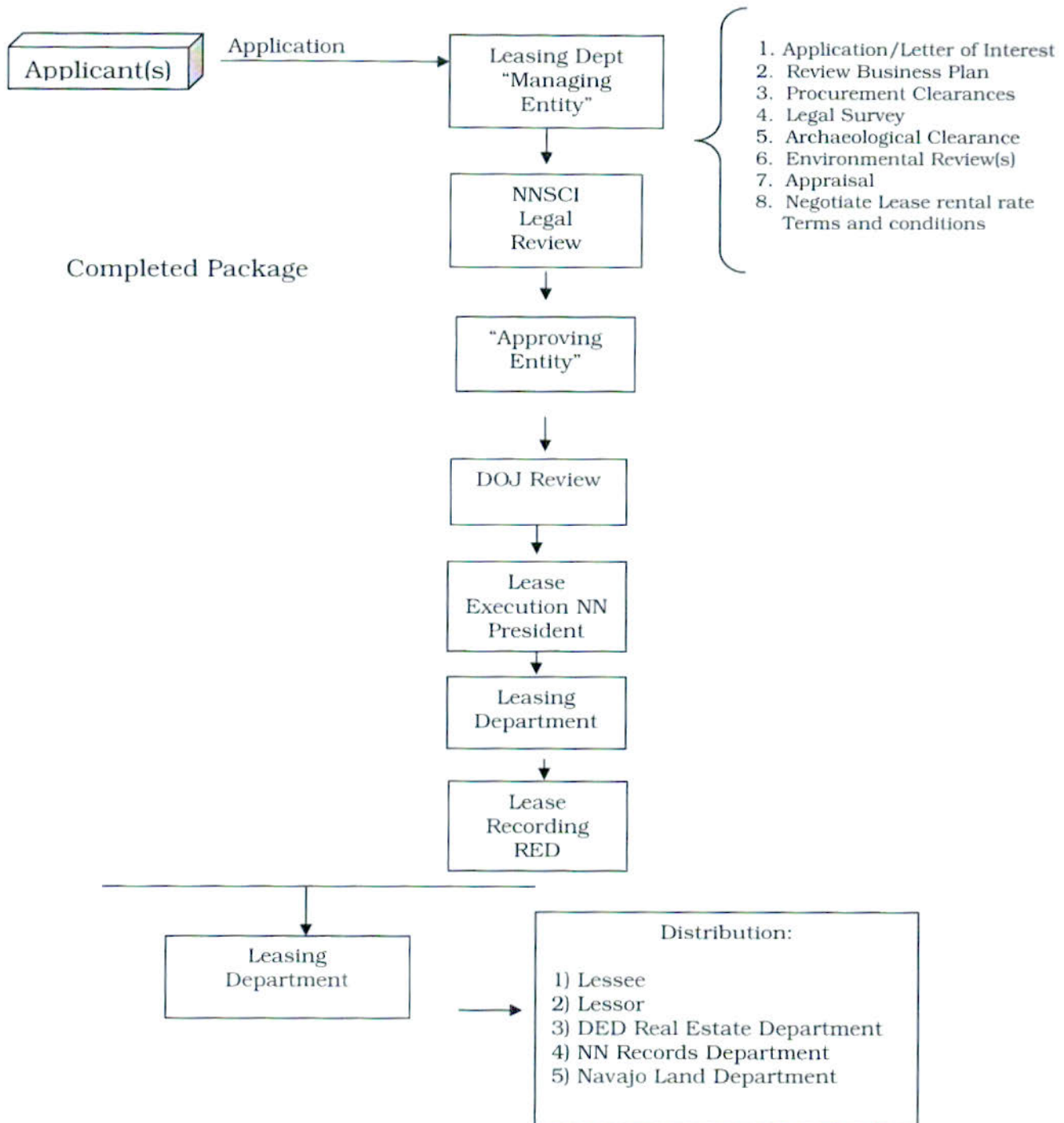
Administrative Fee(s) shall be due and payable upon execution of all Business Leasing Transactions. (Attached as the Exhibit "A" is Fee Schedule). All payments shall be made in the form of one of the following: money order, cashier's check, ACH and credit card and made payable to "Navajo Nation Shopping Centers, Inc.".

1. Administrative fees are non-refundable.
2. There shall be no waiver or reduction of an administrative fee to a Lease or Permit.

The Department has the discretion to adjust the admin fee schedule periodically without RDC's approval.

### 3.0 Navajo Nation Shopping Centers, Inc. Lease Approval Flow Chart

#### LEASE APPROVAL PROCESS





#### **4.0 New Lease** (diagrams the process on 3.0)

Responsibilities of Applicant:

##### **4.1 Applicant:**

1. Application and Letter of Interest.
2. Business Plan including financial statement.
3. If applicable, LRE must submit Proof of registration with Business Regulatory and current Certificate of Good Standing dated within 12 months of the application.
4. If applicable, obtain and provide ethics clearance to the Department.

##### **4.2 Leasing Department**

Upon receipt of the Letter of Interest and application, the Department shall:

1. Obtain procurement clearances from the following (Respective Tribal Departments):
  - a. Accounts Receivable, Navajo Nation Office of the Controller;
  - b. Office of Navajo Tax Commission;
  - c. Office of the Controller Credit Services;
  - d. Support Services Department, Division of Economic Development; and
  - e. Navajo Nation Shopping Centers, Inc.
2. Due diligence to be performed upon the Applicant by reviewing the submitted required documents in section 4.1 and 4.2 of the Admin Plan. Department may request additional information from the Applicant to complete the due diligence process. An applicant may be denied a lease based upon the result of the due diligence performed by the Department.
3. Obtain a Compliance Determination and submit the environmental summary sheet to RED, proceed to 3.0 of the Mgmt Plan.
4. Obtain legal survey and legal description of the proposed pad site and submit to RED for review.

5. Negotiate terms and conditions of the Lease.
  - a. Term
    - 1) Primary Term shall not exceed 25 years.
    - 2) There may be options to renew for up to two additional terms, each term may not exceed 25 years.
    - 3) Term shall be based on the economic viability of the business.
  - b. Rental shall be based on Fair Annual Lease Value through one of the following: Dollars and Cents of International Council of Shopping Centers ("ICSC"), independent Appraisal or similar or same commonly accepted method of evaluation;
  - c. Rent may include the following or combination of the following:
    - 1) Guaranteed Minimum Annual Rental;
    - 2) Percentage Rental;
    - 3) Common Area Maintenance; or
    - 4) Other rent that may apply to the industry
  - d. Rental may be reduced if:
    - 1) Undeveloped land;
    - 2) Leasehold Improvement;
    - 3) Substantial construction or reconstruction of the leasehold improvements are necessary.
      - a. If the Lessee fails to undertake such reconstruction, the Lessee shall be required to pay the rent that would have been due before such waiver or abatement was granted; or
      - b. If Lessee has difficulty securing financing, not to exceed six (6) months from when reduction of rent was approved by the Department.
    - 4) Environmental Clean-up;

- 5) An exigent circumstance must be justified by the Applicant in writing and provide supporting documents for Department's approval.
- e. Aside from the Development Period, rental may be postponed to allow the Lessee to secure financing; however, the postponement shall not exceed twelve (12) months from execution of the Lease.
- f. Rental review and/or adjustments:
  - 1) Leases may be reviewed every five (5) years from execution of the Lease.
  - 2) The Lessee shall be notified in writing ninety (90) days before any adjustment is made.
  - 3) Rent may be adjusted on the applicable fifth anniversary using the CPI or based on Lease rate adjustments, which shall be stipulated in the Lease.
- a. Lease rate adjustments shall be negotiated on a case by case basis which must be based on the following factors and presented in a business plan with documentation to satisfy the factors:
  - i. Proposed investment in the business by proof of capital for the investment;
  - ii. Anticipated Improvements of the business by presentation of a design or drawing for the improvement;
  - iii. Type of business, business activity for the investment and improvement; and
  - iv. Appraised value of the improvement.
- 4) 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.



g. Security Deposit:

- 1) Shall be for 2 months rent of the 1<sup>st</sup> year rental.
- 2) Security deposit may be waived if:
  - a. Applicant has been in good standing for a minimum of five (5) years with the Department;
  - b. Good Standing with Dunn and Bradstreet;
  - c. Fortune 500 Company;
  - d. Non-Profit Organizations;
  - e. Navajo Nation Departments;
  - f. Other Government Entities; or
  - g. The Security may be waived in exigent circumstances. Applicant shall submit justification and provide supporting documents for Department's approval.
- 3) Shall be submitted upon execution of the Lease.

h. Development Period:

- 1) May be granted for a period not exceeding 12 months from the date of execution of the Lease.
- 2) May be extended for exigent circumstances and must be justified by the Applicant in writing and provide supporting documents for Department's approval.

i. Insurance:

- 1) Obtain from a Nationally Accredited Insurance Company with a financial strength of at least an "A" and authorized to do business within the state where the leased premise is located.
- 2) Include the Navajo Nation, NNSCI and United States as additional insured.
- 3) Insurance shall be posted within ten (10) working days from execution of the Lease except the time has been extended by the Department.

- 4) Not be cancelled or amended without thirty (30) days prior written notice to the NNSCI.
- 5) Commercial General Liability Insurance amount shall be:  
Note that insurance may be more as specified in the Lease.
  - a. \$500,000 with a general aggregate limit for each occurrence at \$1,000,000; or
  - b. \$1,000,000 with a general aggregate limit for each occurrence at \$2,000,000, for regulated substance.
  - c. Insurance amount stated above may be reduced if the insurance quote is from a Nationally Accredited Insurance Company with a financial rating of "A".
- 6) Storage Tank sites and hazardous and regulated substances.
  - a. Pollution Liability Insurance or bond shall be an amount as specified in the Lease.
  - b. Environmental audit as provided in Part II of the Lease.
  - c. Bond, insurance or other evidence of financial responsibility to meet the requirements of 40 C.F.R. Part 280, Subpart H.
- 7) Fire and Casualty Insurance amount shall be:
  - a. Extended coverage endorsements covering not less than the full replacement value of all improvements on the leased premises; or
  - b. \$500,000 but may be reduced if:
    - i. Insurance quote is at a lower rate, or
    - ii. The Navajo Nation Risk Management Department, in writing, agrees to a lower amount.
  - c. May be postponed to:
    - i. Receipt of all approvals to commence with construction;
    - ii. Upon the first drawdown of financing the construction; or

- iii. Not to exceed 90 days from execution of the Lease.

#### 8) Construction Security

- a. Shall submit a corporate surety bond, non-revocable letter of credit, certificate of deposit or any other acceptable form of security to the Department.
- b. The NNSCI, the Navajo Nation and the United States shall be additional insureds.
- c. Shall be submitted prior to the commencement of construction or any improvements.
- d. This bond shall be an amount equal to the cost of the construction and/or improvement.

*If the applicant has not made any significant progress at the end of the three (3) months from the receipt of letter of interest, the process shall cease and the parties shall be notified in writing. Department may retain copies at its discretion.*

#### 4.3 Review Process

- 1. The Department shall prepare the Lease package and enclose the following documents:
  - a. Executive Summary;
  - b. Proposed Lease with survey plat;
  - c. Certificate of Good Standing, if applicable;
  - d. Procurement Clearances;
  - e. Environmental Summary.
- 2. The NNSCI Legal shall review the Lease package.

#### 4.4 Approval Process: The Department shall conduct the following:

- 1. Finalize Lease, prepare one (1) original of Lease document(s) and secure Applicant's signature.
- 2. Submit the Lease package to the Approving Entity for review and approval by resolution.



- a. The Approving Entity's signature serves as the approval of the Lease.

#### 4.5 Execution of Lease

1. Submit to the Department of Justice (DOJ) for review; and
2. After DOJ's review, submit to the Office of the President & Vice President for execution.

#### 4.6 Upon execution of Lease, the Department shall:

1. Assign Lease number.
2. Submit the Lease, Permit or Agreement to Real Estate Department (RED) for recording.

#### 4.7 Lease Recording and Distribution

1. RED shall record leases, subleases, assignments, amendments, encumbrances, renewals, modifications, cancellations and termination with:

Land Title and Records Office  
Southwest Regional Office  
Bureau of Indian Affairs  
PO Box 26567  
Albuquerque, NM 87125-6567

2. The Department shall distribute the Lease to the following:
  - a. Lessee;
  - b. Lessor;
  - c. NN Records Department;
  - d. DED RED; and
  - e. Navajo Land Department;

#### 4.8 Lessee(s) upon execution of Lease shall:

1. Comply with all the terms and conditions of the Lease.
2. Maintain communication with the Department.

## 5.0 Expiring Lease

Lessee intending to renew an existing Lease shall notify the Department, one (1) year prior to the expiration of the Lease.

1. Lessee must be:
  - a. Operating a business on the premises; and
  - b. In compliance with Lease terms and conditions, and applicable Navajo Nation laws and policies.
2. If a notification is not received within one (1) year prior to the expiration, the Department may consider another Applicant for the pad site.

### 5.1 Lessee shall submit the following:

1. A letter of interest to renew Lease.
2. LRE proceed to 4.1.(3) of this Admin Plan.
3. The following documentation, if applicable:
  - a. Survey Plat;
  - b. Environmental Summary Sheet;
  - c. Environmental audit.

*If the applicant has not made any significant progress at the end of the three (3) months from the receipt of the letter of interest, the process shall cease and the parties shall be notified in writing. Department may retain copies at its discretion.*

### 5.2 Department shall conduct the following:

1. Review all documents for accuracy and compliance with all applicable laws and regulations.
2. Obtain procurement clearances from the Respective Tribal Departments.
3. Obtain a ICSC, an independent Appraisal or similar or same commonly accepted method of evaluation, if applicable.

4. Negotiate terms and conditions with the prospective Lessee, proceed to 4.2.(5) of this Admin Plan.
5. Begin Review, Approval and Execution Process, proceed to Section 4.3, 4.4 and 4.5 of this Admin Plan.

5.3 Lessee Upon Approval of Lease

1. Comply with all the terms and conditions of the Lease;
2. Maintain communication with the Department.

5.4 Lease Recording and Distribution

1. Proceed to 4.7 of this Admin Plan.



## **6.0 Exercising Option to Renew Lease**

Responsibilities:

### **6.1 Lessee**

1. Submit a letter of intent to the Department to exercise an option to renew the Lease, one (1) year before the expiration of the Lease term.
2. If Lessee fails to submit the written interest to renew, the Department may consider new applications for the Lease premise.
3. Must be in compliance with the terms and conditions of the Lease and applicable Navajo Nation laws and policies.

### **6.2 Department**

1. If the Lessee is not intending to exercise this option, the Lease would expire on own terms.
2. If the Lessee is intending to exercise this option, the Department shall obtain updated procurement clearances from the Respective Tribal Departments and renegotiate the rent, for any change in economic conditions and other terms of the Lease.
3. Option to renew shall be submitted to Approving Entity for approval.

### **6.3 Lessee(s) Upon Renewal of Lease**

1. Comply with all the terms and conditions of the Lease;
2. Maintain communication with the Department.

### **6.4 Lease Recording and Distribution**

1. Record the Lease.
2. Proceed to 4.7 of this Admin Plan.

## **7.0 Assignments**

Lessee(s) intending to assign the Lease shall provide a written notice to the Department.

1. Undeveloped business sites cannot be assigned;
2. If the proposed Assignee intend to change the terms and conditions of the original Lease.
  - A. The Lessee shall modify the Lease prior to the Assignment and;
  - B. Obtain an ER, if applicable.
3. If a sale or foreclosure occurs and the Encumbrancer is the Purchaser, he/she may assign the Lease without approval of the Approving Entity or Lessee(s), provided the Assignee agrees in writing to be bound by all the terms and conditions of the Lease.
4. If the Purchaser is a party other than the Encumbrancer, the Purchaser shall obtain approval by the Approving Entity and agree in writing to be bound by all the terms and conditions of the Lease.
5. The Assignment may be either complex or simple assignment:
  - A. Complex assignment is an assignment of rights, duties and liabilities.
    - i. This assignment shall be for mergers, acquisitions, sale and any other justifiable reasons.
  - B. Simple assignment is an assignment of rights and duties.
6. If the proposed transfer of possessory interest is approved, the terms and conditions of the Lease will remain in full force and effect.

Responsibilities:

### **7.1 Assignor/Assignee**

1. Provide a letter of interest to assign the leasehold interest of the Lease with both original signatures.
2. Must be in compliance with the existing Lease terms and conditions, including applicable Navajo Nation laws and policies.

3. If proposed Assignee is a LRE, proceed to 4.1.3 of this Admin Plan.

*If the applicant has not made any significant progress at the end of the three (3) months from the receipt of the letter of interest, the process shall cease and the parties shall be notified in writing. Department may retain copies at its discretion.*

## 7.2 Department

1. Proceed to 4.4 of this Admin Plan upon receipt of all required documents.
2. If the Assignee proposes modification to the Lease, proceed to 8.0 of this Admin Plan.

## 7.3 Assignee(s) Upon Approval

1. Comply with all the terms and conditions of the Assignment and the Lease.
2. Maintain communication with the Department.

## 7.4 Lease Recording and Distribution

1. Proceed to 4.7 of this Admin Plan.



## **8.0 Modification**

### Responsibilities

#### 8.1 Lessee

1. Submit Letter of Interest, that outlines the requested terms of modification which may include, but not limited to the following:
  - a. Purposes;
  - b. Rental Adjustments;
  - c. Land Description;
  - d. Lease Improvements;
  - e. Business Ownership; and
  - f. Change of Terms and Conditions.
2. May be required to furnish additional clearances in the event of the following:
  - a. An updated ER if the purpose of the Lease is being modified;
3. An updated Survey Plat and Legal Description if the acreage of the Lease is being modified.
4. Must be in compliance with the terms and conditions of the Lease and applicable Navajo Nation laws and policies.

*If the Applicant has not made any significant progress at the end of the three (3) months from the receipt of the letter of interest, the process shall cease and the parties shall be notified in writing. Department may retain copies at its discretion.*

#### 8.2 Department

1. Review all required documents to ensure compliance with this Admin Plan and all applicable Navajo Nation laws and policies.
2. Obtain procurement clearances from the Respective Tribal Departments.

3. Rental shall be based on method indicated in 4.2.5.b of this Admin Plan.
4. Renegotiate Lease terms and conditions, if applicable.
5. Begin review, Approval and Execution Process; proceed to 4.3, 4.4 and 4.5 of this Admin Plan.

#### 8.3 Lessee(s) Upon Approval

1. Comply with all the terms and conditions of the Lease and Modification.
2. Maintain communication with the Department.

#### 8.4 Lease Recording and Distribution

1. Proceed to 4.7 of this Admin Plan.

## **9.0 Collateral Assignment of Lease**

Lessee may collateralize leasehold interest that creates a lien upon real estate encumbered in a Lease as security for the payment of a specified debt.

### **Responsibilities**

#### **9.1 Lessee**

1. Submit a written letter of interest to the Department.
2. Must be in compliance with the existing Lease terms and conditions, including applicable Navajo Nation laws and policies.

#### **9.2 Department**

1. Review Collateral Assignment of Lease and loan documents in consultation with NNSCI Legal Counsel.
2. Begin Review, Approval and Execution Process, proceed to 4.3, 4.4 and 4.5 of this Admin Plan.

#### **9.3 Recording and Distribution**

1. Proceed to 4.7 of this Admin Plan.

#### **9.4 Lessee(s) Upon Approval**

1. Shall not modify, sublease, transfer, mortgage the leasehold interest, or enter into a management agreement without prior written approval of the Lessor, and Surety of the Lease, unless otherwise stipulated in the Lease.
2. Comply with all the terms and conditions of the Lease.
3. Maintain communication with the Department.



## 10.0 Sublease

Lessee who intends to sublease shall contact the Department.

### 1. Responsibilities

#### A. Sublessor

- i. Shall provide a Letter of Interest to process a Sublease.
- ii. Must be in compliance with the existing Lease terms and conditions, including applicable Navajo Nation laws and policies.

#### B. Sublessee shall:

- i. Submit a Letter of Interest and Application.
- ii. If applicant is a LRE, proceed to 4.1.3 of this Admin Plan.
- iii. Be in compliance with applicable Navajo Nation laws and policies.

#### C. The Department shall:

- i. Review, request, and check land status. Submit ER, if applicable;
- ii. Obtain procurement clearances from the Respective Tribal Departments;
- iii. If insurance coverage is not provided, the Applicant shall sign the Indemnification document;
- iv. Upon receipt of required documents, prepare Sublease Agreement for Applicant's signature;
- v. Upon return of original signed Agreement by Applicant, submit to Approving Entity for approval;
- vi. Upon an executed Sublease, proceed to 2.4, 4.3, 4.4, 4.5 and 4.7 of this Admin Plan.

#### D. Upon approval, the Sublease shall be limited to the following:

- i. Not be for the entire leasehold premises;

- ii. Operate a separate business on the premises;
- iii. Not exceed the term of the base Lease;
- iv. Comply with all terms and conditions;

E. Maintain communication with the Department.

*If the Applicant has not made any significant progress at the end of the three (3) months from the receipt of the letter of interest, the process shall cease and the parties shall be notified in writing. Department may retain copies at its discretion.*

## **11.0 Revocable Use Permit**

### **11.1 Applicant**

1. The Applicant shall submit a written Letter of Interest to the Department.
2. Permit
  - A. Issued if:
    - i. The land is withdrawn for NNSCI purposes;
    - ii. Short term business or government operations, including special events or fundraising;
    - iii. Sale of goods and services;
  - B. Shall not be issued if the operation involves hazardous materials and petroleum products.
  - C. Rental for the daily, weekly, monthly, shall be as follows:
    - i. For-Profit:
      - a. \$50.00 a day for a term less than 30 days;
      - b. \$200.00 per month.
    - ii. Non-Profit or community service/fundraising:
      - a. \$25.00 a day for a term of less than 30 days;
      - b. \$100.00 per month.
    - iii. Rental for Permits for licensed Dealerships include, but not limited to vehicles, ATV, motorcycle, boats and mobile homes, Cellular company:
      - a. \$250.00 per day for a term less than 30 days;
      - b. \$500.00 per month.
    - iv. Service Providers such as governmental offices and/or programs are not required to pay.



D. Applicant shall submit the following unless it is for a single day.

i. Worker's Compensation Insurance

a. Amount as required by the State in which the premise is located.

ii. Commercial General Liability Insurance

a. Amount sufficient to insure the premise and Permittee.

iii. Fire and Casualty Insurance

a. Amount sufficient to insure the premises.

b. All insurers must be from a Nationally Accredited Insurance Company with a financial strength of "A" or equivalent;

c. The insurance must be maintained for the entire term of the Permit, including the renewal term.

iv. Obtain an ER, if applicable.

v. If applicant is a LRE, proceed to 4.1 of this Admin Plan.

E. Permits may be modified, subject to 11.2. A.

3. Requirements

A. Term

i. All permits shall not exceed a primary term of one (1) year. A Permit may be extended for an additional one year term.

ii. Permits shall be terminated for non-compliance of the terms and conditions of the Permit or any applicable Navajo Nation laws and policies.

iii. The Department shall immediately notify the Permittee, by certified letter within five (5) working days of the non-compliance. The letter shall include the following information:

a. Cause for termination;

b. Actual date of termination;

c. Timeframe for vacating the premises, which shall not exceed five (5) days from the termination date.

B. Security Deposit

i. Permittee shall submit Security only if seeking a Permit for a term that exceeds six (6) months.

ii. Security deposit shall be for two (2) months of rental.

*If the Applicant has not made any significant progress at the end of the three (3) months from the receipt of the letter of interest, the process shall cease and the parties shall be notified in writing. Department may retain copies at its discretion.*

11.2 Department

1. Review, request, and check land status.

2. Obtain ER, if applicable.

3. Obtain procurement clearances from the Respective Tribal Departments.

4. Obtain the Indemnification document if insurance is not provided.

5. Prepare Permit for Applicant's signature, upon receipt of required documents.

6. Submit Permit to Approving Entity for approval upon return of original signed Permit by Applicant.

7. Upon an executed Permit.

A. Assign Permit number.

B. Collect Administrative fee

C. Distribute

## **12.0 Emergency Operating Agreement**

1. Agreement shall be issued if:
  - A. Lessee abandons building and pad site;
  - B. Lessee agrees, in writing, to mutually terminate and vacate the premises; or
  - C. The Operator is not the Lessee.
2. Operator may simultaneously pursue a Lease.
3. Provide security and manages business.
4. Operators must be in compliance with applicable Navajo Nation laws and policies.
5. Rent shall be negotiated with Operator.

### **12.1 Requirement**

1. Term
  - A. Agreement shall not exceed a Primary Term of one (1) year.
  - B. Operator simultaneously pursuing a Lease shall have one option to renew by submitting a Letter of Notice to the Department. Notice must be given at least thirty (30) working days, prior to the expiration of the Primary term; provided:
    - i. Operator has begun the process for obtaining a Lease;
    - ii. Operator is not in default with the terms and conditions of the Agreement;
    - iii. Operator is in compliance with applicable Navajo Nation laws and policies;
    - iv. The renewal term shall not exceed the Primary term.
2. Termination
  - A. Agreement shall be terminated for non-compliance with the terms and conditions of the Agreement or any applicable Navajo Nation laws and policies.



- B. The Department shall notify Operator, in writing, of any non-compliance issues and shall include the following information:
  - i. Cause for termination;
  - ii. Actual date of termination; and
  - iii. Time frame for vacating the premises.

## 12.2 Applicant's responsibilities

- 1. Shall submit.
  - A. Worker's Compensation, if applicable to the Operator:
    - i. Amount as required by the State in which the premises.
  - B. Commercial General Liability Insurance:
    - i. Amount sufficient to insure the premises.
  - C. Fire and Casualty Insurance:
    - i. Amount sufficient to insure the premises.
  - D. All insurers must be from a Nationally Accredited Insurance Company with a financial strength of "A" or equivalent.
- 2. The insurance must be maintained for the entire term of the Agreement, including the renewal term.

## 12.3 Department

Department shall

- 1. Review land status.
- 2. Obtain an ER, if applicable.
- 3. Obtain procurement clearances from the Respective Tribal Departments.
- 4. Obtain Indemnification document if insurance coverage is not provided.
- 5. Prepare Agreement for Applicant's signature upon receipt of required documents.

6. Submit Agreement to Approving Entity for approval upon return of original signed Agreement by Applicant.
7. Upon an executed Agreement the Department shall provide the following:
  - A. Assign Agreement number;
  - B. Collect administrative fee; and
  - C. Distribute to the Operator.

### **13.0 Novation**

1. Existing Leases that are governed by 25 U.S.C. § 415(a).
  - A. A Lease with a term of 25 years or less may be novated. If the term of the Lease is more than 25 years, the term may be modified to 25 years to allow for a novation.
  - B. The Lease shall be modified to exclude the Secretary of Interior ("Secretary") and replace with the Navajo Nation.
  - C. Each section of the Lease giving responsibility to the Secretary must be stricken and replaced with the Nation.
  - D. This Novation modification shall only include the striking of the Secretary and modifying the term of 25 years or less.
2. Assignments
  - A. The Lease shall be modified as provided above. However, for simple assignments, the original Lessee concurrence is required.
3. Subleases
  - A. The Sublease may be novated, only if the Lease is novated.
  - B. The Sublease shall be modified as provided above.

#### **13.1 Lessee**

1. Shall submit a Letter of Intent; and
2. Must be in compliance with applicable Navajo Nation laws and policies.

#### **13.2 Department**

1. Review all required documents for the Novation, for accuracy and compliance with all applicable Navajo Nation laws and policies.
2. Obtain procurement clearances from Respective Tribal Departments listed in Section 4.2 of this Admin Plan.
3. Begin Review, Approval and Execution Process, refer to 4.3, 4.4, 4.5 of this Admin Plan.



### 13.3 Lessee(s) Upon Execution

1. Comply with all term and conditions of the Novation and the Lease.
2. Maintain communication with the Department.

### 13.4 Lease Recording and Distribution

1. Refer to 4.7 of this Admin Plan.

## **14.0 References**

1. 25 United States Code Annotated 415(e)
2. Navajo Nation Business Leasing Regulations of 2005 (Tribal Regulations)
3. Economic Development Committee Uniform Business Leasing Regulations of 2008 (Uniform Regulations)
4. Adopting Navajo Nation Privacy and Access to Information Act
5. Indian Health Service Sanitation
6. Title 26 of the Navajo Nation Code (Local Governance Act)
7. 5 Navajo Nation Code §2301 Navajo Nation Business Site Leasing Act of 2000
8. Navajo Nation Title 2
9. Navajo Nation Council Resolution CO-63-02
10. Navajo Nation Corporation Code

*Disclaimer: Refer to current documents*

## **15.0 Appendix – Forms**

1. Lease Application
2. Part I Lease Agreement
3. Part II Lease Agreement
4. Assignment
  - a. Complex
  - b. Simple
5. Lease Modification
6. Collateral Assignment of Lease
7. Mutual Termination
8. Sample Business Plan Outline
9. Security Deposit Agreement
10. Emergency Operating Agreement
11. Revocable Use Permit
12. Indemnification
13. Sublease



**FEE SCHEDULE**

a. New Lease Agreement:	\$150.00
b. Modification Agreement:	\$100.00
c. Assignment Agreement:	\$100.00
d. Leasehold Mortgage:	\$100.00
e. Renewal of Lease:	\$100.00
f. Sublease:	\$100.00
g. Collateral Assignment of Lease:	\$100.00
h. Mutual Termination:	\$100.00
i. Administrative transaction:	\$100.00
j. Emergency Operating Agreement	\$100.00
k. Revocable Use Permit:	\$75.00



NAVAJO  
NATION  
SHOPPING  
CENTERS  
INCORPORATED

## Navajo Nation Shopping Centers, Inc. Lease Application

**Note:** *Attach extra sheets if additional space is required to fully answer any questions.*

NAME OF APPLICANT: \_\_\_\_\_

ADDRESS: \_\_\_\_\_ ZIP: \_\_\_\_\_

DOB: \_\_\_\_\_ CENSUS #: \_\_\_\_\_ S.S. #: \_\_\_\_\_ EIN: \_\_\_\_\_

PHONE#: \_\_\_\_\_ FAX#: \_\_\_\_\_ Email: \_\_\_\_\_

IF REPRESENTING AN EXISTING ENTERPRISE, LEGAL ENTITY OR BUSINESS,  
PROVIDE NAME AND ADDRESS: \_\_\_\_\_

ZIP: \_\_\_\_\_

NAMES, DOB & S.S. #'s (and census numbers, if NAVAJO) OF ANY PARTNERS,  
CORPORATE BOARD OF DIRECTORS AND OFFICERS OR  
MEMBERS/MANAGERS OF A LLC: \_\_\_\_\_

DESCRIPTION OF PROPOSED BUSINESS INCLUDING TYPES OF SERVICES:

ANTICIPATED NUMBER OF EMPLOYEES: \_\_\_\_\_

DESCRIPTION OF BUSINESS TRAINING OR EXPERIENCE OF THE APPLICANT:

HAVE YOU EVER BEEN NAMED IN LITIGATION AS A PARTY? IF YES,  
EXPLAIN: \_\_\_\_\_

HAVE YOU EVER FILED BANKRUPTCY AS A DEBTOR? IF YES, EXPLAIN:

IF YOU ARE A FEDERAL OR TRIBAL EMPLOYEE, HAVE YOU EVER BEEN IN  
VIOLATION OF ANY FEDERAL OR NAVAJO ETHICS CODES? IF YES,  
EXPLAIN: \_\_\_\_\_



NAVAJO  
NATION  
SHOPPING  
CENTERS  
INCORPORATED

## Navajo Nation Shopping Centers, Inc. Lease Application

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### Page 2: Supplement

BUSINESS PLAN ATTACHED: \_\_\_\_\_ Yes \_\_\_\_\_ No

### CERTIFICATION

By signing below, I certify that the information on this application and any attachments are accurate and current and also accurately represents my current financial condition. If there are any changes to the information provided including the financial statements, I will immediately notify the NNSCI, in writing. I authorize NNSCI to make any inquiries that NNSCI considers necessary for the purpose of evaluating this lease application, including obtaining credit bureau reports, contacting employers and obtaining a procurement clearance pursuant to the Navajo Business and Procurement Act, 12NNC§§1501et. seq.

\_\_\_\_\_  
SIGNATURE OF PRINCIPAL

\_\_\_\_\_  
DATE

\_\_\_\_\_  
SIGNATURE OF CO-APPLICANT  
(If applicable)

\_\_\_\_\_  
DATE



Lease No. \_\_\_\_\_  
Lease Fee: \_\_\_\_\_

**PART I**  
**NAVAJO NATION SHOPPING CENTERS, INC. LEASE AGREEMENT**  
**(Navajo Nation Trust Land)**

THIS LEASE AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between THE NAVAJO NATION SHOPPING CENTERS, INC. (NNSCI), hereinafter called Lessor, whose address is Post Office Box 478, Window Rock, Navajo Nation (Arizona) 86515, and, \_\_\_\_\_, dba, \_\_\_\_\_, hereinafter called the Lessee, whose address is \_\_\_\_\_, in accordance with the provisions of 25 U.S.C. §§ 415(e) as amended, and as implemented by the regulations contained in the Navajo Nation Business Leasing Regulations of 2005, hereinafter called the Tribal Regulations; and any amendments thereto relative to business leases on restricted lands which by this reference are made a part hereto.

**A. LAND DESCRIPTION.**

1. Lessor hereby leases to the Lessee the following described premises. Said Property is shown on the attached survey plat or site plan marked as Exhibit "A", which by reference is made part hereof.

2. All of the above land is located in \_\_\_\_\_ Chapter of the Navajo Nation, County of \_\_\_\_\_, State of \_\_\_\_\_, subject to any prior, valid, existing rights-of-way and easements; is hereby reserved and excepted from the leased premises rights-of-way for utilities constructed by or on authority of the Lessor, provided that such rights-of-way do not unreasonably interfere with Lessee's use of the leased premises.

**B. POSSESSION, PURPOSE, UNLAWFUL USES.**

1. Possession and use of the premises shall be delivered to Lessee upon the execution of the Lease.

2. Lessee shall develop, use and operate the leased premises for the following purposes only: \_\_\_\_\_

3. The leased premises shall not be used by Lessee, Sublessee(s) or Assignee(s), for any purpose or purposes other than those set out above, except with the prior written consent of Lessor. Consent may be withheld, granted, or granted upon conditions, in the sole discretion of Lessor.

4. Lessee agrees that it will not use or cause to be used any part of the leased premises for any unlawful conduct or purpose.

**C. TERM.**

The term of this Lease shall be \_\_\_\_ ( ) years, beginning on the date this Lease is executed by the Navajo Nation President.

Lessee may exercise options to renew for one additional term of \_\_\_\_\_ years, and a second additional term of \_\_\_\_\_ years. The option may be granted provided the Lease is not in default. Lessee shall give written notice of its intent to renew this Lease to the Department, at least one year, prior to the expiration date of this Lease. Renewal of this Lease is subject to the written approval of the Approving Entity, execution by the Navajo Nation President and to applicable provisions of Navajo Nation law and the regulations contained in the Tribal Regulations, including all amendments and successors thereto.

D. RENTAL.

1. The Lessee, in consideration of the foregoing, covenants and agrees to pay in lawful money of the United States of America to the NNSCI, for the use and benefit of the Lessor the following: (Be specific as to the rental terms of the Lease)

- a. Guaranteed Minimum Annual Rental (GMAR)
- b. Percentage Rental (PR) (if applicable)  
Lease Years \_\_\_\_\_: \_\_\_\_\_ Percent (\_\_\_\_%) of Lessee's total annual gross sales in excess of \_\_\_\_\_ Dollars (\$\_\_\_\_\_)
- c. Other (if applicable)

2. Lessee must make [monthly/quarterly or annual] rental payments in advance not later than the tenth (10<sup>th</sup>) day of the month for which the rental is due. Lessee may elect to pay monthly rental in an amount based on the percentage rental rate on the month's gross receipts; however, no payment shall be less than one-twelfth of the minimum rental. When the annual accounting required by Section 1.3, Part II, of this Lease is completed, the Lessee shall pay any balance due on any percentage rental, or if there is an overpayment, the overpayment shall be credited toward future rents. It is the Lessee's responsibility to ensure that the rental payment is received by NNSCI on or before the date specified above, and payable to:

Navajo Nation Shopping Centers, Inc.  
Attn: Accounting Department  
Post Office Box 478  
Window Rock, Navajo Nation (Arizona) 86515

3. If the rental payment is not received within ten (10) days following the due date:
  - a. A late fee shall be charged and pro-rated for each day the rent is not paid, beginning the tenth day after due date, until the thirtieth day, when the amount shall be paid in full.
  - b. The late fee shall be 10% of the rental due for the month or an amount determined by the Lease terms.
  - c. If rental payment is not received within 30 calendar days following the due date a late fee shall be charged at 10% of the rental due for the month.
  - d. If rental payment is not received within 60 calendar days following the due date a late fee shall be charged at 5% of the rental due for the month or an amount specified in the Lease.
  - e. If rental payment is not received within 90 calendar days following the due date a late fee should be charged at 5% of the rental due for the month or an amount specified in the Lease.

4. In the event a sublease, assignment, amendment or transfer of this Lease, or any right to or interest in this Lease, or any improvements are made to the leased premises, the rent and other terms of this Lease shall be subject to renegotiation. In addition, if the Lessee exercises any options to renew, the Lessor reserves the right to renegotiate the rent, for any change in economic conditions and other terms of the Lease.



5. Lessor reserves the right to inspect the books and records of Lessee and any Sublessee or Assignee to verify the accuracy of the rent and payments.

6. Lessee shall pay common area expenses pursuant Section K of this Lease except otherwise agreed upon Lessor

#### E. IMPROVEMENTS AND FIXTURES

1. The Lessor, in consideration for the granting of this Lease, covenants and agrees that Lessee will construct \_\_\_\_\_ at a cost of and having a reasonable value of \$\_\_\_\_\_ or more.

2. Except as otherwise provided in this Lease, all buildings and improvements, excluding removable personal property and trade fixtures, on the leased property shall remain on said property upon expiration or termination of this Lease and become property of Lessor. However, Lessor may require Lessee, at Lessee's expense, to remove improvements and restore the premises to the original state, within reason, upon termination of this Lease. Any removal of property by Lessee must be completed within ninety (90) days after expiration or termination of this Lease, such presence on the property shall not be deemed a holdover or trespass, provided Lessee is acting in a diligent manner to remove such property.

3. The term "removable personal property" as used in this Section shall not include property which normally would be attached or affixed to the buildings, improvements or land in such a way that it would become a part of the realty, regardless of whether such property is in fact so placed in or on or affixed to the buildings, improvements or land in such a way as to legally retain the characteristics of personal property. Lessee shall remove all removable personal property and trade fixtures prior to termination of this Lease provided that Lessee is not in default of the terms of the Lease. Lessee, at its expense, shall immediately repair any damage to the premises by removal of any such trade fixtures, signs, and other personal property shall leave the premises in a neat and clean condition, free of debris. Should Lessee fail to remove said personal property and trade fixtures upon expiration or termination of this Lease, said property shall thereupon become property of Lessor, and may be disposed of in any manner by Lessor.

#### F. COMPLETION OF DEVELOPMENT.

1. The Lessee shall complete the full improvement and development of the leased premises in accordance with the general plan and architect's design. The date for substantial completion of development shall be \_\_\_\_\_ months from the execution date of the Lease unless the development period is extended. If the Lessee fails to substantially complete development within such period, such failure shall constitute a default and may be cause for termination.

2. Prior to the commencement of construction of any new improvements on the leased premises, or prior to the beginning of any repair or alteration thereto, or work or labor thereon, Lessee shall post non-responsibility notices at the site on Lessor's behalf.

3. Upon completion of construction, the Lessee is required to submit any layout or general plans of the building or facility to the Lessor.

4. Whenever under this Lease a time is stated within which or by which original construction, repairs, or reconstruction of improvements shall be made and during such period a general or sympathetic strike or lock out occurs, war or rebellion ensues, or some event unquestionably beyond Lessee's power to control, the period of delay so caused shall be added to the period limited herein for the completion of such work.



G. CONSTRUCTION, MAINTENANCE, REPAIR, ALTERATION.

1. All improvements placed on the leased premises shall be constructed in a diligent and workmanlike manner and in compliance with applicable laws and building codes. All parts of building visible to the public or from adjacent properties shall present an orderly appearance as determined by Lessor and all service areas shall be screened from public view to the satisfaction of Lessor. Lessee shall, at all times during the term of this Lease and at Lessee's sole cost and expense, maintain the premises and all improvements thereon and any alterations, additions, or appurtenances thereto, in good order and repair and in a safe, sanitary, neat and attractive condition, and shall otherwise comply with all laws, ordinances and regulations applicable to said premises.

2. Lessee shall have the right during the term of this Lease to make alterations, additions or repairs to improvements on the premises unless the amount of the full completion of the alteration, addition or repair, will exceed \$\_\_\_\_\_. Alterations, additions or repairs in excess of the above amount or any removal or demolition of any improvement can be made only with the written approval of Lessor. Any alterations, additions, or repairs to be made to the premises shall be under the supervision of a licensed architect, structural engineer or bonded contractor and made in accordance with plans and specifications. Any alterations, additions, and repairs must be done in a diligent and workmanlike manner.

3. Lessee shall indemnify and hold harmless the Lessor, Navajo Nation, and the United States against liability for all claims arising from Lessee's failure to maintain said premises and the improvements thereon as herein above provided, or from Lessee's non-observance of any law, ordinance or regulation applicable thereto.

H. RENTAL AND PERFORMANCE SECURITY.

1. The Lessor and Lessee agree to [waive or post] \_\_\_\_\_ [cash deposit, letter of credit, Certificate of Deposit and Surety bond] in the amount of first year's 2 months rental, which shall remain in force for the full term of this Lease. The purpose of such security is to guarantee performance on the Lease.

2. Upon execution of the Lease, a copy of the security posted shall be submitted to the Lessor, if applicable.

I. CONSTRUCTION SECURITY BOND.

1. Prior to the commencement of construction of any improvement on the leasehold premises, the Lessee will cause the construction contractor to post a construction bond in favor of Lessor and Lessee. The construction contractor or the Lessee may provide security by one of the following:

- a. Construction surety bond;
- b. Non-revocable letter of credit;
- c. Certificate of deposit; or
- d. Any other appropriate security acceptable to the NNSCI.

2. The NNSCI, the Navajo Nation and the United States shall be named as additional insured.

3. The purpose of the construction security bond is to guarantee the completion of the improvements and payment in full of valid claims of all persons for work performed in or materials furnished for construction of the improvements. This construction security bond shall be an amount equal to the cost of the construction and/or improvement.



## J. INSURANCE

1. Lessee shall obtain Commercial General Liability Insurance within \_\_\_\_ [days or if undeveloped land, upon approval to commence with construction] from the date of execution of the Lease, provided however the Lessee must submit a copy of the Certificate of Insurance before beginning operations of the leased premises. The Commercial General Liability Insurance shall be with an unimpaired minimum combined single limit not less than in the amount of \$\_\_\_\_\_, including with each occurrence a General Aggregate Limit of \$\_\_\_\_\_.

2. Lessee shall obtain Fire and Casualty Insurance with minimum insurance coverage of not less than \$\_\_\_\_\_. Upon execution of the Lease, a certificate of insurance shall be submitted to the Lessor upon \_\_\_\_\_ [receipt of all approvals to commence with construction of the improvements or the first drawdown for financing is received.][days]

3. Lessee shall obtain pollution liability insurance or bond in the amount of \$\_\_\_\_\_ for hazardous and regulated substances.

## K. COMMON AREAS

1. The term "common areas" refers to all areas within the exterior boundaries of the Lease premises which are now or hereafter made available for general use, convenience and benefit of Lessor and other persons entitled to occupy the Lease premises, including, but not limited to, automobile parking areas, parking structures, driveways, sidewalks, walkways, utilities and landscaped and planted areas.

2. Lessee and its employees, agents, patrons and invitees are, except as otherwise specifically provided in this Lease, authorized, empowered and privileged to use the common areas in common with other persons during the term of this Lease. The Lessor agrees, without cost or expense to Lessee, to construct or cause to be constructed, such common areas generally as are necessary for the successful operation of the Lease premise and to maintain and operate, or cause to be maintained and operated (except as hereinafter provided with reference to cost of maintenance), said common areas at all times following completion thereof, for the benefit and use of the customers and patrons of Lessee and other Lessee's, owners and occupants of Lease premises constituting the Shopping Center of which the premises are a part. Lessor shall keep or cause to be kept said common areas in a neat, clean and orderly condition, properly lighted and landscaped, and shall repair any damage to the facilities thereof, but all expense in connection with said common areas shall be charged to the Lessee and prorated in the manner hereinafter set forth. It is understood and agreed that the phrase "expenses in connection with said common areas" as used herein shall be construed to include, but not limited to, all expenses in connection with said common areas for (i) a management fee (not to exceed five percent (5%) of minimum annual and percentage rent collections); (ii) bookkeeping and accounting; (iii) legal services; (iv) all general maintenance and repairs, or painting, restriping, cleaning, and sweeping; maintenance and repair of sidewalks, curbs and Shopping Center signs; maintenance and repair of sprinkler systems, planting and landscaping; (v) lighting and other utilities; (vi) directional signs and other markers and bumpers; (vii) personnel to implement such services including, if Lessor deems necessary, the cost of security guards; (viii) applicable real and personal property taxes and assessments on the improvements and land comprising said common areas; (ix) any governmental imposition or surcharge imposed upon Lessor or assessed against any portion of the common areas; (x) a security alarm system for the Lessee in the Lease premises; (xi) depreciation on maintenance and operating machinery and equipment (if owned) and rental paid for such machinery and equipment (if rented); and (xii) adequate public liability and property damage insurance on the Shopping Center building and common areas; Lessor may cause any or all of said services to be provided by any independent contractor or contractors. Anything to the contrary contained hereinabove notwithstanding, all expenses in



connection with the original construction and installments of the common areas shall be at the sole cost and expense of Lessor of the Lease premise and shall not in any event be charged to Lessee.

3. Should Lessor add to or make available additional common areas not originally contemplated as part of the Lease premise, then said expenses in connection with maintenance of said common areas shall also include all of the aforementioned expenses incurred and paid in connection with said additional common areas.

4. Lessor shall at all times have the right and privilege of determining the nature and extent of the common areas and of making such changes therein and thereto which in its opinion are deemed to be desirable and for the best interest of all persons using common areas, including but not limited to the location and relocation of driveways, entrances, exits, automobile parking spaces, the direction and flow of traffic, and all other facilities or utilities thereof. Nothing contained herein shall be deemed to create any liability upon Lessor or the Secretary for any damage to motor vehicles of customers or employees, or for loss property within such motor vehicles or for personal injuries.

5. Lessor shall also have the right to establish, change, alter and amend, and to enforce against Lessee and the other users of said common areas such reasonable rules and regulations (including the exclusion of employee's parking therefrom) as may be deemed necessary or advisable for the proper and efficient operation and maintenance of said common areas. The rules and regulations herein provided may include without limitation, the hours during which the common areas shall be open for use. Lessor may establish a system or systems of validation or other type of operation, including a system of charges against non-validated parking checks of users, and the Lessee agrees to conform to and abide by all such rules and regulations in its use and the use of its customers and patrons with respect to the automobile parking areas of the common areas; provided, however, that all such rules and regulations and such types of operation or validation of parking checks and other matters affecting the customers and patrons of Lessee shall apply equally and without discrimination to all parties entitled to the use of said automobile parking facilities.

6. Lessor reserves the right, to utilize portions of the common areas for carnival-type shows and entertainment, outdoor shows, displays, product shows, advertising purposes, community activities and other uses which, in Lessor's reasonable judgment, serve the interest of the Shopping Center or provide a community service to the Navajo community. The Lessee may have similar use if it is approved by the Lessor before the occurrence of the event. The above shall not include any prolonged activity which directly competes with or interferes with Lessee's business or any portion of Lessee's business.

7. Lessor shall at all times during the term of this Lease have the sole and exclusive control of the common areas, and may at anytime during the term exclude and restrain any person from use or occupancy thereof, excepting, however, bona fide customers, patrons and service suppliers of Lessee, and other Lessees of Lessor who make use of said areas in accordance with the rules and regulations established by Lessor from time to time with respect thereto. In addition to the rights of Lessee hereunder in and to the areas in this Article referred to, it shall at all times be the duty of Lessee to keep all of said areas free and clear of any obstructions created or permitted by Lessee or resulting from Lessee's operation and to permit the use of any said areas only for normal parking and ingress and egress by the said customers, patrons, employees and agents. Lessee is forbidden to erect or construct any buildings or structures in the common area without obtaining prior approval from the Lessor.

8. If in the opinion of Lessor, unauthorized persons are using any of said areas by reason of the presence of Lessee in the premises, Lessee, upon demand of Lessor, shall enforce Lessor's rights against all such unauthorized persons by appropriate proceedings. Nothing herein



shall affect the rights of Lessor at any time to remove any such unauthorized persons from said areas or to restrain the use of any said areas by unauthorized persons.

9. It is understood that the employees of Lessee and the other Lessees of Lessor within the Lease premise and the employees of other businesses within the Lease premise shall not be permitted to park their automobile in the automobile parking areas of the common areas which may be designated for patrons of the Lease premise. Lessor agrees to furnish and/or cause to be furnished either within the Lease premise parking area, or reasonably close thereto, space for employee parking. Lessor at all times shall have the right to designate the particular parking area to be used by any or all of such employees and any such designation may be changed. Lessee and its employees shall park their cars only in those portions of the common areas, if any, designated by Lessor.

10. The term "Floor Area" does not specifically apply to this Lease; however, the lessee is informed that this term may be used if the Lessor sees fit that the common area may include floor area. When used, it shall be deemed to mean and include all areas for the exclusive use and occupancy by the Lessees of the Lease premise measured for each Lessee from the exterior surface of exterior walls (and from the extensions therefore, in the case of openings) and from the center of interior partitions, including mezzanines, warehousing or storage areas, clerical or office areas, employee areas and restrooms.

11. Lessee's share of common area expenses shall be equal to Lessee's proportionate percentage of the lease premises and Common Area. The term "Lessee's proportionate percentage" as used through this Lease shall be equal to a fraction the numerator of which is the Common Area of the premises and the denominator of which shall be the Common Area of all the areas available for exclusive use and occupancy by the Lessees of the Lease premise.

12. Within thirty (30) days following the end of each calendar quarter or, at Lessor's option, each calendar year, Lessor shall furnish Lessee a statement covering the calendar quarter or year just expired, certified as correct by a certified public accountant or an authorized representative of the Lessor, showing the total of such common area expenses, the amount of Lessee's share of such common area expense for such calendar quarter or year and the payments made by Lessee with respect to such period as set forth in 1 through 13 of this section. If Lessee's share of such common area expenses exceed Lessee's payments made, Lessee shall pay Lessor the deficiency within ten (10) days after receipt of such statement.

13. Failure of Lessee to pay any of the charges required shall constitute a default under the Lease.

#### L. SUBLEASE

Any sublease shall be approved by the Lessor (NNSCI) with written consent from surety, if applicable.

Sublease shall:

- a. Be executed by the Lessor, Sublessor, and Sublessee; and
- b. Require Sublessor and Sublessee to be bound by all terms and conditions of this Lease; and
- c. Not extend beyond the term and any renewals set forth in Section C; and
- d. Be submitted to the NNSCI.

#### M. NOTICES AND DEMANDS

1. All notices, demands, requests or other communications to or upon either party provided for in this Lease, or given or made in connection with this Lease, shall be in writing and shall be addressed as follows:

To or upon Lessor: Chief Executive Officer  
Navajo Nation Shopping Centers, Inc.  
Post Office Box 478  
Window Rock, Navajo Nation (Arizona) 86515  
Telephone: 1-928-871-2218  
Telefax: 1-928-871-4217

To or upon Lessee: \_\_\_\_\_  
dba, \_\_\_\_\_  
Post Office Box \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Telefax: \_\_\_\_\_

2. All notices shall be given by personal delivery, registered or certified mail, postage prepaid or facsimile transmission, followed by surface mail. Notices shall be effective when delivered.

3. Lessor and Lessee may at any time change its address for purposes of this Section by written notice.

#### N. APPLICABLE TERMS AND CONDITIONS

The Standard Terms and Conditions for NNSCI Leases on Navajo Nation Trust Land in Part II apply to this Lease and are incorporated herein in their entirety unless otherwise stated. The Terms and Conditions for Leases with Storage Tanks apply where they are appropriate. If Storage Tanks are on the premises when the Lessee signs the Lease, or are installed after the Lessee signed the Lease, these Terms and Conditions will apply to the Lease as a matter of law.

IN WITNESS THEREOF:

\_\_\_\_\_, Lessee

\_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_

Approval:

NAVAJO NATION SHOPPING CENTERS, INC.

\_\_\_\_\_  
Chief Executive Officer

Date: \_\_\_\_\_

Execution:

NAVAJO NATION

\_\_\_\_\_  
President/Vice President

Date: \_\_\_\_\_



## PART II

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

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

## 1.0 STANDARD TERMS AND CONDITIONS

### 1.1 DEFINITIONS.

A. "Approved Encumbrance" means an encumbrance approved in writing by the Lessor, and sureties, 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:

i) "CERCLA," the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9601 et. seq., and

ii) "RCRA," the Resource Conservation and Recovery Act, 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 paid to others for Lessee's or its affiliates' use and benefit, derived from business done, sales made, or services rendered directly or indirectly or on the leased premises or any portion thereof.

F. "Lessor" means the Navajo Nation Shopping Centers, Inc. (NNSCI) for the purposes of Part I and Part II; provided however, Lessor shall mean the Navajo Nation President for the purpose of execution of leasing transactions as authorized by the Navajo Nation Business Leasing Regulations of 2005.

G. "Secretary" means the Secretary of the Interior or his/her authorized representative, delegate, or successor.

### 1.2 CONDITION OF LEASED PREMISES.

A. Lessee has examined and knows the leased premises and improvements thereon and accepts the same as-is. No representations as to the condition of the leased premises have been made by Lessor, any agent of Lessor or the United States prior to or at the time of concurrence of this Lease. Lessee warrants that it has not relied on any warranty or representation made by or on behalf of Lessor or the United States, but solely upon Lessee's independent investigation.

### 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 Lessor.

B. When an accounting of Gross Receipts is required under the Lease in order to determine a percentage rent, the Lessee shall on a quarterly basis submit to Lessor, no later than two weeks after the end of the quarter, certified statements of gross receipts. Failure to submit aforementioned statements on a timely basis shall be considered a breach of the Lease and the Lease may be subject to termination. With said statements, Lessee shall tender payment of any balance due under the percentage rental fee as set forth in Section D of Part I Lease. Said statement shall be prepared by a licensed Certified Public Accountant, in conformity with GAAP.

C. Any qualified accounting agent or agents appointed by the Lessor, shall have access to and the right to examine and audit any pertinent books and records.

D. The acceptance by the Lessor of any monies paid by Lessee as percentage rental for the leased premises as shown by any statement furnished by Lessee shall not be an admission of the accuracy of said statement, or of the sufficiency of the amount of said percentage rental payment, but the Lessor shall be entitled within four (4) years after receipt of any such percentage rental payment to question the sufficiency of the amount thereof and/or the accuracy of the statements furnished by Lessee to justify the same and shall have the right to examine and/or audit as described. Lessee's refusal to allow the examination or audit of the statements shall constitute a material breach of this Lease. Therefore, Lessee shall for said period of four (4) years after submission to the Lessor any such statement keep safe and intact all of Lessee's records, books, accounts, and other data which in any way bears upon or are required to justify in detail any such statement, and Lessee shall insert a provision in all subleases requiring similar retention of records.

E. Upon request, the Lessee shall provide the following documents, including, but not limited to, insurance policy, bond, sublease, assignment, financial statement, mortgage, collateral instrument, environmental summary, procurement clearance, archaeological clearance, land survey, appraisal, modifications, and corporate documents. The Lessee is required to produce the documents within thirty (30) days from the date of Lessor's request.

### 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 utility or other providers, and



Lessor as may be necessary or appropriate as required by 25 U.S.C. §415 and 25 C.F.R. §169.

B. Lessee is authorized at its own cost to enter into appropriate service line agreements with utility companies for necessary or appropriate utility services to the leased premises, including gas, water, sewer, electricity, telephone, television, internet, and other utilities, without further consent by 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 Navajo Nation law and 25 C.F.R. §169.22, including any amendments or successors thereto.

C. Lessor reserves the right for Lessor's 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, 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 Lessor.

#### 1.5 SUBLEASE, ASSIGNMENT, AMENDMENT, TRANSFER.

A. Lessee shall not sublease, assign, amend, or transfer any right to or interest in this Lease or any of the improvements on the leased premises, or sell, assign or transfer without the written consent of the Lessor and Lessee, as well as the sureties.

No such sublease, assignment, amendment or transfer shall be valid or binding without such approval.

No sublease, assignment, or transfers shall be valid unless the Sublessor, Sublessee, Assignee and/or encumbrancer(s), 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, amendment, or transfer, without Lessor's approval, such action shall be deemed a breach of this Lease, except that an encumbrancer may enforce his rights in the manner hereinafter provided in Part II Section 1.6. Approval of one sublease, assignment, amendment or transfer shall not validate a subsequent sublease, assignment, sale, amendment 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. Approval or disapproval of any sublease, assignment, amendment or transfer for any purpose whatsoever by the Lessee shall be within the sole discretion of Lessor. Approval of any sublease, assignment, amendment, or transfer is subject to the written consent of the Lessor and Lessee, as well as the sureties. Lessor reserves the right to adjust the rental provisions of this Lease upon any sublease, assignment, amendment, 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 obtaining financing 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; and

(2) not jeopardize in any way Lessor's interest in the land; and

(3) be subject to the written approval of the Lessor as well as the sureties. 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 a 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. Lessor shall accept the performance by the encumbrancer for covenants or other obligation under the Lease or Sublease, with the same force and effect as though performed by the Lessor or Sublessee.

(1) In the event of a default by lessee or sublessee on the terms of the lease of sublease, the lessor shall give each encumbrancer notice of the default. The encumbrancer shall have the right to cure the default within a reasonable time. The lessor shall accept performance of encumbrancer for covenants or other obligations under the Lease or sublease. The terms and conditions shall be binding upon the encumbrancer in the same force and effect as though performed by the lessee or sublessee.

(2) In the event of a default by lessee or sublessee on the terms of the collateral assignment or encumbrancer, the encumbrancer(s) shall provide notice of the default to the lessor and to other interested parties, if any. The encumbrancer shall exercise its rights as are provided in this section and as provided in the encumbrancer agreement.

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 Lessor and Lessee notice as required under the encumbrance agreement between sublessee and encumbrancer and/or by applicable law. If notice of such sale is given and the Lessee fails to act, Lessor or Lessee 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/or

(2) To execute in favor of the encumbrancer a promissory note and a new encumbrance, this 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, if any, and to conditions, restrictions, and reservations of record at the time of recording the new encumbrance to Navajo Nation Real Estate Department.

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 to Lessor or Lessee. The sublease shall automatically terminate on the same date the right is exercised and the Lessor or Lessee, as the case may be, 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 Lessor or Lessee 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 interest 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 by Lessor, 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 be bound by all the terms and conditions of the sublease. If a sale, of the subleasehold interest, under the approved encumbrance occurs and the purchaser is a party other than the encumbrancer, approval by 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 of 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 Lessor notice as required under the encumbrance agreement between sublessee and encumbrancer 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, 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; and/or

(2) To execute in favor of the encumbrancer a promissory note and a new encumbrance, this 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, if any, and to conditions, restrictions and reservations of record at the time of recording the new encumbrance to the Navajo Nation Real Estate Department.

I. Each encumbrancer must provide, if Lessor exercises the foregoing rights, all right, title and interest of Lessee in the Lease Sublease to Lessor. The lease shall terminate and 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 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 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 Lessor and the Secretary 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.

A. Lessee shall not permit any lien to be enforced against the leased premises or any part thereof, any liens arising from any work performed, materials furnished, service or equipment ordered by Lessee or obligations incurred by Lessee. The interest of Lessor in the shopping center or the premises shall not be subject to any liens for improvements made by lessee.

B. Lessee shall discharge all such liens before any action is brought to enforce lien; further, Lessee shall pay before becoming delinquent, on all taxes, assessments, licenses, fees, and other like charges that maybe levied during the term of this Lease upon or against the leased land and all interests therein and property thereon, or against Lessee's personal property installed or located in or on the premises, for which either Lessee or Lessor may become liable.

C. 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 be required to contest any claim concerning, asserted tax, or assessment against the property, and to post bond to prevent enforcement of any lien resulting therefrom. The Lessee agrees to protect and hold harmless Lessor, Navajo Nation, 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.

D. 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 existing property, or any improvements.

#### 1.8 LESSOR'S 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 the 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 of Lessor's payment until repayment is made. 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 as set forth in Section B. 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 out in all buildings operated on the leased premises. Non-compliance with Section 1.9 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, other non-hazardous trash and any other regulated substances. Lessee further agrees that all solid waste, including but not limited to refuse, rubbish, other non-hazardous trash and any other regulated substance generated by the Lessee or by any Sublessee shall be disposed of only at a state or tribally certified public or private landfills, 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 and federal government.

#### 1.10 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 the 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. All policies required under this Lease shall name the Lessor, Navajo Nation and the United States as named insureds. 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 is 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) 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 interest provision.

(2) If the leased premise is undeveloped the Lessee must obtain the appropriate



insurance, which shall, include the Lessor, Navajo Nation and the United States as named insureds.

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, shall be based upon the minimum amount required and regulated under the State in which the lease premises is 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 the Lessor and the United States, 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 the Lessor, Navajo Nation and their agents, officials or employees shall not be contributory insurance to that provided by Lessee.

G. An acceptable certificate of insurance shall be issued to the Lessor. The certificate shall indemnify this Lease and indicate the policies will not be canceled, terminated or materially altered unless prior written notice is given to the Lessor and approved by Lessor.

H. Failure on the part of the Lessee to procure or maintain required insurance shall constitute a material breach of Lease and the Lease may be subject to termination.

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 the Lessor, Navajo Nation and the United States 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 condition 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. 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.

Certificates of insurance shall be sent to:  
Navajo Nation Shopping Centers, Inc., P.O. Box 478  
Window Rock, Arizona 86515

#### 1.11 FIRE AND CASUALTY INSURANCE AND FORCE MAJEURE.

A. Lessee shall carry fire and casualty insurance with extended coverage endorsement, covering not less than full insurable value of all improvements and inventory 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 premise are located and shall be written jointly to protect Lessee, Lessor, Navajo Nation and the United States and shall provide for notification to the 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 Lessor at the following address: Navajo Nation Shopping Centers, Inc., P.O. Box 478, Window Rock, AZ, 86515.

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 the Lessor prior to commencement of repair or reconstruction. Lessee shall continue to be responsible for rent and the Lease shall not be terminated unless otherwise stated in this lease or approved by Lessor. The Lessee shall not be entitled to abatement of rent unless approved by Lessor. 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. 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 in escrow after reconstruction has been completed shall be paid to Lessee.

C. If the net insurance proceeds is insufficient for the proper and complete repair, reconstruction, restoration of such damaged or destroyed buildings, improvement or equipment, the Lessee shall nevertheless be required to make such repairs and reconstruction at its own cost and expenses unless otherwise stated in the Lease.

D. In the event the premise is damaged by earthquake, act of war, nuclear reaction, nuclear radiation or radioactive contamination, or from any other casualty not covered by Lessor's Fire and Extended Coverage Insurance the Lessor may, within



one hundred and eighty (180) days following the date of such damage, diligently commence repair, or reconstruct and this Lease shall continue in full force and effect. Lessor shall give the Lessee written notice of its intention to repair or reconstruct within thirty (30) days from the damage to restore the Lease premises.

E. If the damage is seventy-five percent (75%) or more of the total value of all improvements on the premises during the last five (5) years of the term of this Lease, Lessee shall have the option to repair, restore or reconstruct the premises. Lessee shall provide Lessor with a written notice of the exercise of Lessee's reconstruction option within thirty (30) days from the date of the damage. If Lessee exercises 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 be diligent in the reconstruction. Should Lessee not exercise its option to reconstruct, this Lease shall terminate one hundred and twenty (120) days after the date of damage. 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, all insurance proceeds shall be paid to Lessor.

F. Any encumbrancer shall be named as a beneficiary under all insurance policies required by this paragraph. In the event of a loss or damage to the buildings or improvements on the leased property while an approved encumbrancer remains unpaid on the encumbrance, the amount of such loss or damage shall be paid to the encumbrancer on the condition that the encumbrancer agrees to comply with the reconstruction obligations set forth herein. The encumbrancer shall, upon written order of Lessor, Lessor or Lessee, pay such monies for such repair, and it shall not be deemed a payment or credit on the 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 or better than before the damage occurred.

#### 1.12 INDEMNIFY, DEFEND AND HOLD HARMLESS.

Except for Lessor's sole negligence, Lessee shall indemnify, protect, defend and hold harmless the Lessor from and against any and all claims, loss of rents damages, costs, liens, causes of action, suits, demands, judgments, penalties, permits, attorney's or consultant's fees, losses, damages, 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, or violation by Lessee of any restriction, statute, law, ordinance or regulations, or violation of an agreement or condition of the agreement or 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 Lessor by reason of any of the foregoing matters, Lessee, upon notice from Lessor, shall defend the same at Lessee's expense by counsel reasonably satisfactory to Lessor, and the Lessor may cooperate with Lessee in such defense and such involvement would be at the discretion of Lessor. Lessee shall have the right to control such defense and to settle or compromise the claim in cooperation with Lessor as long as such defense, settlement or compromise does not unduly prejudice Lessor and Secretary.

#### 1.13 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 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 the 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 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.

#### 1.14 DEFAULT.

A. Lessor may determine the Lessee is in default for the following:

(1) fails to pay monies or any other amounts such as posting a bond or acquiring insurance when due and such failure continues for ten (10) business days after written notice of default is sent to Lessee.

(2) 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 served on Lessee and not cured within ten (10) days after service of the notice of default and Lessee diligently pursues the cure.

(3) 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 to the 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 the Lessor a statement and explanation disputing the Lessor's determination that the Lease 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. Any additional time granted to cure shall be in the discretion of the Lessor.

D. Should a default occur, the Lessor may take any action in accordance with § 503 of the Navajo Nation Business Leasing Regulations of 2005. Additionally, Lessor may exercise the following options upon Lessee's default:

(1) Sue to collect, all monies that become due and enforce compliance with all terms of this Lease; or

(2) Re-enter the leased premises if the Lessee has abandoned or surrendered of the leased premises, remove all persons and property from the premises, excluding the property belonging to authorized Sublessees, and re-let the leased premises without terminating this Lease. The Sublessee of the Lease is the agent to comply with the terms and conditions of the Lease. As to re-letting out the premises, the Sublessee may not be considered an agent of the Lessee if the Sublessee and Lessee have no business relationship prior to the abandonment. The terms and conditions of such re-letting shall be in the sole discretion of Lessor. The Lessor has the right to alter and repair the premises. 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 toward payment to liquidate the total liability of Lessee; or

(3) Take any other action deemed necessary to protect any interest of Lessor.

E. 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 covenant of this Lease.

F. Lessor shall thereafter give to such encumbrancer a copy of each notice of default by Lessee at the same time as such notice of. 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. The encumbrancer shall have standing to pursue any appeals permitted by applicable statutes and regulations that Lessee would be entitled. 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, cured or is taking action to cure the breach that is the cause of the termination. The duties and obligations of the encumbrancer are also specified outlined at section 1.6(D) and (E) of the Lease.

## 1.15 REMEDIES

A. If the Lessee fails to cure pursuant to Section 1.15 the Lessor has the following options:

(1) terminate this Lease, as a matter of law; or

(2) grant an extension of time to cure the default as agreed to by Lessor and Lessee and Lessee shall be diligent to cure the default; or

(3) pursue the execution on bonds or collection of insurance proceeds; or

(4) pursue any other remedy set forth in the Management Plan, and applicable Navajo Nation laws and policies.

B. If the Lessor terminates the Lease, the Lessor shall send a termination letter to Lessee within a reasonable time period by certified mail, return receipt requested. Lessee shall vacate the premises within thirty (30) days from the date the letter to vacate was mailed to the Lessee, unless an appeal has been filed.

C. The termination shall become effective thirty-one (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. While any of the above remedies are pursued, the Lessee shall make all requisite payments and comply with all terms of the Lease.

## 1.16 MUTUAL TERMINATION

The Lessee may terminate this Lease, without penalty, subject to approval from the Lessor, only during the development period, set forth in Part I.F of this Lease and conditioned upon compliance with the Navajo Business and Procurement Code, 15 §§ N.N.C. 1501 et. seq. Lessee must notify the Lessor in writing of its intention to terminate no later than 30 days prior to the expiration of the development period. After the development period, Lessee may request in writing to terminate the lease. The Lessor may agree to mutually terminate the lease provided all requirements and clearances have been satisfied by the Lessee.

## 1.17 ATTORNEY'S FEES.

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

## 1.18 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.

## 1.19 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.

#### 1.20 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 United States as well as to the Lessor.

#### 1.21 STATUS OF SUBLEASES.

Termination of this Lease, by cancellation or otherwise, shall not serve to cancel approved subleases and/or subtenancies, but shall operate as a temporary assignment to Lessor, without merger of the Lease and sublease or subtenancy, of any and all such subleases and/or subtenancies, until a lease can be obtained between the Sublessee, Assignee, and the Lessor, which such parties shall diligently pursue.

#### 1.22 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 paragraph 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 and if the Lease is terminated or expired, at any time, enter upon the leased premises, or any part thereof, to inspect the same and all buildings and other improvements as is required under the Lease Compliance Form, and the 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.

#### 1.23 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 pay rent in the amount agreed to in previous lease and comply with the terms and conditions of the previous

lease during the holding over period. Accepting holdover rent from Lessee and requiring compliance with previous lease terms do not extend the Lease or constitute an election of remedies or adversely affect any of Lessor's other remedies.

#### 1.24 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, safety, or general welfare which is currently enacted or which may be enacted at a later date.

#### 1.25 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 shall request the Navajo Nation Environmental Protection Agency to assess the lease premises 360 days prior to the expiration or termination of the lease. 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 the Lessor sixty (60) days prior to the expiration or termination or the delivery of the leased premises, whichever occurs first, in turn the Lessor shall submit to the Lessee a copy of such audit within ten (10) days of receipt.

#### 1.26 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.

#### 1.27 MINERALS.

All minerals, including sand and gravel, contained in or on the lease premises are reserved for the use of Lessor, unless placed on the leased premises by the Lessee. Lessor also 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.

#### 1.28 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.

#### 1.29 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 here from, but this provision shall not be construed to extend to this Lease if made with a corporation or company.

**1.30 AGREEMENT TO ABIDE BY NAVAJO AND FEDERAL LAWS.**

The Lessee and the Lessee's employees, agents, and sublessees, assignors, assignees and their employees and agents agree to abide by all laws of the 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.

**1.31 GOVERNING LAW AND CHOICE OF FORUM.**

Except as may be prohibited by applicable federal laws of the Navajo Nation shall govern the construction, performance and enforcement of this Lease. All actions or proceedings brought by Lessee against the Navajo Nation 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 Navajo Nation in any court or administrative body of any state.

**1.32 CONSENT TO JURISDICTION.**

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. Lessee consents to the jurisdiction of Navajo Nation courts and tribunals in connection with disputes arising from the lease.

**1.33 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 Navajo Nation.

**1.34 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 and the Navajo Nation Shopping Centers, Inc.

**1.35 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.

**1.36 QUALIFICATIONS OF BUSINESS.**

In the event Lessee hereunder is a business entity, the person(s) executing is the responsible party (parties) and the person(s) executing this Lease on behalf of Lessee hereby covenant and warrant that Lessee (business entity) 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.

**1.37 COMPLIANCE WITH NAVAJO NATION BUSINESS LEASING REGULATIONS OF 2005.**

- A. Lessee, its sublessees and assignees and other successors in interest shall comply with the provisions of the Navajo Nation Business Leasing Regulations of 2005, which prescribe rules for the regulation of leases on the Navajo Nation as required by 25 U.S.C. §415(e)
- B. Upon determination by the Resources Development Committee that the Navajo Nation Shopping Centers, Inc. 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 Resources Development Committee upon its decision.

**1.38 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.

**1.39 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 the Navajo Nation Shopping Centers, Inc. and executed by the Navajo Nation President.

**1.40 REPAIRS AND MAINTENANCE.**

- A. Lessee agrees at all times, and at its own cost and expense, to repair, replace, and maintain in good condition the premises and every part thereof, including without limitation the utility meters, pipes, and conduits, all fixtures, the store fronts, all Lessee's signs, locks, and closing devices, and all window sash, cases, or frames, door and door frames, floor coverings,



including carpeting, terrazzo, and other special flooring, and all such items or repair, maintenance, air conditioner repairs and maintenance, alteration and improvement or reconstruction as may at any time or from time to time be required by any governmental agency having jurisdiction thereof. All glass, both exterior and interior, is at the sole risk of Lessee, and any glass broken shall be promptly replaced by Lessee with glass of the same kind, size, and quality.

B. Lessee agrees to permit Lessor and officials of the United States Public Health Service and Navajo Nation, and any of their authorized representatives to enter the premises at all times during usual business hours for the purpose of inspecting the same. Lessee further covenants and agrees that Lessor may go upon the premises and make any necessary repairs to the premises and perform any work thereon (i) which may be necessary to comply with any laws, ordinances, rules, or regulations of any public authority or terms of any insurance policy or policies or (ii) that Lessor may deem necessary to prevent waste or deterioration in connection with the premises if Lessee does not make or cause such repairs to be made or performed or cause such work to be performed promptly after receipt of written demand from Lessor or (iii) that Lessor may deem necessary to perform construction work. Nothing herein contained shall imply any duty on the part of Lessor to do any such work which, under any provisions of this Lease, Lessee may be required to do, nor shall it constitute a waiver of Lessee's default in failing to do the same. No exercise by Lessor of any rights herein reserved shall entitle Lessee to any damage for any injury or inconvenience occasioned thereby nor to any abatement of rent.

#### 1.41 LESSEE'S CONDUCT OF BUSINESS.

A. Lessee covenants and agrees that, continuously and uninterrupted from and after its initial opening for business, it will operate and conduct the business for which it is permitted except while the premises are uninhabitable by reason of fire or other casualty or condemnation. Lessee agrees that it will keep the premises in neat, clean and orderly condition. Lessee agrees that all trash and rubbish of the said Lessee shall only be deposited within receptacles as provided by Lessor and that there shall be no other trash receptacles permitted to remain outside of the building. Lessor agrees to cause such receptacles to be emptied and trash removed at Lessee's cost and expense.

B. Lessee agrees that commencing with the opening for business by Lessee in the premises and for the remainder of the term of this Lease, Lessee shall remain open on those hours which are customary for such business and open on such days that are custom for the business. Lessee further agrees to display on its window, door or on the exterior structure of the premises the times and dates when it is open for business. It is agreed, however, that the foregoing provision shall be subject to any governmental regulations or labor union contracts in its hours of operation so prescribed by such governmental regulations or labor union contracts, as the case may be.

C. Lessee will not allow the premises to be used for any organized political or religious meetings or activity. Lessee shall, at all times during the term

hereof, comply with all laws and regulations of the United States and the Navajo Nation applicable to Lessee's conduct of business on the premises.

D. Lessee shall employ its best efforts to operate the business conducted on the premises in a manner that will produce the maximum volume of gross sales.

E. If Lessee sells Franchise Products or Services, and where it is so required by the Franchisor, Lessor agrees throughout the term of this Lease not to lease any other space in the Shopping Center to any Lessee whose primary business is the sale of the same Franchise Products or Services. Lessee must inform Lessor in writing, and provide written documentation, of this Franchise Requirement.

#### 1.42 ADVERTISEMENT AND SIGNS

A. Lessee shall not advertise, by installing signs or by other means of advertisement, on the premises without written approval by the Lessor.

B. The Lessor shall have the right, without liability, with or without notice, to remove any advertisement installed by Lessee in violation of this section and to charge Lessee for the cost of such removal and/or any repairs necessitated thereby.

#### 1.43 LESSOR'S RESERVATIONS AND RIGHTS

Lessor reserves the absolute right to effect such other leases in the Lessor, in the exercise of its sole business judgment, shall determine to best promote the interests of the Lessor, subject to the terms of this Lease. Lessee does not rely on the fact, nor does Lessor represent, that any specific Lessee or number of Lessees shall during the term of this Lease occupy any pads in the Shopping Center. This Lease is and shall be considered to be the only agreement between the parties hereto and their representatives and agents. All negotiations and oral agreements acceptable to both parties have been merged into and are included herein. There are no other representations and warranties between the parties and all reliance with respect to representations is solely upon the representations and agreements contained in this document.

#### 1.44 JOINT AND SEVERAL LIABILITY

All Lessees signing the lease as a Lessee shall be held jointly and severally liability for all terms and conditions of the lease. Any sublessor(s) sublessee(s), assignor(s) and assignee(s) shall be jointly and severally liable for the terms and conditions of the lease or tenant agreement and such liability may even extend to such person(s) assuming responsibilities and/or obligations of the terms and conditions of the lease.



## 2.0 TERMS AND CONDITIONS FOR ALL LEASES AND FOR LEASES WITH STORAGE TANKS

### 2.1 DEFINITIONS.

A. "Regulated Substance" is as defined at the Navajo Nation Storage Tank Act, Title 4, Section 1502 of the Navajo Nation Code; Resources Conservation and Recovery Act, Section 9001(7): 42 U.S.C. 6991(7), which is any substance defined in section 101(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1990 (42 U.S.C. 9601(14)). (but not including any substances regulated as a hazardous waste under subtitle C of the Resource Conservation and Recovery Act (42 U.S.C. 6921 et seq.) and petroleum).

B. "Storage Tank" is any above or underground tank which is defined by:

- (1) Title 4, Section 1502, as amended; and
- (2) An underground storage tank is defined as 42 U.S.C. 6991 (1), or any storage tank, regardless of the percentage of such tank which is located above or below ground, which is not excluded under 42 U.S.C. 6991 (1) and which is used for the storage of regulated substances, or;

### 2.2 REGULATED SUBSTANCES.

This applies to all leases regardless of whether the lessee is operating a gasoline station or not.

A. Before Lessee, Sublessee, Assignee, and Permittee permits or causes any regulated substance (as defined in 2.1(A)) to be used, stored, generated or disposed of on or in the premises, Lessee, Sublessee, Assignee, and Permittee must first obtain written consent of 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 consent shall be deemed granted.

If regulated substances are used, stored, generated or disposed of on or in the leased premises, or if the premises become contaminated in any manner for which Lessee, Sublessee, Assignee, and Permittee is legally liable, Lessee, Sublessee, Assignee, and Permittee shall indemnify and hold harmless the Lessor from any and all claims, damages, fines, judgments, penalties, costs, liabilities or losses (including, without limitation, a decrease in value of the 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, Sublessee Assignee and Permittee.

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, Sublessee, Assignee, and Permittee causes or permits the presence of any hazardous or regulated substance on the premises and such results in any contamination of the leased premises or other property including, but not limited to the improvements, soil, surface water or groundwater, Lessee, Sublessee, Assignee and Permittee shall promptly, at its sole expense, take any and all necessary actions to return the premises to the condition existing prior to the contamination by any such regulated substance on the premises. Prior to any necessary action, the Lessees, Sublessees, Assignees, and Permittees must obtain Navajo Nation Environmental Protection Agency's approval for any such remedial action. Any action taken must follow with the Navajo Nation Storage Tank Act.

B. Lessee, Sublessee, Assignee, and Permittee shall provide the Navajo Environmental Protection Agency and the 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, Sublessee, Assignee, and Permittee 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 Environmental Protection Agency shall be by first class mail to:

Storage Tank Program,  
Navajo Environmental Protection Agency  
Post Office Box 3089  
Window Rock, Navajo Nation (Arizona)  
86515

and,

Navajo Nation Shopping Centers, Inc.  
Post Office Box 478  
Window Rock, Navajo Nation (Arizona)  
86515

### 2.3 FINANCIAL RESPONSIBILITY FOR STORAGE TANKS.

If Lessee, Sublessee, Assignee and Permittee 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 Navajo Nation Storage Tank Act and 40 C.F.R. Part 280, Subpart H regardless of whether the storage tank in question is an aboveground or underground storage tank. Lessee, Sublessee, Assignee, or Permittee shall provide proof of this bond, insurance, or other qualifying financial responsibility mechanism to the Lessor, Real



Estate Department, Division of Economic Development and Navajo Nation Environmental Protection Agency. The 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 the Navajo Nation Environmental Protection Agency 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 40 C.F.R. Part 280, Subpart H financial responsibility requirements. It shall be the responsibility requirements. It shall be the responsibility of the Lessee, Sublessee, Assignee and Permittee to provide the Navajo Nation Environmental Protection Agency, Lessor Real Estate Department and Division of Economic Development with all required documentation or information for release of bond or termination of insurance coverage. For this Section, the insurance policy shall not contain a pollution liability exclusion clause.

#### 2.4 ENVIRONMENTAL AUDITS AND COMPLIANCE DOCUMENTS.

A. Entry Audit: In these provisions, Lessee also refers to Sublessee. If storage tanks are located at the Lease site, the Lessee will supply the Navajo Nation Environmental Protection Agency and the 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 or solid waste from the storage tanks but no later than ninety (90) days after the Lease is concurred by Lessor. Lessee shall notify the Navajo Nation Environmental Protection Agency and the Lessor of Phase Two Environmental Audit.

The Lessee shall notify the Navajo Nation Environmental Protection Agency and the 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 days of the Lessee's written notice, the environmental auditor is deemed accepted. If, however, the most recent prior Lessee of the premises of the Navajo Nation has performed a Phase Two environmental audit on the premises at or after the termination of the prior tenancy, Lessee is not required to perform a Phase Two environmental audit if new or current Lessee agrees to be legally bound by the findings of the above referenced Phase Two environmental audit. In such situation, the Lessee that is forgoing an audit is taking the risk of assuming liability of any contamination on the premises. Each Lessee is encouraged to obtain a phase two environmental audit.

B. Environmental Audit(s): Lessee shall pay to the Lessor the amount of \$15,000 which will be held by the Lessor during the term of the Lease. One year after Lessee's Lease obligation commences Lessee shall pay \$5,000 toward payment of the \$15,000 and shall pay \$5,000 at the end of second and third years of Lessee's payment obligation.

This sum 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 or solid waste has occurred. The Navajo Nation Environmental Protection Agency shall determine whether an audit shall be performed.

If the Navajo Nation Environmental Protection Agency determines 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 to \$15,000, whichever is less. If Lessor performs an environmental audit pursuant to this article 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 the Navajo Nation sufficient to reestablish the amount deposited prior to the audit and to reimburse the Navajo Nation spent on the environmental audit in excess of the \$15,000 deposit.

The deposit shall be kept in an account by the 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 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 attorney's fees.

#### 2.5 OWNERSHIP AND REMOVAL OF STORAGE TANKS

A. The ownership and removal responsibility for any regulated substances or petroleum product 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 Navajo Nation Environmental Protection Agency 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 the Lessor, regulated substances and storage tanks are the property of the Lessee who placed them on the property and do not become the property of the Lessor for RCRA liability purposes unless the property 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 or part of such property.
- C. Prior to termination or expiration of the Lease and prior to vacancy of the property the Lessee shall remove those improvements that are

subject to removal, assess the site for potential contamination, remediate any contamination discovered, and satisfy or actively and in good faith seek resolution of any third-party damages which may have occurred. Should any of the above activities extend past the termination or expiration date of the Lease, the Lease shall be extended and Lessee shall remain financially responsible for completing these activities. The bond, unless waived, or the insurance of this Lease shall not be released or terminated until these activities are completed.



**NAVAJO NATION SHOPPING CENTERS, INC.  
COMPLEX ASSIGNMENT OF LEASE**

THIS ASSIGNMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between the Assignor(s) and named below and the Assignee below, hereby assign to the said Assignee that certain Lease No. \_\_\_\_\_, described below TO HAVE AND TO HOLD the same unto the Assignee from and after the date of approval of this Assignment by the Navajo Nation Shopping Centers, Inc. for portion of the term mentioned in said Lease, together with all the rights, duties and liabilities therein granted. I understand and agree that this assumption shall not be valid or binding upon either party hereto, until approved by the Navajo Nation Shopping Centers, Inc. but otherwise shall be of full force and effect irrevocable by me.

Name of Assignor(s) \_\_\_\_\_

\_\_\_\_\_  
Address of Assignor(s) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signature of Assignor \_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Assignor \_\_\_\_\_

\_\_\_\_\_  
Date

**ASSUMPTION OF LEASE**

I, the Assignee named below, for in consideration of the approval of the above Assignment by the Navajo Nation Shopping Centers, Inc., Lessor, acting by and through its duly authorized agents, hereby assume and agree to pay and be bound by all the rents, covenants, liabilities, terms and conditions of that certain Lease No. \_\_\_\_\_, to the same extent as if I were the Lessee originally named therein. I understand and agree that this assumption shall not be valid or binding upon either party hereto, until approved by the Navajo Nation Shopping Centers, Inc. but otherwise shall be of full force and effect irrevocable by me.

Name of Assignee(s) \_\_\_\_\_

\_\_\_\_\_  
Address of Assignee(s) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signature of Assignee \_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Assignee \_\_\_\_\_

\_\_\_\_\_  
Date

STATE OF \_\_\_\_\_ )  
\_\_\_\_\_) ss.  
COUNTY OF \_\_\_\_\_ )

This instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_.

In witness whereof, I have hereunto set my hand and seal.

MY COMMISSION EXPIRES:

\_\_\_\_\_  
Notary Public



**NAVAJO NATION SHOPPING CENTERS, INC.  
COMPLEX ASSIGNMENT OF LEASE**

Lease No. \_\_\_\_\_

**Description of Premises**

See attached Legal Description

The above assignment and assumption are hereby approved.

APPROVAL:

NAVAJO NATION SHOPPING CENTERS, INC.

\_\_\_\_\_  
Chief Executive Officer

Date: \_\_\_\_\_

EXECUTION:

NAVAJO NATION

\_\_\_\_\_  
President/Vice President

Date: \_\_\_\_\_

**NAVAJO NATION SHOPPING CENTERS, INC.  
SIMPLE ASSIGNMENT OF LEASE**

THIS ASSIGNMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between the Assignor(s) and named below and the Assignee below, hereby assign to the said Assignee that certain Lease No. \_\_\_\_\_, described below TO HAVE AND TO HOLD the same unto the Assignee from and after the date of approval of this Assignment by the Navajo Nation Shopping Centers, Inc. for portion of the term mentioned in said Lease, together with all the rights and duties therein granted. I understand and agree that this assumption shall not be valid or binding upon either party hereto, until approved by the Navajo Nation Shopping Centers, Inc. but otherwise shall be of full force and effect irrevocable by me.

Name of Assignor(s) \_\_\_\_\_

\_\_\_\_\_  
Address of Assignor(s) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signature of Assignor \_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Assignor \_\_\_\_\_

\_\_\_\_\_  
Date

**ASSUMPTION OF LEASE**

I, the Assignee named below, for in consideration of the approval of the above Assignment by the Navajo Nation Shopping Centers, Inc., Lessor, acting by and through its duly authorized agents, hereby assume and agree to pay and be bound by all the rents, covenants, terms and conditions of that certain Lease No. \_\_\_\_\_, to the same extent as if I were the Lessee originally named therein. I understand and agree that this assumption shall not be valid or binding upon either party hereto, until approved by the Navajo Nation Shopping Centers, Inc. but otherwise shall be of full force and effect irrevocable by me.

Name of Assignee(s) \_\_\_\_\_

\_\_\_\_\_  
Address of Assignee(s) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signature of Assignee \_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Assignee \_\_\_\_\_

\_\_\_\_\_  
Date

STATE OF \_\_\_\_\_ )  
\_\_\_\_\_) ss.  
COUNTY OF \_\_\_\_\_ )

This instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_.

In witness whereof, I have hereunto set my hand and seal.

MY COMMISSION EXPIRES:

\_\_\_\_\_  
Notary Public

**NAVAJO NATION SHOPPING CENTERS, INC.  
SIMPLE ASSIGNMENT OF LEASE**

Lease No. \_\_\_\_\_

**Description of Premises**

See attached Legal Description

The above assignment and assumption are hereby approved.

APPROVAL:

NAVAJO NATION SHOPPING CENTERS, INC.

\_\_\_\_\_  
Chief Executive Officer

Date: \_\_\_\_\_

EXECUTION:

NAVAJO NATION

\_\_\_\_\_  
President/Vice President

Date: \_\_\_\_\_

Surety (If applicable)



**NAVAJO NATION SHOPPING CENTERS, INC.  
LEASE MODIFICATION**

Lease No. \_\_\_\_\_

It is hereby agreed by and between the Navajo Nation Shopping Centers, Inc., Lessor and \_\_\_\_\_ (Lessee) and \_\_\_\_\_, Surety, that Business Site Lease No.: \_\_\_\_\_ be modified this \_\_\_\_\_ day of \_\_\_\_\_:

1. An amendment to Paragraph \_\_\_\_\_, to include:

This modification does not change any of the terms and conditions of the base lease, or stipulations except as specifically set forth herein and nothing shall be deemed a waiver of the sovereign immunity of the Navajo Nation and Navajo Nation Shopping Centers, Inc. All other terms and conditions shall remain in full force and effect.

In Witness hereof, the parties hereto have set their hands.

\_\_\_\_\_  
Surety

\_\_\_\_\_  
Lessee

\_\_\_\_\_  
Date

APPROVAL:

NAVAJO NATION SHOPPING CENTERS, INC.

\_\_\_\_\_  
Chief Executive Officer

Date: \_\_\_\_\_

EXECUTION:

NAVAJO NATION

\_\_\_\_\_  
President/Vice President

Date: \_\_\_\_\_

**NAVAJO NATION SHOPPING CENTERS, INC.**  
**COLLATERAL ASSIGNMENT OF LEASE**

This Collateral Assignment of Lease is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ between the \_\_\_\_\_, whose address is \_\_\_\_\_ hereinafter called Assignee and \_\_\_\_\_, whose address is \_\_\_\_\_ hereinafter called the Assignor. The Lease has been previously approved as Lease No. \_\_\_\_\_.

WITNESS

**SECTION I. RECITALS**

- A. The Assignor, also the Lessee, under a certain Lease No. \_\_\_\_\_, a copy of which is attached as Exhibit "A".
- B. Assignor has agreed to make a loan in the amount of \$\_\_\_\_\_ to finance the project. The development loan will be made pursuant to a Loan Agreement dated \_\_\_\_\_, \_\_\_\_\_, and a Promissory Note ("Note") as evidence of its repayment obligation in connection with the Loan Agreement.
- C. The Assignor has agreed to make a Collateral Assignment of the Lease ("Assignment") to secure the Note under the terms of the Loan Agreement as originally made and as it may be amended.

**SECTION II. ASSIGNMENT**

- A. As security for the payment of the Note, the Assignor hereby assigns its leasehold interest, rights, and right to continued possession, under Lease No. \_\_\_\_\_, subject to the terms and conditions herein to Assignee.

**SECTION III. WARRANTIES AND COVENANTS**

- A. Assignor shall pay all applicable rents and other charges pursuant to the terms of the Lease.
- B. Assignor shall not surrender its Lease and interest in the Lease, nor terminate or cancel the Lease. The Assignor shall not modify the Lease without the express written consent of the Assignee. Any such modification without the prior written consent of Assignee shall be null and void and have no force and/or effect. However, Assignee shall not unreasonably withhold approval of any modification to the Lease which does not impair its security interest.

**SECTION IV. PERFORMANCE OF LEASE OBLIGATIONS AND RIGHT TO CURE**

- A. The Assignor shall at all times fully perform and comply with terms and conditions of the Lease.



**NAVAJO NATION SHOPPING CENTERS, INC.**  
**COLLATERAL ASSIGNMENT OF LEASE**

- B. If Assignor fails to fully perform and comply with the Lease, the Assignee may, cure the default, and/or take possession of the leased premises. If Assignee takes possession of the premises, it shall comply with the terms and conditions of the Lease.
- C. The Assignor hereby expressly grants to Assignee, and agrees that Assignee shall have the absolute and immediate right to enter in and on the leased premises, or any part thereof, in the event that Assignee deems it necessary or desirable to prevent or cure any default on the Lease by the Assignor.

**SECTION V. RELEASE OR FORBEARANCE**

No release or forbearance by Assignee of any of the Assignor's obligations under the Loan Agreement or Note shall release the Assignor from any of its obligations under the Lease, including the Assignor obligation to perform all of the terms, covenants and conditions contained in the Lease.

**SECTION VI. DEFAULT AND SALE**

- A. In the event of default under the Loan Agreement and Note, and if the Assignor fails to cure the default, Assignee may exercise the rights provided for in the Loan Agreement, Note, and this Assignment. However, before any subsequent assignment, transfer, or sale, of the Lease, whether under power of sale or foreclosure, Assignee shall give written notice of the event of default and the Assignor's failure to cure the default to the Lessor. Before any notice of sale, subsequent assignment, transfer or any other form of alienation, the Lessor with first priority shall be given the right to pay Assignee the full unpaid principal, accrued interest due under the Loan Agreement and Note, plus reasonable sale and enforcement costs incurred by Assignee through the day of such payment by the Lessor. This right may be exercised at any time before the completion of the sale proceedings.
- B. If the Lessor exercises its right to pay Assignee the full unpaid amount and interest due under the Loan Agreement and the Note, plus reasonable sale and enforcement costs incurred through the date of payment, this Assignment shall automatically terminate on the date such right is exercised, and shall have no further force or effect. However, the termination of this Assignment shall not relieve Assignee from any obligation or liability which has accrued before the date of termination. Assignee shall file the appropriate termination statement and/or release with the Lessor.
- C. In the event that the Lessor avails itself of the rights set forth above, Assignee shall have the right to either 1) remain in possession of the Lease, assume the position of the Assignor and perform the terms and conditions of the Lease so long as Assignee retains title thereto, or 2) sell its interest in the Lease by either public or private sale on terms that are commercially reasonable. If a sale occurs resulting in a purchase by a party other than Assignee, the purchaser shall be bound by all the terms and conditions of the Lease and shall expressly assume those terms and condition of the sale. Any purported sale



**NAVAJO NATION SHOPPING CENTERS, INC.**  
**COLLATERAL ASSIGNMENT OF LEASE**

where the purchaser does not expressly assume the terms and conditions of the Lease shall be null and void and without effect.

**SECTION VII. TERMINATION UPON PAYMENT IN FULL**

In the event that the Assignor pays the amount specified in the Loan Agreement and Note in full plus interest thereon, this Assignment shall cause to have effect and Assignor shall file such termination statement and/or releases as reasonably necessary within ten (10) days after the Assignor pays the full amount of the Loan Agreement and Note and interest thereon, or at such time as the Assignor requests that such termination statements and/or releases be filed.

**SECTION VIII. CHOICE OF LAW**

The laws of the Navajo Nation, shall govern this Assignment. If there is Navajo or applicable federal law the court shall apply such law. In dispute arising under, or related to, this Assignment shall be decided exclusively in the Courts of the Navajo Nation. Nothing in this Collateral Assignment of Lease shall be construed as a waiver, either express or implied, of the Sovereign Immunity of the Navajo Nation and Navajo Nation Shopping Centers, Inc.

IN WITNESS WHEREOF, the parties have executed this Collateral Assignment on the date and year first above written.

FOR THE ASSIGNOR:

\_\_\_\_\_  
(Title)

Date: \_\_\_\_\_

FOR THE ASSIGNEE:

\_\_\_\_\_  
(Title)

Date: \_\_\_\_\_

**NAVAJO NATION SHOPPING CENTERS, INC.  
COLLATERAL ASSIGNMENT OF LEASE**

APPROVAL:

NAVAJO NATION SHOPPING CENTERS, INC.

\_\_\_\_\_  
Chief Executive Officer

Date: \_\_\_\_\_

EXECUTION:

NAVAJO NATION

\_\_\_\_\_  
President/Vice President

Date: \_\_\_\_\_





# **BUSINESS PLAN SAMPLE**

The business plan essentially describes the proposed business operation and activity. The business plan is prepared to coordinate the planning of the business' activities, provide a basis for measuring actual performance against expected performance and serve as a vehicle for communicating to others the business' objectives. The business plan is required to be developed for any proposed business activity. A business plan should follow the basic outline as structured below.

## **I. Cover Letter**

Purpose: Serves as letter of interest and a transmittal letter of the business plan for the proposed activity.

## **II. Summary**

Purpose: Presents the highlights of the completed business plan including the overall goals and strategies the operation or enterprise plans to utilize.

## **III. Business Description**

Purpose: Identifies the proposed business activity, product and location.

### Contents Include:

1. Name and nature of the business.
2. Location and description.
3. Merchandise and product.

## **IV. Market Analysis and Sales Plan**

Purpose: Establishes an estimate of the expected level of revenues which the enterprise can generate, and sets forth a plan of strategy for achieving the projected revenues.

### Contents Include:

1. Description of the product or service to be provided.
2. Identification of the typical purchaser of the product.
3. Estimate of the average quantity and dollar amount of the product purchased by the typical consumer.
4. Geographic area to be served by the enterprise.
5. Estimate of the total number of potential consumers residing within the geographic market area.

6. Estimate of the total dollar size of the market (# of Potential Customers x Average Expenditure per Customer = Total Market Size).
7. Assessment of the competition.
8. Estimated level of the sales and market share of the enterprise.
9. Business Plan
  - Method of Selling
  - Pricing Policy
  - Advertising and Promotional Program
  - Seasonal Factors

## **V. Technical and Operational Plan**

Purpose: Identifies the key technical and operational problems, and sets forth a plan for solving the operational problems.

Contents Include:

1. Facility, acreage and equipment required, and whether these are to be purchased, leased, constructed new, etc.
2. Personnel required to operate the enterprise, including both the management and labor. Identifies any specialized skills which may be required.
3. Management and Structure. If the proposed business activity will be a sole proprietorship, partnership, corporation or franchise operation. An organizational chart and resumes of key personnel should be provided.
4. Production process (for a manufacturing operation).
5. Merchandising plan (for a retail establishment).
6. Source and method of supply (raw materials for manufacturing/inventory for retail).
7. Transportation
8. Unusual technical problems (high utility or water usage, waste product disposal, etc.).

## **VI. Financial Plan**

Purpose: Places a cost estimate on every element in the technical and operational plan, to compare revenues and expenses; identifies total capital requirements and sources of financing.

Contents Include:

1. Statement of financial requirements and sources.
2. Pro-forma statement of revenue and expenses.
3. Projected cash flow for three years.
4. Submit certified financial statements for the past three years.
5. Breakeven analysis.

**NAVAJO NATION SHOPPING CENTERS, INC.**  
**Security Deposit Agreement**

The Navajo Nation Shopping Centers, Inc., hereinafter named "Lessor," Post Office Box 478, Window Rock, Arizona 86515 entered into a Lease No. \_\_\_\_\_, hereinafter named "Lease," (Attached hereto) with \_\_\_\_\_, hereinafter named "Lessee," [Insert Address], for a term of \_\_\_\_ years at a rental value of \$ \_\_\_\_\_.

Terms and Conditions:

1. The Lessee has deposited with the Lessor the sum of \$ \_\_\_\_\_, which is the first years 2 month rental payment, hereinafter named "Security Deposit" as security for the prompt and full payment of the rent of this lease, and any modifications or amendments to the lease.
2. The Lessor shall deposit this security in Lessor's name, as trustee for the Lessee, naming Lessee, in any interest bearing account in [Interest Bank Name, and Address].
3. The security deposit and the interest earned on it, if any, shall remain the money of the Lessee until it is returned or applied to rental payments due to the Lessor as provided in this security agreement. Pending such event, the Lessor shall hold the money in trust.
4. Provided the Lessee has paid all of the rent required under this Lease, the Lessor shall return any remaining balance (security deposit and interest earned, if any) of the security upon the expiration, or earlier termination, extension or renewal, of this lease.
5. Upon default<sup>1</sup> of the Lease by the Lessee, the Lessor shall retain the Security Deposit and interest to remedy the default. The Lessor shall use the security deposit to pay the outstanding balance of the Lease.
6. If the default is cured and if the Lease has not expired or no modifications therein, the Lessee can continue the terms of the Lease only if the Lessee provides another security deposit in the same amount provided in Clause 1 of this agreement.
7. This Agreement contains all the terms and conditions agreed to by the parties herein. No other understanding, oral and otherwise, regarding this agreement shall be deemed to exist or to bind any of the parties hereto. This Agreement shall be amended or extended by mutual written agreement of the parties herein.
8. This Agreement shall become effective on the date it is signed by the Navajo Nation Shopping Centers, Inc.
9. Any disputes arising under this agreement shall be settled administratively under the laws of the Navajo Nation.

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<sup>1</sup> Default is defined pursuant to Section 7.1(1), Management Plan.



**NAVAJO NATION SHOPPING CENTERS, INC.**  
**Security Deposit Agreement**

10. Nothing herein shall be construed, expressly or indirectly, as a waiver of the sovereign immunity of the Navajo Nation and Navajo Nation Shopping Centers, Inc.

\_\_\_\_\_  
Lessee Date

\_\_\_\_\_  
Lessee Date

NAVAJO NATION SHOPPING CENTERS, INC.

\_\_\_\_\_  
Chief Executive Officer Date

**NAVAJO NATION SHOPPING CENTERS, INC.**  
**Emergency Operating Agreement**

*EMERGENCY OPERATING AGREEMENT* made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between Navajo Nation Shopping Centers, Inc., hereinafter referred to as Lessor, and \_\_\_\_\_, hereinafter referred to as "Operator".

**Recitals**

**Whereas** the property is not currently being used and existing structures are subject to vandalism;

**Whereas** the property is within the jurisdiction of the Lessor;

**Whereas** the property is available as a business lease and needs to be occupied for security and maintenance of the business so that the Lessor continues to benefit from the business opportunities.

**Whereas** Lessor desires to engage the services of the Operator to manage and operate this site, on a temporary and emergency basis, until a Lease can be issued, which may be incumbent upon the operator being able to exercise the development efforts and or related interest of the Lessor. Operator desires to provide such services on the terms and conditions contained herein.

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein, the parties agree as follows:

1. **EMPLOYMENT OF OPERATOR:** Operator shall act as the exclusive operator to manage, operate, and maintain the building until a formal lease is executed and approved.
2. **TERM AND RENTAL:** The use of this Agreement will be limited to a term of \_\_\_\_\_ following the date this Agreement is signed; however, may be renewed, \_\_\_\_\_. Operator must give the Lessor notice at least five (5) days before expiration of the Agreement [so long as the Operator is diligently working on obtaining a business site lease].
3. **DUE DILIGENCE:** Operator subject to procurement clearance.
4. **MAINTENANCE, REPAIRS, AND OPERATIONS:** Operator shall not be responsible for, and shall have no liability for any past due or unpaid Lease payments accrued by the former operator prior to the execution of this Agreement. Operator shall be responsible for all maintenance, repair and operations on the building and premises and shall maintain in a pleasant appearance as determined by the Lessor.
5. **EMPLOYEES** Operator shall employ, discharge, and supervise all on-site employees or contractors required for the efficient operation and maintenance of the building. All on-site personnel, except independent contractors and employees of independent contractors, shall be the employees of the Operator. Operator shall comply with all applicable Navajo

**NAVAJO NATION SHOPPING CENTERS, INC.**  
**Emergency Operating Agreement**

Nation preference in employment laws in hiring, supervising, and discharging the on-site personnel at the property.

6. **INSURANCE** Operator may obtain the following insurance, and such insurance shall be maintained in force during the full term of this Agreement:
  - a. Comprehensive general liability insurance for bodily injury, death and property damage which must include the Lessor and the United States as additional named insureds.
  - b. Workers compensation and employer liability insurance to cover the Operator, and employees of the Operator.
7. **TERMINATION:** This Agreement may be terminated by either party by giving not less than thirty (30) day notice in writing to the other party.
8. **CONDEMNATION:** This Agreement shall terminate in the event of a total condemnation of property. If a partial condemnation of the property reduces the compensation of Operator by more than ten percent (10%), Operator may terminate this Agreement.
9. **NO PROPERTY INTEREST CREATED:** Nothing contained in this Agreement shall be deemed to create or shall be construed as creating any property interest in the land.
10. **LICENSING OF OPERATOR:** Operator shall at all times during the term of this Agreement maintain such licenses and permits as are required for any of the various services to be performed by Operator.
11. **OPERATOR AS INDEPENDENT CONTRACTOR:** Operator is an independent contractor and not an employee of the Lessor for any purpose.
12. **COVENANTS AND CONDITIONS:** All of the terms and conditions of this Agreement are expressly intended to be construed as covenants as well as conditions.
13. **NOTICE:** All notices, requests, demands, or other communications hereunder shall be in writing, and shall be deemed to have been duly given if delivered in person, or within five (5) days after deposited in the United States mail, postage prepaid, certified, with return receipt requested, or otherwise delivered to Lessor at P.O. Box 478, Window Rock, Arizona 86515 or to Operator at \_\_\_\_\_. Either party hereto may change the address at which it receives written notices by so notifying the other party hereto in writing.
14. **PARTIES BOUND; ASSIGNMENT:** This Agreement shall be binding on and inure to the benefit of the successors and assigns to the parties hereto, and their respective successors and assigns; provided, however, that this Agreement may not be assigned by Operator without prior written consent of the NNSCI. Anything in the foregoing to the contrary notwithstanding, Operator may, without the consent of the NNSCI, delegate the



**NAVAJO NATION SHOPPING CENTERS, INC.**  
**Emergency Operating Agreement**

performance of (but not responsibility for) any duties and obligations of Operator to any independent contractor or entity.

15. **CONSENT TO JURISDICTION:** Operator hereby consents to the legislative, executive and judicial jurisdiction of the Navajo Nation in connection with all activities conducted by the Operator within the Navajo Nation. Operator shall also agree to be governed by the Navajo Nation, Business Leasing Regulations of 2005 and the Navajo Nation Business Site Lease Management Plan, as amended.
16. **SOVEREIGN IMMUNITY:** Nothing herein shall be construed to waive the sovereign immunity of the Navajo Nation and Navajo Nation Shopping Centers, Inc., explicitly or implicitly.
17. **EFFECT OF PARTIAL INVALIDITY:** Should any section or any part of any section of this Agreement be rendered void, invalid or unenforceable for any reason by the appropriate Navajo Nation Court, such a determination shall not render void, invalid or unenforceable any other section or any part of any section in this Agreement.
18. **INTEGRATION:** The drafting, execution and delivery of this Agreement by the parties have been induced by no representations, statements, warranties or agreements other than those expressed in this Agreement. This Agreement embodies the entire understanding of the parties, and there are no further or other agreements or understandings, written or oral, in effect between the parties relating to the subject matter hereof unless expressly referred to in this Agreement.
19. **MODIFICATION:** This Agreement may not be modified unless such modification is in writing and signed by both parties in this Agreement.

**IN WITNESS WHEREOF**, the parties have executed this Agreement on the day and year first above written.

\_\_\_\_\_  
Operator

DATE: \_\_\_\_\_

Navajo Nation Shopping Centers, Inc.

\_\_\_\_\_  
CEO

DATE: \_\_\_\_\_

**NAVAJO NATION SHOPPING CENTERS, INC.**  
**Emergency Operating Agreement**

NAVAJO NATION SHOPPING CENTERS, INC.  
INDEMNIFY, DEFEND AND HOLD HARMLESS

\_\_\_\_\_, Operator shall indemnify, protect, defend and hold harmless the Navajo Nation Shopping Centers, Inc. (Lessor) 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 premises by Operator, the conduct of the Operator's business, any act, omission, neglect or misconduct of Operator, its agents, contractors, employees or invitees, and out of any Default or Breach by Operator in the performance in a timely manner of any obligation on the Operators part to be performed under this Emergency Operating Agreement. 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 Lessor by reason of any of the foregoing matters, Operator, upon notice from Lessor, shall defend the same at Operator's expense by counsel reasonably satisfactory to the Lessor. Lessor shall cooperate with Operator in such defense. Operator or it's insurer shall have the right to control such defense and to settle or compromise the claim in cooperation with Lessor as long as such defense, settlement or compromise does not unduly prejudice the Lessor.

**OPERATOR**

\_\_\_\_\_, Operator

\_\_\_\_\_  
Date



**NAVAJO NATION SHOPPING CENTERS, INC.**  
**Revocable Use Permit**

This Permit entered into by and between the Navajo Nation Shopping Centers, Inc., hereinafter called the Permitter, whose address is P.O. Box 478, Window Rock, Arizona 86515, and \_\_\_\_\_, dba, \_\_\_\_\_, hereinafter called Permittee, whose address is \_\_\_\_\_.

1. The Permitter hereby permits the Permittee to use area of approximately \_\_\_\_\_ square feet, more particularly shown on Exhibit "A", attached hereto and made a part hereof, \_\_\_\_\_ for \_\_\_\_\_ the \_\_\_\_\_ purpose \_\_\_\_\_ of \_\_\_\_\_.

2. TERM. The term of this Permit shall be for a period of \_\_\_\_\_ beginning on the date of execution by the Permitter.

Permittee may exercise an option to renew for one additional term of one year. Permittee must give the Permitter notice to renew at least five (5) working days, prior to the expiration date of this Permit.

3. RENTAL. The Permittee shall pay to the Permitter rental in the amount of \$\_\_\_\_\_ per \_\_\_\_\_ daily/monthly for the use of the premises described above for the term of the Permit. Payments shall be made payable to the Navajo Nation Shopping Centers, Inc., P.O. Box 478, Window Rock, Arizona 86515.
4. UTILITY SERVICE LINE AGREEMENT. Permittee specifically is authorized to enter into appropriate service agreement with utility companies for utility services to the permitted area, including gas, water, sewer, electricity, telephone, television and other utilities, without further consent by Permitter. Fees and monthly utility charges by these utility companies is solely the responsibility of the Permittee.
5. DELIVERY OF PREMISES. The premises shall be given and accepted by the Permittee "as is" and Permitter shall not be responsible for any latent defects. By signing the Permit, Permittee represents it has examined and inspected the condition of the premises. Upon termination or expiration of this Permit, the Permittee will clean up all refuse in the permitted area and leave it in a neat and presentable condition, satisfactory to the Permitter.
6. UNLAWFUL CONDUCT/ACTIVITIES. The Permittee further agrees to not use or allow any part of said property and/or premises for any unlawful conduct/activities. Violation of this clause shall void the Permit.
7. LIABILITY FOR USE. Permittee shall obtain General Liability Insurance, Fire and Casualty Insurance coverage with the minimum coverage until the Permit expires or is terminated, unless Permittee executes the Permitter Indemnification form. It is further understood and agreed that the Permittee shall hold the Permitter and the Navajo Nation harmless from any and all claims or liabilities arising out of the use, occupancy or



**NAVAJO NATION SHOPPING CENTERS, INC.**  
**Revocable Use Permit**

possession of said property and premises by the Permittee, or injury sustained by the Permittee, or any other person or damage to property, on or about said premises during the term of this Permit.

8. **OBLIGATIONS OF PERMITTEE.** While the permitted premises are in trust or restricted status, all of the Permittee's obligations under this Permit and the obligations of its surety or sureties, are to the Permitter.
9. **TERMINATION OF FEDERAL TRUST.** Nothing contained in this Permit shall operate to delay or prevent a termination of Federal trust responsibilities with respect to the land by the issuance of a fee patent or otherwise during the term of this Permit, however, such termination shall not serve to abrogate the Permit. The owners of the land and the Permittee and its surety shall be notified of any such changes in the status of the land.
10. **TERMINATION.** This Permit may be terminated by either party by giving a two (2) week notice in writing to the other party. The Permit shall terminate automatically when the Permit expires or is terminated and the Permittee shall have no rights including holdover on any portion of the premises unless Permitter gives written consent.
11. **ENVIRONMENT.** Permittee shall take all necessary measure to assure compliance with applicable Federal and Tribal laws including the Navajo Nation Environmental Review in accordance with the Tribal Regulations including any amendments thereto which by this reference are made a part hereof.
12. **PERFORMANCE CASH BOND.** Permittee shall provide a security or cash bond to the Permitter to ensure performance of the terms and conditions in this Permit. The security or cash bond amount shall be equal to two (2) month's rent. A security is not required for a permit that has a term of six (6) months or less.
13. **EMPLOYMENT OF QUALIFIED NAVAJOS.** In connection with all employment and contracting opportunities arising out of Permittee's activities under this Permit, Permittee 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 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 Permit. Violation of such laws by the Permittee shall constitute a breach of this Permit and provide grounds for suspension or termination of the Permit or any other remedy prescribed by the NPEA and NBOA.
14. **AGREEMENT TO ABIDE BY NAVAJO AND FEDERAL LAWS.** The Permittee and its employees and agents agree to abide by all laws, regulations, and ordinances of the Navajo and all laws, regulations and ordinances of the United States now in force and effect or which may hereafter be in force and effect. This agreement to abide by Navajo laws shall not forfeit rights, which the Permittee and its employees and agents enjoy under the federal laws of the United States Government.

**NAVAJO NATION SHOPPING CENTERS, INC.**  
**Revocable Use Permit**

15. **PERMIT REQUIREMENTS NOT EXCLUSIVE.** Nothing in the Permit shall be construed to relieve Permittee of any obligations pursuant to any Federal or Navajo Nation law for the protection of the environment or the public health, safety or general welfare which is currently enacted or which may be enacted.
16. **GOVERNING LAW AND CHOICE OF FORUM.** Except as may be prohibited by applicable federal law, the laws of the Navajo Nation shall govern the construction, performance and enforcement of this Permit. Any action or proceeding brought by Permittee against the Permitter in connection with or arising out of the terms and conditions of this Permit shall be brought only in the Courts of the Navajo Nation, and no action or proceeding shall be brought by Permittee against the Permitter, in any court or administrative body of any state. Permittee hereby consents to the legislative, executive, and judicial jurisdiction of the Navajo Nation in connection with all activities conducted by the Permittee within the Navajo Nation.
17. **NO WAIVER OF SOVEREIGN IMMUNITY.** Nothing in this Permit shall be interpreted as constituting a waiver, express or implied, of the sovereign immunity of the Navajo Nation, Navajo Nation Shopping Centers, Inc. and Permitter.
18. **VALIDITY.** Any modification thereof or amendment to this Permit shall not be valid or binding upon either party hereto, until approved by the Permitter. A sub-permit, assignment, modification or amendments may not be entered into without the written consent of Permitter.
19. **SUCCESSORS AND ASSIGNS.** The terms and conditions contained herein shall extend to and be binding upon the successors, heirs, assigns, executors, administrators, employees and agents.
20. **NOTICES.** All notices, demands, requests, changes in information or other communications to or upon either party provided for in this Permit, or given or made in connection with this Permit, shall be in writing and shall be addressed as follows:

THE NAVAJO NATION SHOPPING CENTERS, INC.  
P.O. Box 478  
Window Rock, AZ 86515  
928-871-2218

Permittee:

\_\_\_\_\_ [address]  
\_\_\_\_\_ [phone]  
\_\_\_\_\_ [telefax]



**NAVAJO NATION SHOPPING CENTERS, INC.**  
**Revocable Use Permit**

IN WITNESS WHEREOF, the parties hereto have executed the Permit this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Name of Permittee:

\_\_\_\_\_  
Address of Permittee

\_\_\_\_\_  
Signature of Permittee

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Permittee

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date:

NAVAJO NATION SHOPPING CENTERS, INC.

\_\_\_\_\_  
Chief Executive Officer

\_\_\_\_\_  
Date:



**NAVAJO NATION SHOPPING CENTERS, INC.**  
**Revocable Use Permit**

**INDEMNIFICATION**

I, \_\_\_\_\_, Operator shall indemnify, protect, defend and hold harmless the Navajo Nation Shopping Centers, Inc. (Lessor) 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 premises by Operator, the conduct of the Operator's business, any act, omission, neglect or misconduct of Operator, its agents, contractors, employees or invitees, and out of any Default or Breach by Operator in the performance in a timely manner of any obligation on the Operators part to be performed under this Emergency Operating Agreement. 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 Lessor by reason of any of the foregoing matters, Operator, upon notice from Lessor, shall defend the same at Operator's expense by counsel reasonably satisfactory to the Lessor. Lessor shall cooperate with Operator in such defense. Operator or it's insurer shall have the right to control such defense and to settle or compromise the claim in cooperation with Lessor as long as such defense, settlement or compromise does not unduly prejudice the Lessor.

**OPERATOR**

\_\_\_\_\_, Operator

\_\_\_\_\_  
Date

**NAVAJO NATION SHOPPING CENTERS, INC.**  
**SUBLEASE**

This Sublease is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_ hereinafter called "Sublessor" and \_\_\_\_\_ hereinafter called "Sublessee" in accordance with the provisions of 25 U.S.C. § 415 (e) as amended, and as implemented by the regulations contained in the Navajo Nation Business Leasing Regulations of 2005, as amended. The Sublessor is the Lessee of the base Lease.

**WITNESSETH:**

**1. PROPERTY SUBLEASED**

The Sublessor hereby subleases to the Sublessee its interests in the following described tract of land within the Navajo Nation, County of \_\_\_\_\_, State of \_\_\_\_\_, and appurtenances thereto, and more particularly described as follows:

**2. AUTHORIZED PURPOSES**

Sublessee may provide the following services and engage in those enterprises which are specified in the Lease:

**3. TERM**

This Sublease shall be for the term of \_\_\_\_\_ years commencing on \_\_\_\_\_, 20\_\_\_\_, except it may be terminated as provided in Lease No. \_\_\_\_\_. The term shall not exceed the Base Lease term.

**4. RENTAL**

The Sublessee shall pay \$\_\_\_\_\_ monthly rent to the Sublessor.

The Sublessor shall pay \$\_\_\_\_\_ monthly rent to the Navajo Nation Shopping Centers, Inc. (NNSCI), P.O. Box 478, Window Rock, AZ 86515.

**5. ASSIGNMENT**

The Sublessee may assign or transfer the Sublease during the term of this Sublease without approval from the Lessor, only if the Lease provides that the Lessee may enter into Subleases without approval from the Lessor, otherwise, approval from the Lessor is required. If Subleases are not subject to approval from the Lessor then Sublessee may assign or transfer the Sublease, subject to the written approval of the Sublessor.

**6. IMPROVEMENTS, REPAIRS, ALTERATIONS, CONSTRUCTION**

Improvements as used herein shall be deemed to mean buildings, structures, fixtures, equipment and other improvements affixed to or resting upon the lands leased hereunder in such a manner as to be a part of the realty. It shall include all present improvements,



**NAVAJO NATION SHOPPING CENTERS, INC.**  
**SUBLEASE**

and all improvements hereafter constructed upon or affixed to the land by Sublessee as approved in compliance accordance with the Base Lease.

**7. TERMINATION**

This Sublease and all rights hereunder may be terminated in one of the following ways:

- (a) Expiration of the original term of the Base Lease.
- (b) Expiration of Sublease term or any renewal or extension thereof; or
- (c) Default or breach of any of its terms. In the event of default or breach of any of the terms hereof by the Sublessee, the Sublessor shall give written notice of such default. Within thirty (30) days after receipt of such notice, the Sublessee shall correct the default. Failure to correct the default shall terminate the Sublease.
- (d) Mutual termination.

**8. INSURANCE**

The Sublessee shall, during the full term of this Sublease, and at its expense, keep the fixtures, equipment and buildings of the Sublessor and/or those constructed by Sublessee, adequately insured against loss or damaged by fire. The Sublessee shall, during the full term of this Sublease, and at their own cost and expense, carry public liability insurance. Said policy to be written jointly to protect the Lessor, Sublessor, Sublessee and the United States. A copy of said policies shall be provided to the Lessor.

**9. SOVEREIGN IMMUNITY**

Nothing herein shall be deemed a waiver of sovereign immunity, expressed or implied, of the Navajo Nation, Navajo Nation Shopping Centers, Inc. and Lessor.

**10. INCORPORATION OF LEASE**

This Sublease is expressly made subject to all the terms, conditions, and limitations contained in the Lease between the Sublessor and the Lessor. In case of conflict between this Sublease and the Base Lease, the provisions of the Base Lease or any amendments thereto shall govern.

**11. CONSENT TO JURISDICTION**

Sublease hereby consents to the legislative, executive, and judicial jurisdiction of the Navajo Nation in connection with all activities conducted by the Sublessee within the Navajo Nation.

**12. NOTICE**

Notice shall be provided for any amendments, change or deviations from this Sublease or the Lease and sent by mail, fax or hand delivery to the following:



**NAVAJO NATION SHOPPING CENTERS, INC.  
SUBLEASE**

Sublessor: \_\_\_\_\_  
\_\_\_\_\_

Lessor: \_\_\_\_\_  
\_\_\_\_\_

**IN WITNESS WHEREOF** the parties have set their hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Sublessor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Sublessor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Sublessee

\_\_\_\_\_  
Date

\_\_\_\_\_  
Sublessee

\_\_\_\_\_  
Date

The foregoing Sublease agreement is hereby approved.

CONCURRENCE:

NAVAJO NATION SHOPPING CENTERS, INC.

\_\_\_\_\_  
Chief Executive Officer

\_\_\_\_\_  
Date

APPROVAL:

NAVAJO NATION

\_\_\_\_\_  
President/Vice President

\_\_\_\_\_  
Date

TAB 7



NAVAJO  
NATION  
SHOPPING  
CENTERS  
INCORPORATED

**LEASE  
MANAGEMENT  
PLAN**



## MANAGEMENT PLAN

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## 1.0 Post – Lease Management

1.1 Department responsibilities are contained in this Management Plan (“Mgmt Plan”) concerning post lease:

1. Upon Lease approval by Approving Entity and execution by the Navajo Nation President, the Department shall:

a. Collect the appropriate administrative fee, proceed to 2.4 of the Admin Plan;

b. Assign lease number as follows:

Crownpoint	NNSCICP- * - ** -
Dilkon	NNSCIDK- - -
Kayenta	NNSCIKY- - -
Shiprock	NNSCISR- - -
Tuba City	NNSCITC- - -
Window Rock	NNSCIWR- - -
St. Michaels	NNSCISM- - -
Pinon	NNSCIPN- - -
Pinehill	NNSCIPH- - -
Navajo Pine	NNSCINP- - -

Other sites will be identified as above.

\*year \*\*number

c. Distribute and Record Lease, proceed to 4.7 of the Admin Plan.

d. Obtain the Security Deposit.

e. Obtain Insurance Policies as outlined in the Lease.

f. Final notification shall be sent before expiration of the development period:

i. Proceed to 4.2.5.h of the Admin Plan.

ii. Termination of the Lease: On the expiration date of the development period, the Lease shall be sent through the Review, Approval and Execution process for Mutual or Unilateral Termination, proceed to 7.0 of the Mgmt Plan.

1.2 Distribution and Record:

1. Proceed to 4.7 of Admin Plan.

1.3 Lessee Responsibilities:

1. Proceed to 4.8 of the Admin Plan.



## **2.0 Lease Compliance**

2.1 Rental Compliance: Accounting Department shall maintain and ensure that the rental payments are timely.

### **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:
    - i. A late fee shall be charged and pro-rated for each day the rent is not paid, beginning the tenth day after due date, until the thirtieth day, when the amount shall be paid in full.
    - ii. The late fee shall be 10% of the rental due for the month or an amount determined by the Lease terms.
  - c. If rental payment is not received within 30 calendar days following the due date:
    - i. A late fee shall be charged at 10% of the rental due for the month.
  - d. If rental payment is not received within 60 calendar days following the due date:
    - i. A late fee shall be charged at 5% of the rental due for the month or an amount specified in the Lease.
  - e. If rental payment is not received within 90 calendar days following the due date:
    - i. A late fee should be charged at 5% of the rental due for the month or an amount specified in the Lease.
2. All Lease payments are due on the date specified in the Lease. It is the Lessee's responsibility to ensure that the rental payment is received by Accounting Department on or before the date specified:
- a. Payments mailed or delivered to NNSCI will be forwarded within one (1) working day from receipt of payment to the Accounting Department, unless otherwise specified in the Lease;
  - b. Payments received after 2:00 p.m. will be receipted and posted on the following business day.

### 3. Periodic review:

- a. The Department shall be responsible for the periodic review.
- b. One year prior to the end of the periodic review, the Department shall begin the process for periodic review which provides that Rent may be adjusted on the applicable fifth anniversary using the CPI or based on lease rate adjustment, which shall be stipulated in the lease.

#### 1. Proceed to 4.2.5.f of the Admin Plan.

- i. A report shall be developed;
- ii. Negotiate lease adjustment with the Lessee; and
- iii. Process a Lease Modification, proceed to 8.0 of the Admin Plan.

#### 2. Consumer Price Index;

- i. Shall be calculated by the Department;
- ii. Notification shall be given to the Lessee of the adjusted amount, 90 days before the end of the periodic review; and
- iii. Process a Lease modification, proceed to 8.0 of the Admin Plan.

#### 3. Appraisal:

- i. A report shall be developed by a Professional Appraiser;
- ii. Negotiate the lease rental adjustment with the Lessee; and
- iii. Process a Lease modification, proceed to 8.0 of the Admin Plan.

### 2.2 Annual Lease Compliance:

Department will conduct inspection of all Leases, on an annual basis to ensure Lessee's compliance with the Lease terms and conditions. If the Lessee is not in compliance initiate and implement the provisions for enforcement outlined in 7.0 of the Mgmt Plan.

2.3 Holdover:

Conduct an on-site inspection of the leasehold premise to ensure the Lessee has vacated after the expiration or termination of the Lease.

1. If the Lessee remains in possession of the leasehold premise upon termination or expiration of Lease ("holdover period"), the Department in writing, shall take appropriate action against the Lessee.
2. Rental: In the event of a holding over by Lessee beyond the expiration or termination date, Lessee shall pay the department double the rent on the entire premise from rent in the amount previously stated in the Lease and including the first (1<sup>st</sup>) day of holdover until the holdover period ends.
3. Enforcement: If the Lessee does not respond to Department's letter notifying of delinquent Holdover, Department will enforce all remedies under Navajo Law.



**3.0 Environmental Review ("ER").** The Department shall request Environmental Summary (ES) from the Real Estate Department (RED) and comply with all applicable laws and policies which include, but not limited to Navajo Nation Business Regulations of 2005, Economic Development Committee Uniform Business Leasing Regulations of 2008, and any other applicable environmental laws and regulations of the Navajo Nation.

An Environmental Review Record must be maintained for all Leasing decisions. Any environmental related documents must be transferred to the Environmental Reviewer.

**3.1 Modification and Amendments**

**1. ER shall be required:**

- a. Change in the land description that would increase land acreage not in the original land description;
- b. Changes in the purpose or improvement of the operation that would include a dramatic change in the business operation, (i.e. from an office building to gas station);
- c. Change in discharge of emission or effluent;
- d. Before demolition or removal of the building, if the building contains environmental contamination (i.e. hazardous substances, asbestos, underground storage tanks, etc.)
- e. Any change which would impact, alter or disturb the biological or cultural resources of the Nation, which will be at the discretion of the Environmental Reviewer.

**2. ER not required:**

- a. Extending a term or condition of the Lease, including the Term, Completion of Development, removal of improvements etc.
- b. Exercising an option to renew or renewal of the Lease without any changes in the Term and Conditions of the Lease.
- c. Change in the Land Description, unless to increase the acreage of the land.
- d. Extending the improvements (building) for the same or similar business operations, without an increase in the acreage of the

land, and without changes in the terms or conditions, unless changes fit within these exceptions.

- e. Change in the Rental or any rent adjustments, as allowed under the Lease.
- f. Increase in the value of Improvements.
- g. Waiver, postponement or any changes in the Rental and Performance Bond, and the Construction Bond.
- h. Novation
- i. Demolition and removal of a building, unless the building contains environmental contamination (i.e. hazardous substances, asbestos, underground storage tanks etc.)
- j. Any changes in the Lease that would not have an impact to the biological or cultural resources of the Nation, which will be at the discretion of the Environmental Reviewer.

### 3.2 Environmental Summary Sheet:

- 1. Obtain compliance determination from Navajo Nation Historic Preservation Department, Navajo Nation Environmental Protection Agency and Navajo Nation Fish and Wildlife Department. Thereafter, Department shall submit the compliance determination to the RED.
- 2. Upon receipt of the compliance determinations, the Department shall submit to RED for environmental review.
  - a. If there is no impact present, the RED's Environmental Reviewer shall fill out and sign the RED's Environmental Summary Sheet form.
  - b. If there is an impact present, the RED's Environmental Reviewer shall request the Department to address the concerns raised in the compliance determination. Once the concerns have been adequately addressed, the RED Environmental Reviewer shall fill out and sign the RED's Environmental Summary Sheet form.

### 3.3 Public Notice

- 1. If the Environmental Reviewer finds the impact to the Nation's resources to be critical, the Department shall publish the Environmental Review in a newspaper of general circulation and the notice shall include the following;

- a. Provide at least one opportunity for public comment, for no more than a 30 calendar days period;
  - b. Indicate the record is open to the public and where the record can be reviewed.
2. Public Comments shall be taken into consideration by the Environmental Reviewer before the Environmental Summary Sheet is signed.

#### 3.4 ER Record

1. The Department Environmental Review Record must contain the following information:
  - a. Compliance determinations;
  - b. Correspondences;
  - c. Any supporting documents;
  - d. Environmental Summary Sheet Form;
  - e. *If applicable*, Public Notice; and
  - f. *If applicable*, Public Comments.

The only document needed in the Review Package before final approval is the Environmental Summary Sheet form. However, the Approving Entity reserves the right to review the Environmental Review Record before approval.



#### **4.0 Fair Annual Lease Value**

The annual rental of the lease shall be based on Dollars and Cents of Shopping Centers, appraisal or similar common method of evaluation which is the method of obtaining rental rents from geographical locations with similar features of improvements, development or non-development of premises, infrastructure and related factors to determine rent.

##### **4.1 Appraisal:**

1. The Department shall be responsible to secure an appraisal.
2. Appraisers shall meet the following:
  - a. Complete the appraisal and appraisal reports in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP). Furthermore, the reports must meet the requirements of the appropriate reporting provisions of the USPAP and the Appraiser must comply with the Competency Rule. Prior to accepting an assignment or entering into an agreement to perform any assignment, an Appraiser must have knowledge and/or experience regarding commercial rental property within the Navajo Nation.
  - b. Provide proof of good standing in the state registered or proof of reciprocity from the state in which the Appraiser is conducting the appraisal.
  - c. Categorized as a Certified General by the National Registry.
3. Must have current Errors and Omission Insurance coverage.
4. Must include in his/her report a signed statement agreeing to protect the confidentiality of all information he/she obtains relative to Navajo Trust Lands. This is in addition to the general requirements stipulated in the Confidentiality Clause of the Ethics Rule in USPAP.

##### **4.2 Dollars and Cents of Shopping Centers publication**

1. Use as a guide in the section of the Neighborhood Shopping Centers
  - a. Obtain appropriate classification, i.e. food service, clothing, home furnishing, etc.
  - b. Square Foot determines rates for rent per square foot, sales per square foot, common area maintenance, and percentage rent.

- c. Department will be responsible to determine appropriate rental rate.

## **5.0 File Management**

5.1 Lease Files shall be maintained by the Department for five (5) years after expiration of the Lease. After the 5 years expiration, all files shall be digitized.

5.2 Files shall contain the following:

1. Approved Lease and supporting documents including:

- a. Lease Transaction
- b. Survey Plat;
- c. Exhibits to the Lease;
- d. Certificate of Incorporation, Certificate of Good Standing, if applicable;
- e. Security Deposit, Receipt for Administrative Fees, Construction Bond;
- f. Insurance Policy;
- g. Appraisal Report;
- h. Procurement Clearances;
- i. Lease Offer Summary Sheet;
- j. Environmental Summary Sheet and Compliance Determinations;
- k. Financial and Accounting Information;
- l. Enforcement/Compliance Information; and
- m. Miscellaneous Correspondence.



## **6.0 Financial Management**

### **6.1 Accounting Procedures:**

1. Accounts Receivable Technician shall generate invoices to the Lessee on the 10<sup>th</sup> of each month prior to the due date of the Lease payment, unless payments are made in advance.
2. Leases executed during the year shall receive invoices prorated for the current calendar year.
3. Payments shall be made by the Lessee using one of the following methods:
  - a. Money order, Business or cashier's check and made payable to:  
Navajo Nation Shopping Centers, Inc.  
P.O. Box 478  
Window Rock, AZ 86515
  - b. Automatic Clearing House (ACH) payment setup and Automatic recurring credit card payment. The Lessee must fill out an ACH payment authorization or Credit Card authorization form and submitted to the Accounting Department to set up the ACH.
4. The Lessee in its present form or any other identifiable capacity as an individual, business, corporation or partnership has outstanding debt or delinquent accounts receivable owing to the Department, the Department may offset any claim against amounts owed to or has a claim with accounts payable to the individual, business, corporation or partnership through appropriate legal remedies
5. The Department shall maintain a report on rental income.
6. The Department shall have a financial system that reflects the required information as provided by the Uniform Regulations Section 604 (4.2);
7. The Department shall disseminate "Settlement Agreement", to the Accounting Department, if applicable.

### **6.2 Annual Accounting**

1. Annual Accounting shall include the information as provided in 604(4.1) of the Uniform Business Leasing Regulation of 2008 and in 402 of the Navajo Nation Business Leasing Regulations of 2005.

2. The Annual Accounting shall be generated on an annual basis and submitted to RED by June 1<sup>st</sup> each year.

## **7.0 Enforcement, Relief and Remedies**

The Department shall enforce the terms and conditions of the Lease.

### **7.1 Defaults:**

1. Not paying rent, common area charges, late charges, or repayment plans (proceed to 10.0 of the Mgmt Plan);
2. Conducting business outside the business site;
3. Conducting business without a valid Lease;
4. Not conducting business under the purposes set forth in the Lease;
5. Abandonment;
6. Unlawful conduct or business on the business;
7. Holdover – unless authorized;
8. Assigning, Subleasing, or transfer of the lease without approval of the NNSCI;
9. No development or completion of development within the time granted;
10. Not maintaining the premises in a pleasant appearance;
11. Unlawful construction or violation of building codes;
12. Not maintaining Security throughout the Lease term;
13. Not maintaining construction bond throughout the Lease term;
14. Not maintaining appropriate insurance through the Lease term;
15. Violating health codes and standards;
16. Encumbering the Lease without approval from the Lessor;
17. Not paying taxes or necessary utility payments for the health and protection of the customers and employees;
18. Not maintaining the sanitation clearance;



19. Not complying with environmental laws, including Hazardous and Regulated Substances;
  20. Not complying with the Navajo Preference in Employment Act and Navajo Business Opportunity Act;
  21. Not complying with environmental laws for Storage Tanks;
  22. Not maintaining an Environmental Audit Deposit;
  23. Not maintaining Storage Tank Bond, insurance or other qualifying financial responsibility mechanism as required by 40 CFR 280;
  24. Any other violations or breach of the terms and conditions of the Lease.
- 7.2 If a Default has occurred, proceed to 8.2 of the Mgmt Plan, unless the Default is going to cause death, injury or sickness to anyone including the business owner, then proceed to 8.6 of the Mgmt Plan.
1. If the Lessee is in default, the Department shall:
    - A. Notify the Lessee in writing. The letter shall contain the following information.
      - i. Date the default occurred;
      - ii. Provide an explanation of the default and the decision;
      - iii. Inform the Lessee of the three (3) remedies below;
        - a. Cure;
        - b. Request additional time in writing; or
        - c. Dispute the decision in writing, which must include an explanation.
      - iv. The actual date when the Lessee must respond.
    - B. Must be mailed via certified mail return receipt;
    - C. Lessee will have ten (10) days from date the notice is mailed to respond.
  2. If the Lessee cures the default, the process is stopped immediately.

3. If the Lessee requests additional time, the Department shall:
  - A. Evaluate the request to determine if additional time will be granted and with reason the appropriate time frame.
  - B. Notify the Lessee, in writing, once a determination is made:
    - i. The additional time granted; or
    - ii. The additional time is not granted and will proceed with appropriate action.
4. If the Lessee disputes the Department's decision in writing:
  - A. Approving Entity will evaluate and determine whether or not a default has occurred.
  - B. Upon determination, the Approving Entity shall notify the Lessee in writing:
    - i. No default has occurred; or
    - ii. Default has occurred and the letter shall provide the following:
      - a) Restate the default;
      - b) Explain the reason for maintaining the default with supporting references, applicable laws and regulations; and
      - c) State an actual date for the Lessee to cure, which must be no more than ten (10) days from mailing of the letter to Lessee.
5. If Lessee continues to dispute the decision, the Department shall request a meeting with the Lessee to resolve the dispute.
  - A. If the Department and Lessee cannot come to a resolution, a letter shall be issued and is the final decision of the Department. The Department may proceed with termination or any other appropriate action or remedy.
6. If the Department recommends termination of the Lease.
  - A. Submit recommendation of termination letter to the Approving Entity, with executive summary and any supporting documents.
  - B. Approving Entity shall approve or disapprove the termination.

### 7.3 Settlement

1. Department may enter into a settlement agreement.
2. If there is no settlement, the Department may proceed to Termination, Section 8.3 of the Mgmt Plan or conduct any other appropriate action.

### 7.4 Emergency Cancellation of the Lease

If the Lessee's conduct causes or threatens to cause immediate and significant harm to the premises or persons, or undertakes criminal activity thereon, the Department may contact the Navajo Nation Police Department and immediately seek Temporary Restraining Order and Permanent Injunction against the Lessee and/or terminate the Lease without notice to the Lessee. The Lessee may appeal the decision to the Navajo Nation Office of Hearings and Appeals.

### 7.5 Eviction/Court Action

The eviction proceeding shall be carried out in accordance with applicable Navajo Nation Laws.

### 7.6 Trespass

If a person or Lessee(s) occupies the premises without the Department's approval, the Department may pursue appropriate remedies, including the filing of a trespass or forcible entry detainer action to regain possession.



## **8.0 Termination**

The cancellation or termination of the Lease shall be governed by the Lease terms and conditions and by applicable Navajo Nation laws and policies which includes but not limited to the Business Leasing Regulations of 2005 and Economic Development Committee Uniform Business Leasing Regulations of 2008.

### **8.1 Mutual Termination**

Lessee and Department mutually agree to terminate the Lease. The Mutual Termination shall not release Lessee of any financial, environmental or any other obligations of the Lease, if any.

#### **1. Responsibilities**

##### **a. Lessee**

- i. Shall submit a written request to mutually terminate the Lease.

##### **b. Department**

- i. Shall obtain a written document from the Respective Tribal Departments as provided in Section 4.2(1) of the Admin Plan to verify Lessee's compliance with the applicable Navajo Nation laws and policies.
  - a) If Lessee is in non-compliance, the Department shall stop the negotiation for Mutual Termination and consider its options as provided in Section 7.0 of this Mgmt Plan.
- ii. Request a clearance from the Navajo Nation Environmental Protection Agency, if this provision applies to the Lessee.
- iii. Begin Review, Approval and Execution Process, proceed to 4.3, 4.4 and 4.5 of the Admin Plan.

##### **c. Lease Recording and Distribution**

- i. Proceed to 4.7 of the Admin Plan

### **8.2 Unilateral Termination – Department may terminate a Lease by providing a cancellation letter to the Lessee based on the Default provided that the process in this Section is followed.**

### 8.3 Termination

1. The Department shall cancel the Lease:
  - a. Once the Department decides to terminate the Lease, a letter shall be sent immediately to the Lessee informing the Lessee of the termination.
  - b. The termination letter shall be sent to the Lessee by certified mail, return receipt requested. The termination letter shall:
    - i. Explain the grounds for termination;
    - ii. Notify the Lessee of the default;
    - iii. Notify the Lessee of its right to appeal the termination; and
    - iv. Order the Lessee to vacate the premises within thirty-one (31) days from mailing the termination order.
2. A termination shall become effective thirty-one (31) days after mailing the termination letter;
3. An appeal may be filed by the Lessee. Pending the outcome of an Appeal, the Lessee shall comply with all the terms and conditions of the Lease.
4. Upon lease termination, the Department may enter the premises, change locks, and take any necessary steps to preserve the property.
5. Provide a copy of the terminated Lease to the RED.

### 8.4 Eviction/Court Action:

If Lessee(s) is unwilling to vacate the business site after termination of the Lease, the Department may take all necessary steps including but not limited filing an eviction action to ensure Lessee vacates the Lease premise.

### 8.5 Expiration

The expiration of the Lease term shall govern the process of ending the Lease on its own term unless the Lease is renewed.

1. The Lease expiration occurs when Lessee has not notified the Department of intentions to exercise an option to renew the Lease. Proceed to Section 5.0, Expiring Lease, of Admin Plan.
2. Thirty (30) days prior to the date of Expiration, the Department shall notify the Lessee of the following:
  - a. Date of Expiration
    - i. Lessee shall vacate the Lease premise, return the site to original state and comply with Part I and II of the Lease.
3. If the Lessee is still on the Lease premise after expiration of Lease, the Department shall conduct the following:
  - a. Begin legal proceedings; and/or
  - b. Advertise availability of Lease premise.

#### 8.6 Abandonment

When a Lessee abandons the leased premise, the terms and conditions of the Lease shall remain in full force and effect until the Lease is terminated.

#### 8.7 Property Management

Immediately upon termination of the Lease, the Department shall conduct an inventory and an inspection of the leased premises.



## **9.0 Appeal**

1. The Lessee may appeal a decision of the Department.
2. Upon receipt of such decision by the Department, the Lessee shall work with the Department to address the decision. If there is no compromise between the Lessee and Department, the Department shall provide the final decision in writing to the Lessee.
3. The Lessee may appeal the final decision of the Department to the Approving Entity. If this appeal is made by the Lessee, the Approving Entity shall make a final decision which is appealable to the Office of Hearings and Appeals (OHA). If an appeal is made to the Approving Entity, the Approving Entity shall render a decision in fifteen (15) days from receiving the appeal from the Lessee.
4. The Lessee may decide to appeal the decision of the Department directly to the OHA without appealing the final decision of the Department to the Approving Entity.
5. The appeal to the OHA shall be filed within thirty-one (31) days from the date of the final decision by the Department or Approving Entity. The appeal shall be conducted in accordance with Section 601 of the Navajo Nation Business Site Leasing Regulations of 2005.
6. The Lessee may appeal the OHA's decision to the Navajo Nation Supreme Court in compliance with Section 602 of the Navajo Nation Business Site Leasing Regulations of 2005. The Lessee shall file the appeal with the Navajo Nation Supreme Court within thirty-one (31) days from the date of the OHA Order.

## **10.0 Governing Law**

The laws of the Navajo Nation shall govern the construction, performance and enforcement of the Leases.

## **11.0 Severability**

If a court of competent jurisdiction or a tribunal of Navajo Nation determines a provision in the Plan is invalid, void or unenforceable, it shall be stricken and the remainder shall remain in full force and effect.

## **12.0 Appendix – Forms (the forms are subject to change as may be warranted by the case law, federal law and Navajo Nation law)**

1. Annual Lease Compliance
2. Inspection
3. Environmental Summary
4. TPM Steps on Generating Rent Invoice
5. Standard Invoice

**NAVAJO NATION SHOPPING CENTERS, INC.  
ANNUAL LEASE COMPLIANCE REPORT**

Business Name: \_\_\_\_\_

Lease Number: \_\_\_\_\_

Date Approved: \_\_\_\_\_

Current Address: \_\_\_\_\_

Term: \_\_\_\_\_

Telephone No: \_\_\_\_\_

Lessee(s) : \_\_\_\_\_  
\_\_\_\_\_

**A. Lease Status:**

1. ☐ Active – Operating
2. ☐ Active Non-Operating
  - a) ☐ Developed
  - b) ☐ Bill @ Holdover Rate?  
No
3. Expired Operating
  - a) Expiration \_\_\_\_\_
4. Expired Non-Operating
5. Cancelled
  - a) Cancellation \_\_\_\_\_
6. Terminated
  - a) Termination \_\_\_\_\_
- B. Action Requesting:
  1. ☐ Stop Billing
    - a) As of Date: \_\_\_\_\_

7. ☐ Settlement
  - a) Promissory Note: Yes ☐ No ☐
8. ☐ Abandoned
  - a) Business Closed? Y ☐ ☐
  - b) Date Closed \_\_\_\_\_
9. ☐ Permit only
  - a) Begin \_\_\_\_\_
  - b) Ending \_\_\_\_\_
10. ☐ Lessee Deceased
  - a) Probate in process? Yes ☐ No ☐
  - Relinquished to: \_\_\_\_\_
2. ☐ Continue Billing
  - a) Until Date: \_\_\_\_\_

**C. Authorized Activities:**

\_\_\_\_\_  
\_\_\_\_\_

**D. Agreed upon Improvements (renovations, repairs, etc.)**

\_\_\_\_\_  
\_\_\_\_\_

**E. Improvements Completion Date/Development Period:**

\_\_\_\_\_  
\_\_\_\_\_

**F. If no evidence of Improvements, explain:**

\_\_\_\_\_  
\_\_\_\_\_

**G. Procurement (rent) Compliance:**

\_\_\_\_\_



**NAVAJO NATION SHOPPING CENTERS, INC.  
ANNUAL LEASE COMPLIANCE REPORT**

H. Underground Storage: \_\_\_\_\_  
\_\_\_\_\_

I. Bonding: \_\_\_\_\_

J. Insurance: \_\_\_\_\_  
\_\_\_\_\_

COMMENTS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Inspected by: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_

# NAVAJO NATION SHOPPING CENTERS, INC. INSPECTION FORM

Date of Inspection: _____	Lease No.: _____					
Lessee/s Name & Address: _____ _____	Business Name & Address: _____ _____					
Physical Location: _____	Business Type: _____					
Current Status of Business Site: Active <input type="checkbox"/> Expired <input type="checkbox"/> Terminated <input type="checkbox"/> Abandoned <input type="checkbox"/>						
Building _____ Construction Type: (frame, brick, metal, etc.) _____ Dimensions: _____ Condition: _____  Retail space _____ Construction Type: _____ Dimensions: _____ Comments: _____ _____						
Foundation Type: _____ Condition: _____						
Utilities: Waterline/Wells: <input type="checkbox"/> Gas/Propane: <input type="checkbox"/> Wastewater/Septic: <input type="checkbox"/> Communication: <input type="checkbox"/> Other: _____						
Underground storage tanks: Yes <input type="checkbox"/> No <input type="checkbox"/> Fuel Dispensers: Qty/Capacity: _____ Qty: _____						
Propane Sales: Yes <input type="checkbox"/> No <input type="checkbox"/> Tank Capacity: _____						
Equipment (Condition Code: New "N" Excellent "E" Good "G" Poor "P" Salvage "S" Scrap "X")						
Item No.	Description	Mfr.	Model No.:	Size	Color	Condition

Report By: \_\_\_\_\_

\_\_\_\_\_  
Print Name & Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**NAVAJO NATION SHOPPING CENTERS, INC.  
ENVIRONMENTAL SUMMARY**

DATE: \_\_\_\_\_

Requesting Party: \_\_\_\_\_

Reviewed by: \_\_\_\_\_

EXCEPTIONS: \_\_\_\_\_  
\_\_\_\_\_ (do not need to fill out form)

Summary of Compliance Determinations (if non-NEPA environmental review process).

1. Historic Preservation:

\_\_\_\_\_  
\_\_\_\_\_

2. Fish and Wildlife:

\_\_\_\_\_  
\_\_\_\_\_

3. Navajo Environmental Protection Agency:

\_\_\_\_\_  
\_\_\_\_\_

Summary of Compliance with Environmental Laws:

1. National Historic Preservation:

\_\_\_\_\_  
\_\_\_\_\_

2. Floodplain Management:

\_\_\_\_\_  
\_\_\_\_\_

3. Wetlands Protection:

\_\_\_\_\_  
\_\_\_\_\_

4. Endangered Species Act:

\_\_\_\_\_  
\_\_\_\_\_

5. Air Quality:

\_\_\_\_\_  
\_\_\_\_\_



**NAVAJO NATION SHOPPING CENTERS, INC.  
ENVIRONMENTAL SUMMARY**

6. Sole Source Aquifer:

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7. Abandoned Mine Lands:

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8. Navajo Nation Solid Waste Act:

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9. Any Navajo Nation Environmental Laws and Regulations, as applicable:

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I certify that the Environmental Review Process and the Compliance Determination Process in good faith has been complied with:

\_\_\_\_\_  
Environmental Reviewer

Date: \_\_\_\_\_

# NAVAJO NATION SHOPPING CENTERS, INC.

## ACCOUNTING SOFTWARE PROPERTY MANAGEMENT STEPS

Accounting Software Property Management steps on Entering Standard Invoice through Accounts Receivable Module: Entering Standard Invoices

### Step 1: Process to Generate Invoices Rent Roll

Accounting Software System Program: Timberline Version: 9.8			
Detailed Steps	Step Description	Field Name	Value
■ Choose Property Management			
■ Choose Task	Create Charges		
■ Choose Generate Rent Roll			
■ Choose Trail Run	Click Ok		
■ Generate Rent Roll – Trial Run	Cut off Date (Beginning of Month) Transaction Date (Beginning of Month) Accounting Date (Beginning of Month)		
■ Click Ranges (Select All) Click Start			
■ Print Trial Run	Leasing Manager reviews rent roll. Rent roll - Approved		
■ Go back to Property Management			
■ Choose Task	Create Charges		
■ Choose Generate Rent Roll			
■ Click Create Rent Roll			
■ Choose Prefill to set Rent Date	Click Ranges – Select All Click Start		
■ Post	PM – Select Generate Rent Roll		
■ Post	GL Select Generate Rent Roll		
■ Go to Tools	Choose Formulas		
■ Highlight	Water invoices Change Type Click Charge		
■ Go To Reports	Click Close Choose forms Choose Invoice Beginning Number Invoice – Ok Click ranges Choose active tenants Click Conditions		

**NAVAJO NATION SHOPPING CENTERS, INC.  
ACCOUNTING SOFTWARE PROPERTY MANAGEMENT STEPS**

	Choose charge date -Enter rent roll date -Click Ok Click Printer set-up -Check print to file -Add save date of rent roll Click start		
--	--	--	--

Output	
Expected Results	Actual Results
Create an unposted Invoice for the Lease. You will be able to view and edit the batch while in Pending Status.	After the Batch is approved and posted. Choose Financial, Accounts Receivable, Statement Reminder Processing, Invoice Print (at the top of the form it will display automatically Batch Application R55AR02) Select Invoice Print and continue.





NAVAJO  
NATION  
SHOPPING  
CENTERS  
INCORPORATED

## INVOICE

Lessee Address  
P.O. Box  
City, State, Zip Code

Date: 0-00-0000

Lessee:

Lease Number:

Invoice Number:

Charge Date	Description	Charge	Credit	Amount
0/0/00	Rent	0.00		0.00
0/0/00	Navajo Nation Sales Tax	0.00		0.00

Please pay this amount: 0.00

### REMITTANCE

Make Checks Payable to:

NAVAJO NATION SHOPPING CENTERS, INC.  
P.O. BOX 478  
WINDOW ROCK, AZ 86515

Invoice Number:

Date: 0-00-0000

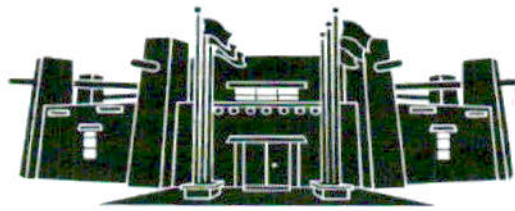
Lessee:

Lease Number:

Amount Due:

Amount Enclosed: \_\_\_\_\_

Due Upon Receipt



MEMORANDUM

TO: Honorable Amber K. Crotty  
24<sup>th</sup> Navajo Nation Council

FROM: Ka Lowell  
Kristen Lowell, Principal Attorney  
Office of Legislative Counsel

DATE: April 16, 2019

**SUBJECT: AN ACTION RELATING TO RESOURCES AND DEVELOPMENT COMMITTEE;  
APPROVING A DELEGATION OF AUTHORITY TO THE NAVAJO NATION  
SHOPPING CENTERS, INC. TO EXERCISE LEASING AND MANAGEMENT  
AUTHORITY OVER BUSINESS SITE LEASES**

As requested, I have prepared the above-referenced proposed resolution and associated legislative summary sheet pursuant to your request for legislative drafting. Based on existing law and review of documents submitted, the resolution as drafted is legally sufficient. As with any action of government however, it can be subject to review by the courts in the event of proper challenge.

Please ensure that this particular resolution request is precisely what you want. You are encouraged to review the proposed resolution to ensure that it is drafted to your satisfaction.

The Office of Legislative Counsel confirms the appropriate standing committee(s) based on the standing committees powers outlined in 2 N.N.C. §§301, 401, 501, 601 and 701. Nevertheless, "the Speaker of the Navajo Nation Council shall introduce [the proposed resolution] into the legislative process by assigning it to the respective oversight committee(s) of the Navajo Nation Council having authority over the matters for proper consideration." 2 N.N.C. §164(A)(5).

If the proposed resolution is unacceptable to you, please contact me at the Office of Legislative Counsel and advise me of the changes you would like made to the proposed resolution.

THE NAVAJO NATION  
LEGISLATIVE BRANCH  
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: 0095-19

SPONSOR: Amber Kanazbah Crotty

TITLE: An Action Relating To Resources And Development Committee:  
Approving A Delegation Of Authority To The Navajo Nation Shopping Centers,  
Inc. To Exercise Leasing And Management Authority Over Business Site Leases

*Date posted:* April 19, 2019 at 6:28 PM

Digital comments may be e-mailed to [comments@navajo-nsn.gov](mailto:comments@navajo-nsn.gov)

Written comments may be mailed to:

Executive Director  
Office of Legislative Services  
P.O. Box 3390  
Window Rock, AZ 86515  
(928) 871-7586

Comments may be made in the form of chapter resolutions, letters, position papers, etc. Please include your name, position title, address for written comments; a valid e-mail address is required. Anonymous comments will not be included in the Legislation packet.

**Please note:** This digital copy is being provided for the benefit of the Navajo Nation chapters and public use. Any political use is prohibited. All written comments received become the property of the Navajo Nation and will be forwarded to the assigned Navajo Nation Council standing committee(s) and/or the Navajo Nation Council for review. Any tampering with public records are punishable by Navajo Nation law pursuant to 17 N.N.C. §374 *et. seq.*



THE NAVAJO NATION  
LEGISLATIVE BRANCH  
INTERNET PUBLIC REVIEW SUMMARY

LEGISLATION NO.: 0095-19

SPONSOR: Honorable Amber KanazbahCrotty

TITLE: An Action Relating to Resources and Development Committee; Approving a Delegation of Authority to the Navajo Nation Shopping Centers, Inc. to Exercise Leasing and Management Authority over Business Site Leases

Posted: April 19, 2019 at 6:28pm

5 DAY Comment Period Ended: April 24, 2019

Digital Comments received:

Comments Supporting	<i>None</i>
Comments Opposing	<i>None</i>
Inconclusive Comments	<i>None</i>



Legislative Secretary  
Office of Legislative Services

4-25-19 8:39am

Date/Time