Navajo Nation Business Site Lease Management Plan

DIVISION OF ECONOMIC DEVELOPMENT

Navajo Administrative Plan
(Revised August 5, 2009)

DIVISION OF ECONOMIC DEVELOPMENT

Navajo Management Plan
(Revised August 5, 2009)
RESOLUTION OF THE
ECONOMIC DEVELOPMENT COMMITTEE
OF THE NAVAJO NATION COUNCIL

21ST NAVAJO NATION COUNCIL – THIRD YEAR, 2009

AN ACTION

RELATING TO ECONOMIC DEVELOPMENT; APPROVING THE NAVAJO NATION
BUSINESS SITE LEASE MANAGEMENT PLAN AND THE DELEGATION OF THE
AUTHORITY TO APPROVE BUSINESS SITE LEASES TO THE DIVISION OF
ECONOMIC

BE IT ENACTED:

1. The Navajo Nation hereby approves the Navajo Nation Business Site Lease Management Plan as found at "Exhibit A" attached and made a part hereto.

2. The Navajo Nation, pursuant to 2 N.N.C. § 724 (B)(2), hereby approves the delegation of the Economic Development Committee's authority to approve business site leases to the Division of Economic Development as further described at Section 1.9 of the Navajo Nation Business Site Lease Management Plan as found at Exhibit "A".

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Economic Development Committee of the Navajo Nation Council at a duly called meeting held at St. Michaels, Navajo Nation (Arizona), at which a quorum was present and that the same was passed by a vote of 5 in favor, 0 opposed, this 5th day of August, 2009.

Lawrence R. Platero, Chairman
Economic Development Committee

Motion: Tom LaPahe
Second: Tommy Tsosie
Table of Contents

1.0 Executive Summary ................................................................................................................ 4
1.1 Legal Framework: ............................................................................................................... 4
1.2 Amendment of Plan: ............................................................................................................ 4
1.3 Annual Reporting: ............................................................................................................... 4
1.4 Administrative Framework: ............................................................................................... 4
1.5 Severability: ......................................................................................................................... 5
1.6 Organization: ....................................................................................................................... 5

ORGANIZATIONAL CHART ........................................................................................................ 6

1.7 Services: .............................................................................................................................. 7
1.8 Management Summary: ...................................................................................................... 7
1.9 Approving Entity: EDC Delegation to DED ..................................................................... 7

2.0 Pre-Business Site Lease ........................................................................................................... 8
2.1 General Information: .......................................................................................................... 8
2.2 Definitions for purposes of the Plan: ................................................................................. 8
2.3 Advertisement ...................................................................................................................... 9
2.4 Administrative Fees ............................................................................................................. 9

3.0 Navajo Nation Lease Approval Flow Chart ....................................................................... 11

4.0 New Lease ............................................................................................................................... 12
4.1 Applicant shall submit: ..................................................................................................... 12
4.2 Division of Economic Development .................................................................................. 12
4.3 Review Process ................................................................................................................ 15
4.4 Approval Process ............................................................................................................... 16
4.5 Execution of Lease ............................................................................................................. 16
4.6 Lessee(s) Upon Execution of Lease ................................................................................ 17
4.7 Lease Recording and Distribution ...................................................................................... 17

5.0 Expiring Lease ....................................................................................................................... 17
5.1 Lessee ............................................................................................................................... 17
5.2 Division of Economic Development .................................................................................. 18
5.3 Lessee Upon Approval of Lease Renewal ...................................................................... 18
5.4 Lease Recording and Distribution ...................................................................................... 18

6.0 Exercising Option to Renew Lease: ..................................................................................... 18
6.1 Lessee ............................................................................................................................... 19
6.2 Division of Economic Development ................................................................. 19
6.3 Lessee(s) Upon Receipt of the Acknowledgement Letter: ........................................ 19
6.4 Lease Recording and Distribution ................................................................. 19

7.0 Sublease .............................................................................................................. 19
7.1 Subleases that Require Approval from the Nation ........................................................ 20
7.2 Sublease that do not Require Approval from the Nation .................................................. 21

8.0 Novation .............................................................................................................. 22
8.1 Lessee .................................................................................................................. 22
8.2 Division of Economic Development ........................................................................ 22
8.3 Lessee(s) Upon Execution .................................................................................. 22
8.4 Lease Recording and Distribution ........................................................................ 22

9.0 Assignments ........................................................................................................ 22
9.1 Assignor/Acceptee ........................................................................................... 23
9.2 Division of Economic Development ...................................................................... 24
9.3 Acorn (s) Upon Approval .................................................................................. 24
9.4 Lease Assignment Recording and Distribution ................................................... 24

10.0 Modification ..................................................................................................... 24
10.1 Lessee .............................................................................................................. 24
10.2 Division of Economic Development .................................................................... 25
10.3 Lessee(s) Upon Approval .............................................................................. 25
10.4 Lease Recording and Distribution .................................................................... 25

11.0 Collateral Assignment of Lease ......................................................................... 25
11.1 Lessee .............................................................................................................. 25
11.2 Division of Economic Development .................................................................... 26
11.3 Collateral Assignment of Lease Recording and Distribution ................................... 26
11.4 Lessee(s) Upon Approval of Collateral Assignment of Lease ................................. 26

12.0 Revocable Use Permit .................................................................................... 26
12.1 Requirement .................................................................................................... 27
12.2 Applicant .......................................................................................................... 28
12.3 Division of Economic Development .................................................................... 29

13.0 Conditional Use Permit .................................................................................. 30
13.1 Requirement .................................................................................................... 30
13.2 Applicant .......................................................................................................... 31
13.3 Division of Economic Development .................................................................... 32
14.0 Emergency Operating Agreement ................................................................. 32
  14.1 Requirement ................................................................................................. 33
  14.2 Applicant ........................................................................................................ 34
  14.3 Division of Economic Development .............................................................. 34

15.0 References ........................................................................................................ 36
  1. 25 United States Code Annotated 415(e) ............................................................ 37
  2. Navajo Nation Business Leasing Regulations of 2005 (Tribal Regulations) .... 43
  3. Economic Development Committee Uniform Business Leasing Regulations of 2008
     (Uniform Regulations) ....................................................................................... 67
  4. Adopting Navajo Nation Privacy and Access to Information Act ................. 85
  5. Indian Health Service Sanitation ........................................................................ 96
  6. Title 26 of the Navajo Nation Code (Local Governance Act) ......................... 97
  7. 5 Navajo Nation Code §2301 Navajo Nation Business Site Leasing Act of 2000 ... 129
  8. Navajo Nation Title 2 ......................................................................................... 132

16.0 Appendix – Forms ............................................................................................. 133
  1. Part I Business Site Lease ................................................................................... 134
  2. Part II Business Site Lease .................................................................................. 142
  3. Modification ......................................................................................................... 159
  4. Assignment .......................................................................................................... 160
     a. Complex Form ................................................................................................. 160
     b. Simple Form ..................................................................................................... 162
  5. Revocable Use Permit ......................................................................................... 164
  6. Collateral Assignment of Lease .......................................................................... 168
  7. Mutual Termination ............................................................................................. 172
  8. Security Agreement .............................................................................................. 173
  9. Sample business plan Outline .......................................................................... 175
 10. Emergency Operating Agreement ................................................................... 177
 11. Conditional Use Permit ..................................................................................... 181
 12. Indemnification Form ......................................................................................... 184
 13. Sample Sublease Form ....................................................................................... 186
 14. Leasehold Credit Rules ...................................................................................... 190
1.0 Executive Summary
This Navajo Administrative Plan (“Admin Plan”) and the Navajo Management Plan (“Management Plan”) together make up the Navajo Nation Business Site Lease Management Plan (“Plan”) provide the Division of Economic Development (“DED”) with consistent policy, direction and guidance in its management of business site leases (“Lease”) and other related business activities and documents under its jurisdiction on the reservation consisting of 17.0 plus million acres of Trust Lands, or approximately 27,000 square miles.

1.1 Legal Framework:
25 U.S.C. § 415, as amended
Navajo Nation Business Leasing Regulations of 2005 (“Tribal Regulations”), as amended
Economic Development Committee Uniform Business Leasing Regulations of 2008 (“Uniform Regulations”), as amended

1.2 Amendment of Plan:
The Plan may be amended from time to time upon written recommendation from DED and approval from the Economic Development Committee of the Navajo Nation Council (“EDC”).

1.3 Annual Reporting:
DED Approving Committee shall provide an initial report to EDC six (6) months from the date of execution of the EDC resolution granting delegation of approval authority to DED and annually thereafter.

1.4 Administrative Framework:
DED is established for the purpose of creating an environment that is conducive to promoting and developing businesses in the commercial, tourism, industrial and other sectors of the Navajo Nation economy, thereby creating employment and business opportunities.
1. Objectives:
   a. Promote and create employment for Navajos and business opportunities in the commercial, industrial, tourism and other private sector of the Navajo economy for individuals residing on or near the Navajo Nation; and
   b. Recommend the enactment, amendment, or rescission of laws and promulgation and/or reduction of regulations to enhance economic development on the Navajo Nation (“Nation”) and to create a positive business environment; and
   c. Maintain a decentralized network of business development offices in the primary growth centers of the Nation in order to provide individuals and organizations with technical assistance in developing business plans, feasibility studies,
financing (loan and grant packaging), planning, business site lease processing, business preference certification, and industrial park management; and
d. Develop and manage a comprehensive financing program to expand or develop new economic enterprises for the Nation.

1.5 Severability:
If a court of competent jurisdiction 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.

1.6 Organization:
DED is organized with seven (7) departments, each with specific duties and responsibilities.
1. Administration
2. Project Development Department (“PDD”)
3. Business Regulatory Department (“BRD”)
4. Tourism Department (“Tourism”)
5. Real Estate Department (“RED”)
6. Support Services Department
7. Small Business Development Department (“SBDD”)

1.7 Services:
DED offers technical services through seven (7) departments. There will be an open line of communication between clients and DED personnel.

1. Literature:
DED will have brochures available at its respective departments. The brochures will give a general outline of all required documents and tasks needed to secure a business site lease and other applicable information.

2. Technical Assistance Services:
DED will conduct training/workshops throughout the Nation. Services will include but not limited to: Obtaining business loans and financing; processing Leases; obtaining business preference certifications to individuals, small businesses, chapters and other organizations; and business retention activities. Other services include: promotion of business, economic development activities to chapters, communities, business associations, and other organizations.

1.8 Management Summary:

1. Organizational Structure
DED has seven (7) departments each with specific duties and responsibilities. All business site lease documents will be packaged by the PDD, SBDD, Tourism (“appropriate DED department”) as identified in the DED Master Plan of Operation ensuring compliance with all applicable laws before any business site lease transaction is forwarded from the appropriate DED department for approval.

2. Professional Development
Staff will attend workshops/seminars on an annual basis to enhance their knowledge on business, real estate, finance, or other courses related to the objectives of the Plan.

1.9 Approving Entity: EDC Delegation to DED

1. DED Approving Committee shall be established and exercise the authorities of the EDC as provided in the Uniform Regulations.

2. The DED Approving Committee shall consist of the following:
   a. Chief Financial Officer or designee;
   b. single designated PDD staff; and
   c. single designated SBDD staff.

3. The designated PDD and SBDD individual shall be selected for a term of three (3) years.
   a. The Department Manager for PDD and SBDD shall make the selection of the applicable designated staff;
   b. If a determination is not made within five (5) days from the approval of delegation from EDC, expiration, removal, resignation or vacancy of the designated staff the Executive Director shall make the selection;
   c. The same designated staff may be re-appointed.
d. If the designated PDD or SBDD individual is presenting a leasing transaction before the DED Approving Committee, the appropriate Department Manager shall appoint an interim staff for that transaction.

4. If the Chief Financial Officer’s position is not filled, the Executive Director of DED shall select a DED staff member to serve until the position is filled.

5. Removal:
   a. Any of the three members may be removed for good cause, which can only be done with the approval of the EDC.
   b. Good Cause may include lack of attendance or violation of any policy, rules or regulations.
   c. If the Chief Financial Officer is removed, the Executive Director of DED shall select a replacement from the DED staff, subject to the three (3) year term limit.

6. Resignation or Vacancy:
   a. At any time, a member may resign as a member of the DED Approving Committee or if a vacancy arises from death, illness or any other occurrence the above procedures in this Section 1.9 (3) and (4) shall apply.

7. Meetings:
   a. The DED Approving Committee shall meet on the first and third Monday of each month;
   b. A meeting shall be conducted no less than twice a month.
   c. Each meeting shall be deemed public record and an Official Resolution shall be adopted by the DED Approving Committee for each leasing transaction, if applicable.

8. The DED Approving Committee shall adopt rules of order for approval of leasing transactions.

2.0 Pre-Business Site Lease

2.1 General Information:
Prospective applicants for a business site lease should contact the appropriate DED department. An applicant can be an individual (sole proprietorship) or any legally recognized business entity or organization. A group of Individuals, Partnership, Limited Partnerships (LP), Limited Liability Partnership (LLP), Corporation or Limited Liability Company (LLC), professional association, professional corporations, organized or chartered under federal, state or Navajo Nation law. All legally recognized business entity or organization must register with the BRD and be in good standing under the laws of the Navajo Nation.

2.2 Definitions for purposes of the Plan:
1. Approving Entity: means the DED Approving Committee who has been delegated the authority by the EDC to approve Business Site Leasing Transactions under the Plan.
2. **Assignment**: means 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 business site lease.

3. **Business Site Lease (“Lease”)**: means any Lease for business purpose issued upon the Navajo Nation Trust Land under the authority of this Plan and DED.

4. **Business Site Leasing Transactions**: means a new Lease, renewal of Lease; modification, novation, assignment; collateral assignment of Lease; revocable use permit; conditional use permit; or emergency operating agreement.

5. **Consumer Price Index**: means a program produces monthly data on changes in the prices paid by urban consumers for a representative basket of goods and services.

6. **Development Period**: means the time period from when a Lease is executed to when improvements are expected to be substantially completed.

7. **Environmental Reviewer**: means the employee of the DED that has the authority set forth in the Tribal Regulations.

8. **Lease Package**: means all required documents necessary, to be granted a Lease, Permit, or Agreement.

9. **Modification**: means a change in the terms and conditions of the Lease.

10. **Nominal Rent**: means insignificant rent.

11. **Non-Profit**: means one 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.

12. **Novation**: means a modification of the Lease that permits the lessee to voluntarily consent to the leasing jurisdiction of the Tribal Regulations.

13. **Primary Term**: means the initial term of the Lease, Permit or Agreement.

14. **Security**: means 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.

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

### 2.3 Advertisement

DED may advertise available commercial land for leasing.

### 2.4 Administrative Fees

Administrative Fee(s) shall be due upon approval of any leasing or administrative transaction and before any distribution of the document. All payments are non-refundable and shall be made by money order or cashier’s check, payable to “The Navajo Nation” and deposited with RED.
FEE SCHEDULE:

1. New Lease $150.00
2. Option of Renew $100.00
3. Renewal of Lease $100.00
4. Modification Agreement $100.00
5. Assignment Agreement $100.00
6. Collateral Agreement $100.00
7. Revocable/Conditional Use Permits $100.00
8. Emergency Operating Agreement $75.00
9. Other Administrative Transactions $100.00
3.0 Navajo Nation Lease Approval Flow Chart

**Applicant**

Letter of Intent → **Appropriate DED Department**

- 1. Receive letter of intent
- 2. Provide technical services
- 3. Negotiate Terms
- 4. Any other services as deemed appropriate and required under this Plan

**Completed Package**

**Review Process**

- 1. Appropriate DED Department Manager
- 2. Division Director
- 3. Division of Finance, subject to Section 4.0
- 4. Department of Justice

**Approved Lease Package**

**Lease Approval and Execution**

- 1. DED Approving Committee
- 2. Real Estate Department
- 3. Office of the President and Vice President for final signature

**Approved BSL**

**Distribution (Six (6) Originals)**

1) Lessee
2) Albuquerque BIA Land Title and Records Office
3) DED Real Estate Department
4) Appropriate DED Department
5) Navajo Nation Land Department
6) Navajo Nation Office of the Controller

**Distribution (Two (2) Copies)**

7) Local Government Unit (Upon Request)
8) Respective BIA Agency Real Estate Services Office (copy)

**Division of Economic Development Real Estate Department**
4.0 New Lease

Responsibilities

4.1 Applicant shall submit:

1. Letter of Intent
2. Business plan.
3. Chapter resolution/Land Users Consent – required when land is initially being withdrawn for commercial purposes. A Chapter resolution is not required for existing business sites.
4. If an Applicant is a legally recognized entity ("LRE") must comply with the following: (absolute pre-requisite)
   a. LRE must register with the BRD and comply with the requirements of the Navajo Corporation Code;
   b. LRE must submit a current Certificate of Good Standing to the appropriate DED Department. The certificate shall be dated within 12 months prior to administrative review of the Lease.
5. Provide a certified legal survey and legal description of the proposed business site, unless an existing legal survey and legal description dated post 1986.
6. Secure Ethics Clearance, if applicable – Federal employees, Tribal elected officials and Tribal employees must comply with this requirement.

4.2 Division of Economic Development

1. Review all documents for accuracy and compliance with applicable laws and regulations.
2. Upon receipt of the Letter of Intent, the appropriate DED department shall notify RED, for purposes of the archeological clearance and submit documents list in Section 2.0 of the Management Plan.
3. Interview, orientate, counsel and assist Applicant.
4. Obtain an Environmental Review ("ER") and a certified Environmental Summary ("ES"), proceed to 3.0 of the Management Plan.
5. Obtain a procurement clearance from:
   a. Accounts Receivable, Office of the Controller (outstanding rental);
   b. Navajo Tax Commission (outstanding taxes);
   c. Credit Services, Office of the Controller (loan default);
   d. Support Services, Division of Economic Development (BIDF default); and
   e. Navajo Nation Shopping Center, Inc. (outstanding rental) (collectively known as "respective tribal departments").
6. Prepare and 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 an Appraisal or Market Data Research (“MDR”), proceed to 4.0 of the Management Plan.
c. Rental shall be a flat rate per year.
d. Rental may be reduced if:
   1) Development Period;
   2) Leasehold Improvement;
   3) Substantial construction or reconstruction of the leasehold improvements is necessary.
      a) If the lessee fails to undertake such reconstruction, he/she shall be required to pay the rent that was in existence before such waiver or abatement was granted for the period of the waiver or abatement of rent.
      b) If lessee has difficulty securing financing, not to exceed one (1) year.
4) Environmental Clean-up;
5) Rental based on % of permanent Navajo Employment;
6) An exigent circumstance, which must be justified by the Applicant and approved by the appropriate DED department. The justification shall be in writing and the Applicant shall enclose supporting documents to justify its claim.

e. Rental may be nominal rent and the fair annual lease value shall not be determined, based on 3.0 of the Management Plan, for:
   1) Navajo Nation Departments;
   2) Non-profit organizations validly organized under federal law;
   3) Federal or State governmental entities; or
   4) Other exigent circumstances, which must be justified by the Applicant and approved by the appropriate DED department. The justification shall be in writing and the Applicant shall enclose supporting documents to justify its claim.

f. Aside from the development period, Rental may be postponed to allow the Applicant to secure financing, however, the postponement shall not exceed one (1) year.

g. Rental adjustments:
   1) All Leases shall be reviewed every five years, the five year period shall start on the:
      a) fifth anniversary from the date of the execution of the Lease;
      b) expiration date of the Development Period; or
      c) date the first rental was due, whichever is applicable.
   2) The lessee shall be notified by RED in writing ninety (90) days before any adjustment is made, with a courtesy copy to the appropriate DED department.
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 or MDR.

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.

h. Rental Security:
   1) Shall be 50% of the annual rental for businesses that gross over $1 million annually;
   2) Shall be 25% of the annual rental for all other businesses.
   3) Security may be waived if:
      a) Applicant has been in good standing for a minimum of five (5) years with the Navajo Nation Business and Procurement Act;
      b) Good Standing with Dunn and Bradstreet;
      c) Fortune 500 Company;
      d) Non-Profit Organizations;
      e) Navajo Nation Departments;
      f) Other Governmental Entities:
      g) The Security may be waived in exigent circumstances, which must be justified by the Applicant and approved by the appropriate DED department. The justification shall be in writing and the Applicant shall enclose supporting documents to justify its claim.
   4) Security shall be submitted upon the commencement of rental.

i. Development Period:
   1) Shall be granted for a period not to exceed three (3) years from the date of execution of the Lease.
   2) May be extended in exigent circumstances, which must be justified by the Applicant and approved by the appropriate DED department. This justification shall be in writing and the Applicant shall submit supporting documents to justify its claim.

j. Insurance:
   1) Be obtained from a Nationally Accredited Insurance Company with a financial strength of at least an “A” and authorized to do business within in the state where the leased premise is located.
2) Include the Navajo Nation and United States as additional insureds.
3) Insurance shall be posted within thirty (30) days from execution of the Lease.
4) Not be cancelled or amended without thirty (30) days’ prior written notice to the RED.
5) Commercial General Liability Insurance amount shall be:
   a) $500,000 with a general aggregate limit for each occurrence at $1,000,000
   b) $1,000,000 with a general aggregate limit for each occurrence at $2,000,000, if the following:
      i. Storage Tank site;
      ii. Regulated substances on site;
      iii. Heighten Criminal Activity, common in the normal type of business (i.e. gaming, selling of alcohol, etc.).
   c) Insurance amount may be reduced if:
      i. Insurance quote is at a lower rate, from a Nationally Accredited Insurance Company with a financial rating of “A”; or
      ii. The Navajo Nation Risk Management Department, in writing, agrees to a lower amount.
6) 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, from a Nationally Accredited Insurance Company with a financial rating of “A”; 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; or
      iii. Not to exceed ninety days from execution of the Lease.

The responsibilities of the Applicant shall be completed in six (6) months. At the end of six (6) months, if the Applicant has not made any significant effort in the completion of their responsibility on any of the above documents the Application is void, at the discretion of DED. If the Application is void the application and all the documents shall be returned to the Applicant. However, appropriate DED departments may retain a copy of the Application and the documents at its discretion.

4.3 Review Process
1. The appropriate DED department shall prepare the Lease package and enclose the following documents:
a. Executive Summary
b. Chapter Resolution, if applicable;
c. Certificate of Good Standing, if applicable;
d. Procurement Clearances; and
e. Environmental Summary.

2. The appropriate DED department shall initiate the SAS process:
a. Program Manager/Department Manager;
b. Division Director;
c. Division of Finance, unless the procurement clearance is issued within thirty days of the initiation of the SAS process;
d. Department of Justice.

4.4 Approval Process
1. Appropriate DED department shall submit the Lease package to the DED Approving Committee.
2. If the Lease transaction is approved, the DED Approving Committee shall issue an official Resolution that must be attached to the document for the purposes of execution by the Navajo Nation President and Recording.

4.5 Execution of Lease
1. Appropriate DED department shall submit package to the RED for review to ensure compliance with Navajo Nation law, policy, rules and regulations and the Plan.
   a. RED shall have five (5) working days to review the package for compliance.
   b. If the RED finds any violation that may require legal review it shall request a legal opinion from DOJ and the package shall not be submitted to the Navajo Nation President (“President”) for final signature.
   c. If the RED finds a violation, it shall immediately notify the appropriate DED department with a written explanation of the violation.
      1) The appropriate DED department shall explain and remove illegal terms and conditions and if necessary, negotiate new terms and conditions with the Applicant.
      2) May be required to submit package through the SAS process, refer to this section 4.3.
      3) If no violation the RED shall return the Lease Package to the appropriate DED department for finalization
2. Finalize Lease which include preparing six (6) original sets of Lease document(s) and securing Lessee(s) signature.
3. Forward Lease document(s) with copy of the Resolution, including transmittal letter to the Office of the President for signature.
4. Upon Lease execution by the President, the Lease shall be submitted to RED.
4.6 Lessee(s) Upon Execution of Lease
1. Comply with all the terms and conditions of the Lease
2. Maintain liaison with the appropriate DED department

4.7 Lease Recording and Distribution
1. RED shall record Leases, subleases, assignments, amendments, encumbrances, renewals, modifications, cancellations and termination with the:
   Land Title and Records Office
   Southwest Regional Office
   Bureau of Indian Affairs
   PO Box 26567
   Albuquerque, New Mexico 87125-6567

2. RED is responsible for distributing Lease, in accordance with the Plan, as follows:
   - Originals shall be distributed to the following:
     a. Lessee
     b. Albuquerque BIA Land Title and Records Office
     c. DED Real Estate Department
     d. Appropriate DED Department
     e. Navajo Nation Land Department
     f. Navajo Nation Office of the Controller
   - Copies shall be distributed to the following:
     a. Local Government Unit upon written request
     b. Appropriate BIA Agency Real Estate Services Office

5.0 Expiring Lease
Lessee intending to renew a Lease shall notify the appropriate DED department, one (1) year prior to the expiration of the Lease and exhaustion of all options to renew.
1. Lessee must be:
   a. Operating a business on the premises;
   b. In compliance with Lease terms and conditions, Navajo law, rules and regulations.
2. If a notification is not received within one (1) year prior to the expiration, DED may consider another Applicant for the business site.

5.1 Lessee
1. Submit a letter of intent to renew Lease to the Navajo Nation President and the appropriate DED department;
2. LRE must submit a Certificate of Good Standing from the BRD. The certificate shall be dated within 12 months prior to administrative review of the Lease;
3. Submit the environmental audit as required by Part II of the Business Site Lease to the appropriate DED department;
4. Submit a Clearance from RED for insurance and bond/security requirements, as applicable;
5. Submit following documents (if applicable):
   a. Amended business plan, only if amending the purposes of the Lease or the purposes were not fulfilled on the former Lease;
   b. Survey Plat;
   c. ER.

The responsibilities of the Lessee/Applicant shall be completed in six (6) months. At the end of six (6) months, if the Lessee/Applicant has not made any significant effort in the completion of their responsibility on any of the above documents the Application is void, at the discretion of DED. If the Application is void, the application and all the documents shall be returned to the Lessee/Applicant. However, appropriate DED departments may retain a copy of the Application and the documents at its discretion.

5.2 Division of Economic Development
   1. Review all documents for accuracy and compliance with all applicable laws and regulations.
   2. Obtain a procurement clearance from the respective tribal departments.
   3. Complete an Appraisal Report or MDR, as/if applicable.
   4. Prepare and negotiate Lease terms and conditions with the prospective Lessee, refer to 4.6 of this Admin Plan.
   5. Begin Review, Approval and Execution Process, refer to Section 4.3, 4.4, 4.5 of this Admin Plan.

5.3 Lessee Upon Approval of Lease Renewal
   1. Comply with all the terms and conditions of the Lease;
   2. Maintain liaison with the appropriate DED department.

5.4 Lease Recording and Distribution
   1. Refer to 4.7 of this Admin Plan

6.0 Exercising Option to Renew Lease:
Lessee shall give written notice to the Navajo Nation President and the appropriate DED Department one (1) year prior to the expiration of the Lease with the intent or denial of exercising the option to renew.
1. If a written notice is not received one (1) year prior to the expiration of the Lease, DED may consider a new applicant.

**Responsibilities:**

6.1 **Lessee**

1. Submit a written notice of intent or denial to exercise their option to renew Lease with the following acknowledgement:

   The Navajo Nation acknowledges and grants approval for the Lessee to exercise an option to renew pursuant to the terms of the Lease

   APPROVAL:

   ____________________________  
   Navajo Nation President

2. Must be in compliance with applicable Navajo Nation laws.

6.2 **Division of Economic Development**

1. Upon receipt of the letter of intent by the appropriate DED Department DED shall obtain a procurement clearance from the respective tribal departments

2. The appropriate DED department, in coordination with RED, shall ensure the Lessee is in compliance of the Lease before issuing a response to the Lessee, based on the Annual Lease Compliance Form and Site Status Report;

3. If the Lessee is not in default based on such reports and clearance the letter shall be submitted to the Navajo Nation President for execution.

4. If the Lessee is not intending to exercise this Option, the appropriate DED department may initiate 4.0 of this Admin Plan.

6.3 **Lessee(s) Upon Receipt of the Acknowledgement Letter:**

1. Comply with all the terms and conditions of the Lease;

2. Maintain liaison with the appropriate DED department.

6.4 **Lease Recording and Distribution**

1. Refer to 4.7 of this Admin Plan

7.0 **Sublease**

Lessee who intends to sublease shall contact the appropriate DED department. General information and technical assistance in processing the Sublease transaction will be provided.
1. Subleases must be approved by the Nation, except for the following:
   a. Permanent office building tenants;
   b. Shopping center tenants;
   c. Retail mini mall tenants;
   d. Other business where the nature of the business is subleasing/tenant agreements;
   or
   e. For the purposes of merger, acquisition, or transfer of stock or any publicly traded companies.
2. If an exception, the Subleases shall be pre-authorized in the Lease;
3. If a Sublease must be approved by the Nation, then the Sublease must:
   a. Not be for the entire leasehold premises;
   b. Lessee must conduct a separate operating business on the premises.
4. Subleases shall:
   a. Not exceed the term of the Lease;
   b. Require the Sublessee to agree to be bound to all terms and conditions of the Lease, including, all rental payments, shall be paid to the “Navajo Nation” and submitted to the DOF at the following address:
      
      Cashier’s Section  
P.O. Box 3150  
Window Rock, AZ 86515
5. Landlord/Tenant Agreements can be used for: 1) Permanent office building tenants; 2) Shopping center tenants; 3) Retail mini mall tenants; or 4) businesses where the nature of the business is subleasing/tenant agreements.

The responsibilities of the Lessee/Sublessee/Applicant shall be completed in three (3) months. At the end of three (3) months, if any of the above documents are not completed the Application is void, unless the Lessee/Sublessee/Applicant has made significant effort in completing the application process. If the Application is void the application and all the documents shall be returned to the Lessee/Sublessee/Applicant. However, appropriate DED departments may retain a copy of the Application and the documents at its discretion.

7.1 Subleases that Require Approval from the Nation
   Responsibilities
   1. Sublessor and Sublessee:
      a. Shall provide a Letter of intent to Sublease the leasehold interest of the Lessee to the DED.
      b. Must be in compliance with the existing Lease terms and conditions, including applicable Navajo Nation laws and regulations.
   2. Sublessee:
a. If Applicant is a LRE:
   1) LRE must register with the BRD and comply with the requirements of the Navajo Corporation Code;
   2) LRE must submit a Certificate of Good Standing to the appropriate DED Department. The Certificate of Good Standing shall be dated within 12 months from the initiation of the Review Process.
b. Must be in compliance with Navajo laws and regulations
c. The package will be considered void if not completed within three (3) months unless the Applicant makes a significant effort to complete the transaction. The voided package shall be returned to the Applicant.

3. Division of Economic Development:
   a. Upon receipt of all required documents for the Sublease, review for accuracy, completeness, and compliance with all applicable laws and regulations;
   b. Obtain a written document from the respective tribal departments to verify Applicant’s compliance with Navajo Business Procurement Act;
   c. Obtain updated land survey and ER, if applicable;
   d. Negotiate Sublease terms and conditions, only if the Sublessee proposes changes or modifications from the Lease:
      1) Complete at Appraisal Report or MDR;
      2) Refer to 4.2(6) of this Admin Plan.
   e. Begin Review, Approval and Execution Process, refer to 4.0 of this Plan.

4. Lease Recording and Distribution:
   a. Refer to 4.7 of this Admin Plan

5. Sublessee(s) Upon Approval:
   a. Comply with all the terms and conditions of the Sublease and the Lease;
   b. Maintain liaison with the appropriate DED department.

7.2 Sublease that do not Require Approval from the Nation
   1. Sublessor
      a. Shall provide a copy of the Sublease, to the appropriate DED department
   2. Sublessee
      a. Must agree to be bound to all terms and conditions of the Lease
   3. Division of Economic Development
      a. Shall distribute for recording;
      b. Refer to 4.7 of this Plan.
   4. Sublessee(s) Upon Approval
      a. Comply with all the terms and conditions of the Sublease and the Lease.
      b. Maintain liaison with the appropriate DED department.
8.0 Novation
Substitution of the Navajo Nation and discharge of the Secretary of Interior, Bureau of Indian Affairs. In other words, adding a new party who was not a party to the original duty.

1. Existing Leases:
   a. Only Lease with a Term of 25 years or less can be novated, however the Term can also 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 modification can only include the striking of the Secretary and modifying the Term if the term is greater than 25 years.

2. Assignments
   a. The Lease shall be modified as explained above. However, for simple assignments, the original Lessee’s concurrence is required.

3. Subleases
   a. The Sublease can be novated, only if the Lease is novated.
   b. The Sublease shall be modified as explained above.

8.1 Lessee
1. Shall submit a Letter of Intent; and
2. Must be in compliance with Navajo Nation law.

8.2 Division of Economic Development
1. Review all required documents for the Novation, for accuracy and compliance with all applicable laws and regulations.
2. Obtain a procurement clearance from the respective tribal departments.

8.3 Lessee(s) Upon Execution
1. Comply with all the terms and conditions of the Novation and the Lease.
2. Maintain liaison with the appropriate DED department.

8.4 Lease Recording and Distribution
1. Refer to 4.7 of this Plan

9.0 Assignments
Lessees who intend to assign their Lease need to contact the appropriate DED Department to receive technical assistance in processing the Assignment.
1. Business premise that are undeveloped cannot be assigned;
2. Business premise that are undeveloped cannot be divided up by an Assignment.
3. If the proposed Assignee wishes to change the terms and conditions of the original Lease, the Lessee prior to the Assignment shall modify the Lease, and conduct an ER, if applicable;
4. If a sale or foreclosure occurs and the Encumbrancer is the Purchaser, he or she may assign the Lease without approval of the Lessor(s) or Lessee(s), provided the Assignee agrees in writing to be bound by all the terms and conditions of the Lease. If the Purchaser is a party other than the Encumbrancer, approval by the Approving Entity is required, provided the Purchaser agrees in writing to be bound by all the terms and conditions of the Lease;
5. The Assignment may be either complex or simple assignments:
   a. Complex assignments are an assignment of rights, duties and liabilities
      1) This assignments shall be for mergers, acquisitions, sale and any other justifiable reasons;
   b. Simple assignments are an assignment of rights and duties.
6. If the proposed transfer of possessory interest is approved, the terms and conditions of the Assignor will remain in full force and effect.

Responsibilities:

9.1 Assignor/Assignee

1. Shall provide a written notice of intent to assign the leasehold interest of the Lessee to the appropriate DED department, with both original signatures;
2. Must be in compliance with the existing Lease terms and conditions, including applicable Navajo laws and regulations.
3. If A proposed Assignee is a LRE:
   a. LRE must register with the BRD and comply with the requirements of the Navajo Corporation Code;
   b. LRE must submit a Certificate of Good Standing to the appropriate DED Department. The Certificate of Good Standing shall be dated within 12 months from the initiation of the Review Process.

The responsibilities of the Lessee/proposed Assignee shall be completed in three (3) months. At the end of three (3) months, if any of the above documents are not completed the Application may be considered void, at the discretion of the appropriate DED department, unless the Lessee/proposed Assignee has made significant effort in completing the application process. If the Application is void the application and all the documents shall be returned to the Lessee/Applicant. However, appropriate DED departments may retain a copy of the Application and the documents at its discretion.
9.2 Division of Economic Development
1. Upon receipt of all required documents for the Assignment, review for accuracy, completeness, and compliance with all applicable laws and regulations;
2. Obtain written document from the appropriate tribal departments to verify applicant’s compliance with Navajo Business Procurement Act;
3. Negotiate Assignment terms and conditions, only if the Assignee proposes changes or modifications from the Lease;
   a. Complete an Appraisal or MDR.
   b. Complete an ER, if applicable
   c. Refer to 4.2(3) of this Admin Plan

9.3 Assignee(s) Upon Approval
1. Comply with all the terms and conditions of this Assignment and the Lease;
2. Maintain liaison with the appropriate DED department.

9.4 Lease Assignment Recording and Distribution
1. Refer to 4.7 of this Admin Plan

10.0 Modification
Modification is a change or an alteration, which introduces new elements into the Lease terms and conditions.

Responsibilities
10.1 Lessee
1. Submit Letter of Intent. This Letter would include but not be limited to:
   a. Purposes;
   b. Rental Adjustments;
   c. Land Description;
   d. Lease Improvements;
   e. Business Ownership; and
   f. Change of Terms and Conditions.
2. Major operational changes, requires Lessee to furnish additional clearances, as may be required, such as:
   a. ER;
   b. Survey Plat and Legal Description, if the proposed Modification will affect the Lease acreage.
3. Must be in compliance with the terms and conditions of the Lease.
The responsibilities of the Lessee/Applicant shall be completed in three (3) months. At the end of three (3) months, if the Lessee/Applicant has not made any significant effort in the completion of their responsibility on any of the above documents the Application is void, at the discretion of DED. If the Application is void the application and all the documents shall be returned to the Lessee/Applicant. However, appropriate DED departments may retain a copy of the Application and the documents at its discretion.

10.2 Division of Economic Development
1. Review all required documents for the Modification, for completeness, and compliance with all applicable laws and regulations.
2. May request such clearances as may be deemed necessary, depending on what section of the Lease terms and conditions is/are affected by the proposed Modification.
3. Shall obtain written document from the appropriate tribal departments to verify applicant’s compliance with Navajo Business Procurement Act.
4. Complete an Appraisal Report or MDR as/if applicable.
5. Renegotiate Lease terms and conditions (if applicable).

10.3 Lessee(s) Upon Approval
1. Comply with all the terms and conditions of the Modification and the Lease.
2. Maintain liaison with the appropriate DED department.

10.4 Lease Recording and Distribution
1. Refer to 4.5 of this Admin Plan

11.0 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

11.1 Lessee
1. Shall provide a written notice of intent to collateralize leasehold interest held under a Lease to the appropriate DED department.
2. Must be in compliance with the existing Lease terms and conditions, including applicable Navajo Nation laws and regulations.
3. Must be in compliance with the Navajo Nation Business and Procurement Act.
11.2 Division of Economic Development
1. Review all documents for the Collateral Assignment of Lease, in consultation with DOJ.
2. Obtain a written document from the respective tribal departments.

11.3 Collateral Assignment of Lease Recording and Distribution
1. Refer to 4.7 of this Admin Plan.

11.4 Lessee(s) Upon Approval of Collateral Assignment of Lease
1. Shall not modify, 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 liaison with the appropriate DED department.

12.0 Revocable Use Permit
Definitions for purposes of this Section 12.0:
Permit means a written agreement between the Navajo Nation and the Applicant for a Revocable Use Permit to use Navajo Nation Trust land for a specified purpose, pursuant to the Navajo Nation Business Site Leasing Regulations of 2005. A Permit conveys no possessory interest and may be revoked at will.
1. Permits shall be issued if:
   a. Previously withdrawn for commercial purposes;
   b. Short term business, events, fundraising or government operations, including political entities;
   c. Sale of goods and services.
2. Rental for Permits shall be negotiated (i.e. daily, weekly), not including the administrative fee, shall be the following:
   a. For-Profit:
      1) $50.00 a day for a term less than 30 days;
      2) $200.00 per month.
   b. Non-Profit or community service/fundraising:
      1) $25.00 a day for a term less than 30 days;
      2) $100.00 per month.
   c. Rental for Permits for licensed Dealerships include, but not limited to vehicles, ATV, motorcycle, boats and mobile homes:
      1) $250.00 per day for a term less than 30 days;
      2) $500.00 per month.
3. Permits can be modified, subject to 12.1(1).
4. Permits shall be issued by the Nation, which has been filed by the Applicant with the appropriate DED department.

12.1 Requirement
1. Term
   a. Shall not exceed one (1) year, except the permit may include an option to renew for an additional term which shall not exceed one (1) year;
      1) Upon the expiration of the Permit and after exhaustion of both terms, the Permit cannot be extended, however, a new Permit may be issued.
      2) The same Permittee on the same site can only be issued a new permit twice. A Permittee may be granted a new permit beyond the two permit limit, so long as it is evident that the Permittee is not circumventing the Lease process. The Permittee shall justify an extension to the appropriate DED department. This justification may be approved only if shown exigent circumstances exist or circumstances exist beyond the control of the Permittee.
   b. Perpetual terms shall not be permitted.
   c. Permittees can exercise one option to renew, by submitting a letter of notice to the appropriate DED department. Notice must be given at least five (5) working days, prior to the expiration of the Primary Term; provided
      1) Permittee is not in default with the terms and conditions of the Permit;
      2) Permittee is in compliance with Navajo laws and regulations;
   d. The renewal term shall not exceed the Primary Term, however, the renewal term can be for a period less than the Primary Term (ex. If the Permit is for six (6) months the renewal term can only be up to six (6) months). Termination Permits shall be terminated for non-compliance with the terms and conditions of the Permit or any Navajo Nation laws and regulations.
   e. The appropriate DED department shall immediately notify RED in writing and RED shall notify the Permittee within five (5) working days from the notification from the appropriate DED department of non-compliance and termination by certified letter, which shall include the following:
      1) Cause for termination;
      2) Actual date of termination;
      3) Timeframe for vacating the premises, which shall not exceed five (5) days from the effective date of termination.
2. Security
   a. Permittee shall submit Security only if seeking a Permit for a term that exceeds 6 months.
   b. Security shall be for three months of rental.
3. Holdover  
   a. Appropriate DED department will conduct an on-site inspection of the leasehold premise to ensure the Permittee has vacated after the expiration or termination of the Permit.  
      1) If the Permittee remains in possession of the leasehold premise upon termination or expiration of the lease (“holdover period”) the appropriate DED department shall notify RED.  
      2) Rental: In the event of a holding over by Lessee beyond the expiration or termination date, as applicable, Permittee shall continue to pay the Navajo Nation the rental charged from the previous month before expiration of the Permit, until the holdover period ends.  
      3) Enforcement; If the Permittee does not respond to RED’s letter notifying the Lessee that it is a delinquent Holdover Tenant, RED shall refer the matter to the Department of Justice (“DOJ”). DOJ will enforce all remedies as outlined in Section 7.8 of the Management Plan.

Responsibilities
12.2 Applicant

1. Shall provide a written Letter of Intent for a Permit to the appropriate DED department.

2. May submit  
   a. Worker’s Compensation  
      1) Minimum amount as required by the State in which the premises are located  
   b. Commercial General Liability Insurance:  
      1) Amount sufficient to cover operations of Permittee  
   c. Fire and Casualty Insurance:  
      1) Minimum amount as required by the State in which the premises are located;  
      2) All insurers must be from a Nationally Accredited Insurance Company with a financial strength of “A” or equivalent;  
      3) The insurance must be maintained for the entire term of the Permit, including the renewal term.

3. ER, if applicable (i.e. oil, gas, propane, flammable materials, hazardous and regulated substances)  
   a. If contamination is found then the site must be cleaned;  
   b. Once the site has been cleaned a Permit may be issued while pending approval of EPA and the United States Environmental Protection Agency (“USEPA”).

4. If Applicant is a LRE:  
   a. LRE must register with the BRD and comply with the requirements of the Navajo Corporation Code;
b. LRE must submit a Certification of Good Standing to the appropriate DED department. The Certificate of Good Standing shall be dated within twelve months from the initiation of the Review Process.

The responsibilities of the Applicant shall be completed in three (3) months. At the end of three (3) months, if the Applicant has not made any significant effort in the completion of their responsibility on any of the above documents the Application is void, at the discretion of DED. If the Application is void the application and all the documents shall be returned to the Lessee/Applicant. However, appropriate DED departments may retain a copy of the Application and the documents at its discretion.

12.3 Division of Economic Development
1. Review, request, and check land status. Submit ER, if necessary.
2. Shall obtain a written document from the appropriate tribal departments to verify Applicant’s compliance with Navajo Business Procurement Act.
3. If the Applicant does not provide appropriate insurance coverage the appropriate DED department must obtain the signature of the Applicant on the Indemnification document.
4. Upon receipt of required documents, prepare Permit for signature by Applicant.
5. Upon return of original signed Permit by Applicant, the Permit is then submitted to:
   a. Appropriate DED department
   b. Department of Justice, only if changes made to the standard format.
   c. DED Division Director for execution
6. Upon an executed Permit, the appropriate DED department shall forward the Permit to RED.
7. RED shall:
   a. Collect the administrative fee;
   b. Assign a tracking number; and
   c. Distribute the Permit.
8. Distribute copies to:
   a. Permittee
   b. Appropriate DED department
   c. Land Department
   d. DOF
13.0 **Conditional Use Permit**

Definitions for purposes of this Section 13.0:

Permit means a written agreement between the Navajo Nation and the Applicant for a conditional use of Navajo Nation Trust land for a specified purpose contrary to the land status. A Permit conveys no possessory interest and may be revoked at will.

1. Permits shall be issued, only, if:
   a. Land is not withdrawn for commercial purposes;
   b. Chapter Resolution is obtained as described below;
   c. Grazing Official or Land Board approval; and
   d. Permittee is diligently pursuing a Lease.

2. Rental for Permits shall be negotiated (i.e daily, weekly), not including the Administrative Fee, shall be:
   a. For Profit rental shall be:
      1) $50.00 a day for a term of less than 30 days;
      2) $200.00 per month.
   b. Non-Profit rental shall be:
      1) $25.00 per day for a term less than 30 days.
      2) $100.00 per month
   c. Permits can be modified, subject to 13.1(1).
   d. Permits shall be issued by the Nation, which has been filed by the Applicant with the appropriate DED department.

13.1 **Requirement**

1. **Term**
   a. Permits shall not exceed a Primary Term of one (1) year. Perpetual terms shall not be permitted.
      1) Upon the expiration of the Permit and after exhaustion of both terms, the Permit cannot be extended, however, a new Permit may be issued.
   b. Permittee can exercise one option to renew, by submitting a letter of notice to the appropriate DED department. Notice must be given at least five (5) working days, prior to the expiration of the Primary Term; provided:
      1) Permittee has begun the process for obtaining a Lease;
      2) Permittee is not in default with the terms and conditions of the Permit;
      3) Permittee is in compliance with Navajo Nation laws and regulations;
      4) The renewal term shall not exceed the primary term.

2. Obtain approval from the Grazing Official and applicable Land Users.

3. Chapter Resolution is required and shall obtain following:
   a. Recommend approval of the Permit; and
   b. Recognize the land is not withdrawn for commercial purposes

4. Termination
a. Permits shall be immediately terminated twenty-four (24) months from the approval of the Permit, if a Lease has not been approved.
b. Permits shall be terminated for non-compliance with the terms and conditions of the Permit or any Navajo laws and regulations.
c. The appropriate DED department shall immediately notify RED in writing and RED shall notify the Permittee within five (5) working days from the notification of non-compliance and termination by certified letter, which shall include the following:
   1) Cause for termination;
   2) Actual date of termination;
   3) Timeframe for vacating the premises, which shall not exceed five (5) days from effective date of termination.

Responsibilities
13.2 Applicant
1. Shall provide a written Letter of Intent for a Permit to the appropriate DED department.
2. May submit:
   a. Worker’s Compensation:
      1) Minimum amount as required by the State in which the premises are located.
   b. Commercial General Liability Insurance:
      1) Amount sufficient to cover operations of Permittee.
   c. Fire and Casualty Insurance:
      1) Minimum amount as required by the State in which the premises are located.
   d. All insurers must be from a Nationally Accredited Insurance Company with a financial strength of “A” or equivalent.
   e. The insurance must be maintained for the entire term of the Permit, including the renewal term.
3. ER, if applicable (i.e. oil, gas, propane, flammable materials, hazardous and regulated substances)
   a. If contamination is found then the site must be cleaned; and
   b. Once the site has been cleaned a Permit may be issued while pending approval of EPA and the USEPA.
4. If Applicant is a LRE:
   a. LRE must register with the BRD and comply with the requirements of the Navajo Corporation Code;
   b. LRE must submit a current Certification of Good Standing to the appropriate DED department.

The responsibilities of the Applicant shall be completed in three (3) months. At the end of three (3) months, if the Applicant has not made any significant effort in the completion of
their responsibility on any of the above documents the Application is void, at the discretion of DED. If the Application is void the application and all the documents shall be returned to the Lessee/Applicant. However, appropriate DED departments may retain a copy of the Application and the documents at its discretion.

13.3 Division of Economic Development

1. Review, request, and check land status. Submit ER, if necessary.
2. Shall obtain a written document from the appropriate tribal departments to verify Applicant’s compliance with Navajo Business Procurement Act.
3. If the Applicant does not provide appropriate insurance coverage the appropriate DED department must obtain a sign Indemnification document.
4. Upon receipt of required documents, prepare Permit for signature by Applicant.
5. Upon return of original signed Permit by Applicant, the Permit is then submitted to
   a. Appropriate DED department;
   b. Department of Justice, unless no changes have been made to the standard form.
   c. DED Division Director for execution.
6. The Permit shall be submitted to the DED Division Director for approval.
7. Upon an executed Permit, the appropriate DED department shall forward the Permit to RED.
8. RED shall:
   a. Collect the Administrative Fee;
   b. Assign a tracking number; and
   c. Distribute the Permit.
9. Distribute copies to:
   a. Permittee
   b. Appropriate DED department
   c. Land Department
   d. DOF

14.0 Emergency Operating Agreement

Definitions for purposes of this Section 14.0:

Agreement means a written Agreement between the Navajo Nation and the Operator for emergency use of Navajo Nation Trust land for a specified purpose. An Agreement conveys no possessory interest and may be revoked at will.

1. Agreements shall be issued, only, if:
   a. Abandoned Structure or Building.
   b. Operating Business with:
      1) Abandoned Lessee;
2) Lessee agrees in writing to mutually terminate and vacate the premises;
3) Expired or terminated Lease, Permit, and Agreement, provided the Operator is not the Lessee, Permittee, or Operator of the expired or terminated Lease, Permit, and Agreement, unless:
a) Delay to obtain a Lease for an expired Lease with the same Lessee that is beyond the control of the Lessee and such delay is not the result of the Lessee’s actions.

2. Operator must diligently pursue a Lease, unless:
   a. To provide for security;
   b. To temporarily manage operating businesses.
3. Operators must be in compliance with Navajo laws and regulations.
4. Rent shall be waived only for this Agreement, and shall not be construed to be the rent for future Permits or Leases.

14.1 Requirement
1. Term
   a. Agreement shall not exceed a Primary Term of one (1) year. Perpetual terms are not permitted
   b. Operator obtaining a Lease shall have one option to renew by submitting a Letter of Notice to the appropriate DED department. Notice must be given at least five (5) working days, prior to the expiration of the Primary term; provided:
      1) Operator has begun the process for obtaining a Lease;
      2) Operator is not in default with the terms and conditions of the Agreement;
      3) Operator is in compliance with Navajo laws and regulations;
      4) The renewal term shall not exceed the Primary term.
   c. Operator not obtaining a Lease shall have two options to renew, by submitting a letter of notice to the appropriate DED department. Notice must be given at least five (5) working days, prior to the expiration of the Primary Term and option to renew; provided
      1) Operator is not in default with the terms and conditions of the Agreement;
      2) Operator is in compliance with Navajo laws and regulations;
      3) 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 Navajo laws and regulations.
   b. The appropriate DED department shall immediately notify RED in writing of any non-compliance issues and thereafter RED shall notify the Operator within five (5) working days of the notification:
      1) Cause for termination
      2) Actual date of termination
3) Timeframe for vacating the premises, which shall not exceed five (5) days from effective date

Responsibilities

14.2 Applicant
1. Shall submit Letter of Intent for an Agreement.
2. May submit
   a. Worker’s Compensation:
      1) Minimum amount as required by the State in which the premises are located.
   b. Commercial General Liability Insurance:
      1) Amount sufficient to cover operations of Operator.
   c. Fire and Casualty Insurance:
      1) Minimum amount as required by the State in which the premises are located.
   d. All insurers must be from a Nationally Accredited Insurance Company with a financial strength of “A” or equivalent.
   e. The insurance must be maintained for the entire term of the Agreement, including the renewal term.
3. ER, if applicable (i.e. oil, gas, propane, flammable materials, hazardous and regulated substances)
   a. If contamination is found then the site must be cleaned.
   b. Once the site has been cleaned, Agreement may be issued while pending approval of EPA and the USEPA.

14.3 Division of Economic Development
1. Review request, and check land status. Submit ER, if necessary.
2. Shall obtain a written document from the appropriate tribal departments to verify Applicant’s compliance with Navajo Business Procurement Act, unless there is no response within five (5) working days.
3. If the Applicant does not provide appropriate insurance coverage the appropriate DED department must obtain a signed Indemnification document.
4. Prepare Agreement for signature by Applicant.
5. Upon return of original signed Agreement by Applicant, the Agreement is then submitted to:
   a. Appropriate DED department
   b. Department of Justice, only if changes made to the standard format.
   c. DED Division Director for execution.
6. The Agreement shall then be submitted to the DED Division Director for approval.
7. Upon an executed Agreement, the appropriate DED department shall submit the Agreement to RED and RED shall:
   a. Collect the administrative fee;
   b. Assign a tracking number to the Agreement; and
c. Disburse copies of the Agreement.
8. Distribute copies to:
   a. Operator
   b. Appropriate DED department
   c. Land Department
   d. DOF
15.0 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

*Disclaimer: Refer to current documents*
(a) Authorized purposes; term; approval by Secretary

Any restricted Indian lands, whether tribally, or individually owned, may be leased by the Indian owners, with the approval of the Secretary of the Interior, for public, religious, educational, recreational, residential, or business purposes, including the development or utilization of natural resources in connection with operations under such leases, for grazing purposes, and for those farming purposes which require the making of a substantial investment in the improvement of the land for the production of specialized crops as determined by said Secretary. All leases so granted shall be for a term of not to exceed twenty-five years, except leases of land located outside the boundaries of Indian reservations in the State of New Mexico, leases of land on the Agua Caliente (Palm Springs) Reservation, the Dania Reservation, the Pueblo of Santa Ana (with the exception of the lands known as the "Santa Ana Pueblo Spanish Grant"), the reservation of the Confederated Tribes of the Warm Springs Reservation of Oregon, the Moapa Indian Reservation, the Swinomish Indian Reservation, the Southern Ute Reservation, the Fort Mojave Reservation, the Confederated Tribes of the Umatilla Indian Reservation, the Burns Paiute Reservation, the Coeur d'Alene Indian Reservation, the Kalispel Indian Reservation, the pueblo of Cochiti, the pueblo of Pojoaque, the pueblo of Tesuque, the pueblo of Zuni, the Hualapai Reservation, the Spokane Reservation, the San Carlos Apache Reservation, the Yavapai -Prescott Community Reservation, the Pyramid Lake Reservation, the Gila River Reservation, the Soboba Indian Reservation, the Viejas Indian Reservation, the Tulalip Indian Reservation, the Navajo Reservation, the Cabazon Indian Reservation, the Muckleshoot Indian Reservation and land held in trust for the Muckleshoot Indian Tribe, the Mille Lacs Indian Reservation with respect to a lease between an entity established by the Mille Lacs Band of Chippewa Indians and the Minnesota Historical Society, leases of the lands comprising the Moses Allotment Numbered 8 and the Moses Allotment Numbered 10, Chelan County, Washington, and lands held in trust for the Las Vegas Paiute Tribe of Indians, and lands held in trust for the Twenty-nine Palms Band of Luiseno Mission Indians, and lands held in trust for the Reno Sparks Indian Colony, lands held in trust for the Torres Martinez Desert Cahuilla Indians, lands held in trust for the Guidiville Band of Pomo Indians of the Guidiville Indian Rancheria, lands held in trust for the Confederated Tribes of the Umatilla Indian Reservation, lands held in trust for the Confederated Tribes of the Warm Springs Reservation of Oregon, and lands held in trust for the Cow Creek Band of Umpqua Tribe of Indians, land held in trust for the Prairie Band Potawatomi Nation, lands held in trust for the Cherokee Nation of Oklahoma, land held in trust for the Fallon Paiute Shoshone Tribes, lands held in trust for the Pueblo of Santa Clara, land held in trust for the
Yurok Tribe, land held in trust for the Hopland Band of Pomo Indians of the Hopland Rancheria, lands held in trust for the Yurok Tribe, lands held in trust for the Hopland Band of Pomo Indians of the Hopland Rancheria, lands held in trust for the Confederated Tribes of the Colville Reservation, lands held in trust for the Cahuilla Band of Indians of California, lands held in trust for the Confederated Tribes of the Grand Ronde Community of Oregon, and the lands held in trust for the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana, and leases to the Devils Lake Sioux Tribe, or any organization of such tribe, of land on the Devils Lake Sioux Reservation, which may be for a term of not to exceed ninety-nine years, and except leases of land held in trust for the Morongo Band of Mission Indians which may be for a term of not to exceed 50 years, and except leases of land for grazing purposes which may be for a term of not to exceed ten years. Leases for public, religious, educational, recreational, residential, or business purposes (except leases the initial term of which extends for more than seventy-four years) with the consent of both parties may include provisions authorizing their renewal for one additional term of not to exceed twenty-five years, and all leases and renewals shall be made under such terms and regulations as may be prescribed by the Secretary of the Interior. Prior to approval of any lease or extension of an existing lease pursuant to this section, the Secretary of the Interior shall first satisfy himself that adequate consideration has been given to the relationship between the use of the leased lands and the use of neighboring lands; the height, quality, and safety of any structures or other facilities to be constructed on such lands; the availability of police and fire protection and other services; the availability of judicial forums for all criminal and civil causes arising on the leased lands; and the effect on the environment of the uses to which the leased lands will be subject.

(b) Leases involving Tulalip Tribes

Any lease by the Tulalip Tribes under subsection (a) of this section, except a lease for the exploitation of any natural resource, shall not require the approval of the Secretary of the Interior (1) if the term of the lease does not exceed fifteen years, with no option to renew, (2) if the term of the lease does not exceed thirty years, with no option to renew, and the lease is executed pursuant to tribal regulations previously approved by the Secretary of the Interior, or (3) if the term does not exceed seventy-five years (including options to renew), and the lease is executed under tribal regulations approved by the Secretary under this clause (3).

(c) Leases involving Hopi Tribe and Hopi partitioned lands accommodation agreement

Notwithstanding subsection (a) of this section, a lease of land by the Hopi Tribe to Navajo Indians on the Hopi Partitioned Lands may be for a term of 75 years, and may be extended at the conclusion of the term of the lease.

(d) Definitions

For purposes of this section
(1) the term "Hopi Partitioned Lands" means lands located in the Hopi Partitioned Area, as defined in section 168.1(g) of title 25, Code of Federal Regulations (as in effect on October 11, 1996);

(2) the term "Navajo Indians" means members of the Navajo Tribe;

(3) the term "individually owned Navajo Indian allotted land" means a single parcel of land that--

(A) is located within the jurisdiction of the Navajo Nation;

(B) is held in trust or restricted status by the United States for the benefit of Navajo Indians or members of another Indian tribe; and

(C) was--

(i) allotted to a Navajo Indian; or

(ii) taken into trust or restricted status by the United States for an individual Indian;

(4) the term "interested party" means an Indian or non-Indian individual or corporation, or tribal or non-tribal government whose interests could be adversely affected by a tribal trust land leasing decision made by the Navajo Nation;

(5) the term "Navajo Nation" means the Navajo Nation government that is in existence on August 9, 1955, or its successor;

(6) the term "petition" means a written request submitted to the Secretary for the review of an action (or inaction) of the Navajo Nation that is claimed to be in violation of the approved tribal leasing regulations;

(7) the term "Secretary" means the Secretary of the Interior; and

(8) the term "tribal regulations" means the Navajo Nation regulations enacted in accordance with Navajo Nation law and approved by the Secretary.

(e) Leases of restricted lands for the Navajo Nation

(1) Any leases by the Navajo Nation for purposes authorized under subsection (a) of this section, and any amendments thereto, except a lease for the exploration, development, or extraction of any mineral resources, shall not require the approval of the Secretary if the lease is executed under the
tribal regulations approved by the Secretary under this subsection and the term of the lease does not exceed

(A) in the case of a business or agricultural lease, 25 years, except that any such lease may include an option to renew for up to two additional terms, each of which may not exceed 25 years; and

(B) in the case of a lease for public, religious, educational, recreational, or residential purposes, 75 years if such a term is provided for by the Navajo Nation through the promulgation of regulations.

(2) Paragraph (1) shall not apply to individually owned Navajo Indian allotted land.

(3) The Secretary shall have the authority to approve or disapprove tribal regulations referred to under paragraph (1). The Secretary shall approve such tribal regulations if such regulations are consistent with the regulations of the Secretary under subsection (a) of this section, and any amendments thereto, and provide for an environmental review process. The Secretary shall review and approve or disapprove the regulations of the Navajo Nation within 120 days of the submission of such regulations to the Secretary. Any disapproval of such regulations by the Secretary shall be accompanied by written documentation that sets forth the basis for the disapproval. Such 120-day period may be extended by the Secretary after consultation with the Navajo Nation.

(4) If the Navajo Nation has executed a lease pursuant to tribal regulations under paragraph (1), the Navajo Nation shall provide the Secretary with--

(A) a copy of the lease and all amendments and renewals thereto; and

(B) in the case of regulations or a lease that permits payment to be made directly to the Navajo Nation, documentation of the lease payments sufficient to enable the Secretary to discharge the trust responsibility of the United States under paragraph (5).

(5) The United States shall not be liable for losses sustained by any party to a lease executed pursuant to tribal regulations under paragraph (1), including the Navajo Nation. Nothing in this paragraph shall be construed to diminish the authority of the Secretary to take appropriate actions, including the cancellation of a lease, in furtherance of the trust obligation of the United States to the Navajo Nation.

(6)(A) An interested party may, after exhaustion of tribal remedies, submit, in a timely manner, a petition to the Secretary to review the compliance of the Navajo Nation with any regulations approved under this subsection. If upon such review the Secretary determines that the regulations were violated, the Secretary may take such action as may be necessary to remedy the violation, including rescinding the approval of the tribal regulations and reassuming responsibility for the approval of leases for Navajo Nation tribal trust lands.
(B) If the Secretary seeks to remedy a violation described in subparagraph (A), the Secretary shall--

(i) make a written determination with respect to the regulations that have been violated;

(ii) provide the Navajo Nation with a written notice of the alleged violation together with such written determination; and

(iii) prior to the exercise of any remedy or the rescission of the approval of the regulation involved and the re-assumption of the lease approval responsibility, provide the Navajo Nation with a hearing on the record and a reasonable opportunity to cure the alleged violation.

(f) Any contract, including a lease or construction contract, affecting land within the Gila River Indian Community Reservation may contain a provision for the binding arbitration of disputes arising out of such contract. Such contracts shall be considered within the meaning of "commerce" as defined and subject to the provisions of section 1 of Title 9. Any refusal to submit to arbitration pursuant to a binding agreement for arbitration or the exercise of any right conferred by Title 9 to abide by the outcome of arbitration pursuant to the provisions of chapter 1 of Title 9, sections 1 through 14, shall be deemed to be a civil action arising under the Constitution, laws or treaties of the United States within the meaning of section 1331 of Title 28.

(g) Lease of tribally-owned land by Assiniboine and Sioux Tribes of the Fort Peck Reservation

(1) In general

Notwithstanding subsection (a) of this section and any regulations under part 162 of Title 25, Code of Federal Regulations (or any successor regulation), subject to paragraph (2), the Assiniboine and Sioux Tribes of the Fort Peck Reservation may lease to the Northern Border Pipeline Company tribally-owned land on the Fort Peck Indian Reservation for 1 or more interstate gas pipelines.

(2) Conditions

A lease entered into under paragraph (1)--

(A) shall commence during fiscal year 2011 for an initial term of 25 years;

(B) may be renewed for an additional term of 25 years; and

(C) shall specify in the terms of the lease an annual rental rate--
(i) which rate shall be increased by 3 percent per year on a cumulative basis for each 5-year period; and

(ii) the adjustment of which in accordance with clause (i) shall be considered to satisfy any review requirement under part 162 of Title 25, Code of Federal Regulations (or any successor regulation).
RESOLUTION OF THE
ECONOMIC DEVELOPMENT COMMITTEE
OF THE NAVAJO NATION COUNCIL

20th NAVAJO NATION COUNCIL - FOURTH YEAR 2006

AN ACTION
LEGISLATION NO. 0896-06

RELATING TO ECONOMIC DEVELOPMENT; APPROVING AND ADOPTING
AMENDMENTS TO THE NAVAJO NATION BUSINESS SITE LEASING
REGULATIONS OF 2005 AS ADOPTED JULY 24, 2006 (EDCJY-III-06)

BE IT ENACTED:


2. The Economic Development Committee of the Navajo Nation Council hereby approves and adopts the amendments to the Navajo Business Site Lease Regulations of 2005 (EDCJY -111-06) as found in detail in Exhibit "A" attached and made a part hereto.

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 at St. Michaels, Navajo Nation (Arizona), at which a quorum was present and that the same was passed by a vote of 6 in favor and 0 opposed, this 3rd day of January 2007.

Lawrence R. Platero, Chairperson
Economic Development Committee

MOTION: Alice White
SECOND: Tommy Tsosie
# Navajo Nation Business Leasing Regulations of 2005

## Table of Contents

**Authority:** 46

**Subchapter 100 General Provisions:** 46

- §101 Purpose and Applicability 46
- §102 Title 47
- §103 Definitions 47
- §104 Scope 51
- §105 Effective Date 51
- §106 Approval 51
- §107 Choice of Law 51
- §108 Duration and Renewal 51

**Subchapter 200 Obtaining a Business Site Lease:** 52

- §201 Information 52
- §202 Supporting documents 52
- §203 Records 52
- §204 Ownership of Records 53

**Subchapter 300 Business Site Lease Requirements:** 53

- §301 Terms and Conditions 53
- §302 Land Descriptions 53
- §303 Appraisal, Local Studies 54
- §304 Environmental Review Process 54
- §305 Fair Annual Lease Value 54
- §306 Bond 55
- §307 Insurance 56
- §308 Improvements 56
- §309 Subleases, Assignments, Amendments and Encumbrances 56

**Subchapter 400 Business Lease Management:** 57

- §401 Management 57
- §402 Accounting 57
- §403 Administrative Fees 57
Subchapter 500 Enforcement ........................................................................................................... 58
§501 Enforcement ......................................................................................................................... 58
§502 Defaults ............................................................................................................................. 58
§503 Remedies ........................................................................................................................... 58
§504 Penalties ............................................................................................................................. 59
§505 Harmful or Threatening Activities ...................................................................................... 59
§506 Holdover ............................................................................................................................ 60
§507 Trespass ............................................................................................................................. 60

Subchapter 600 Appeals .............................................................................................................. 60
§601 Appeals ............................................................................................................................... 60
§602 Appeals to the Navajo Nation Supreme Court ................................................................. 60

Subchapter 700 [Reserved] ....................................................................................................... 61

Subchapter 800 Environmental Review Process ....................................................................... 61
§801 [Reserved] .......................................................................................................................... 61
§802 Threshold Determination ................................................................................................. 61
§803 Action on Leasing Decision Subject to Completion of ERP ............................................. 61
§804 Lessee Responsible for Environmental Compliance Determinations ............................. 61
§805 Compliance Determinations ............................................................................................. 62
§806 Compliance Determinations in Earlier or Concurrent Environmental Review Documents .............................................................................................................. 63
§807 Determination That Lessee Has Completed Compliance Determination Process .......... 63
§808 Compliance Determination Summary .............................................................................. 64
§809 Public Notice Requirements: .......................................................................................... 64
§810 Environmental Review Record .......................................................................................... 64
§811 Environmental Reviewer's Authorities and Duties ........................................................... 65
§812 Environmental Reviewer's Closure Procedures ................................................................. 65
§813 Environmental Reviewer Required to Consult with Navajo Nation Departments .......... 66

Subchapter 900 Amendments; Severability ............................................................................. 66
§901 Amendments ...................................................................................................................... 66
§902 Severability ......................................................................................................................... 66
§903 Appeal of a Decision ........................................................................................................... 66
Authority:

The *Navajo Nation Trust Land Leasing Act of 2000*, 25 U.S.C. § 415(e), P.L. 106-568, December 27, 2000, authorizes the Navajo Nation to develop regulations and issue leases without the approval of the Secretary, provided such regulations are consistent with the Secretary's regulations. According to the *Congressional Report*, the tribal regulations need not be identical to the Secretary's regulations but may reflect the Nation's special needs and circumstances. See Senate Reports: No. 106-368 accompanying S. 1658 (Committee on Indian Affairs); Congressional Record, Vol. 146 (2000), and H.R. 5528.

The Navajo Nation Council's Economic Development Committee (E.D.C.) of the Navajo Nation Council is authorized by its enabling legislation, the *Navajo Nation Business Site Leasing Act of 2000*, 2 Navajo Nation Code (N.N.C.) § 724, and 5 N.N.C. § 2301-2306; and the *Navajo Nation Local Governance Act* codified at Title 26 N.N.C., and any enabling legislation of its local governmental units, to promulgate business site leasing regulations for the Nation's business site leasing program. These regulations satisfy the tribal statutory requirements and thus are tribal regulations.

Subchapter 100 General Provisions

§101 Purpose and Applicability

A. The purposes of these regulations are to:

1. Recognize the authority of the Navajo Nation to issue business site leases, and establish streamlined procedures for environmental review, approval, management and enforcement of leases;

2. Promote self-determination, encourage economic self-sufficiency, and increase business activity and employment on lands of the Navajo Nation;

3. Implement the Navajo Nation Trust Land Leasing Act of 2000, and

4. Implement the *Navajo Nation Business Site Leasing Act*, the *Navajo Nation Local Governance Act* and the enabling legislation of other local government units; and
B. The Navajo Nation Business Site Leasing Act mandates certain provisions to protect and preserve Navajo Nation trust land, provisions for trust asset accounting, provisions for record keeping and title recording, and provisions for modern leasing practices. Accordingly, Subchapter 400 of these regulations set forth the business site leasing management system.

§102 Title

The regulations shall be referred to as the *Navajo Nation Business Site Leasing Regulations of 2005*.

§103 Definitions

A. For purposes of these regulations:

1. *Assignment* means an agreement between a 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.

2. *Approving Entity* means the governmental entity that has statutory authority to perform the duties and responsibilities of the Lessor on behalf of the Navajo Nation, and to approve or disapprove leasing transactions, which include but are not limited to: lease issuance, lease amendment or modification, subleasing, lease assignment or transfer, tenant leases, and lease terminations. The *Navajo Nation Business Site Leasing Act of 2005* gives the Economic Development Committee the power to act in the capacity of the Approving Entity.

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 of the Navajo Nation.

4. *Bond* means a 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.

5. *BIA* means the Bureau of Indian Affairs, United States Department of the Interior.

7. *Change in land* use means the change from residential to non-residential, commercial to industrial, or one industrial to another that significantly differs from the former use.

8. *Development period* means the time period from when a lease is executed to when improvements are expected to be substantially completed.

9. *Economic Development Committee* (EDC) means the Oversight Committee that has the statutory authority to give final approval for all business site leases and has authority to delegate some or all of its statutory authority to agencies within the Navajo Nation.

9A. *Environmental Reviewer* is the employee of the Division of Economic Development that has the authority set forth in §811, which authorities are provided pursuant to the Master Plan of Operation for the Division of Economic Development.

10. *Equity* means value of a business or a property, over and above the indebtedness against it, and includes tangible and intangible assets, including capital stock, options, franchises, trademarks, patents, copyrights, goodwill, contracts, facilities, infrastructure, and equipment.

11. *Executing Official* means the Navajo Nation President or Division of Economic Development Division Director, if properly delegated, who shall execute all business site leases on the Navajo Nation and take all necessary and proper action on leases and subleases including amendments, modifications, assignments and cancellations of leases and subleases.

12. *Fair annual lease value* means the most probable dollar amount a property should bring in a competitive and open market reflecting all conditions and restrictions of the specified lease agreement including term, rental adjustment and revaluation, permitted uses, use restrictions, and expense obligations; the lessee and lessor each acting prudently and knowledgeably, and assuming consummation of a lease contract as of a specified date and the passing of the leasehold from lessor to lessee under conditions whereby:

   a. Lessee and lessor are typically motivated;

   b. Both parties are well informed or well advised, and acting in what they consider their best interests;

   c. A reasonable time is allowed for exposure in the open market;
d. The rent payment is made in terms of cash in United States dollars, and is expressed as an amount per time period consistent with the payment schedule of the lease contract; and

e. The rental amount represents the normal consideration for the property leased unaffected by special fees or concessions granted by anyone associated with the transaction.

13. *Governance-Certified Chapter* means a Navajo Nation chapter that has obtained certification of its "Five Management System" pursuant to the *Navajo Nation Local Governance Act*.

14. *Human Environment* means the connection between the people and their environment.

15. *Interested party* means a person whose interest is adversely affected by the Managing Entity's leasing decision.

16. *Lease* means a written agreement or contract 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. Pursuant to 5 N.N.C. § 2303. F., a "Lease" also means a business lease, permits and licenses granting land use privileges in Navajo Nation trust land for business purposes. The written contract in which the rights to use and occupy land or structures are transferred by the owner to another for a specified period of time in return for a specified rent.

17. *Leasing Decision* in the context of the Environmental Review Process means the following types of lease transactions that will be acted on by the Approving Entity: lease issuance, lease amendment or modification, subleasing, lease assignment or transfer, and tenant leases.

18. *Lessee* means a person to whom property (Navajo Nation trust land) is leased under a Lease. One who has the right to use or occupy a property under a lease agreement, e.g., the leaseholder or tenant.

19. *Lessor* means the Navajo Nation who holds property title and conveys the right to use and occupy the property under a lease agreement.

20. *Local Government Unit* means a governance-certified local government, 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 includes governance-certified chapters, municipal forms.
of governments, and alternative forms of governments. Additionally, it refers to
townships that have been delegated the authority to approve business site leases.

21. *Managing Entity* means the governmental entity that has statutory authority to manage
all business site leases, in accordance with an approved business site leasing
management plan.

22. *Mortgage* means a written *instrument* that creates a *lien* upon real estate encumbered
in a business site lease as security for the payment of a specified debt.

23. *Navajo Nation* means the Navajo Nation Government.

24. *Navajo Nation Environmental Review* (NNER) comprises all of the documents
relevant to the Environmental Review Process for a specific Leasing Decision. The
Record is maintained by the Environmental Reviewer, and will be provided to the
Approving Entity.

25. *Navajo Nation law* means the body of law governing the land and activities occurring
within the jurisdiction of the Navajo Nation.

26. *Navajo Nation trust land* means the surface estate of land or any interest therein held
by the United States in trust for the Navajo Nation; land held by the Navajo Nation and
subject to federal restrictions against alienation or encumbrance; land reserved for
federal purposes; land held by the United States in trust for a Navajo Nation
corporation chartered under Section 17 of the *Indian Reorganization Act*.

27. *OST* means the Office of Special Trustee for American Indian, U.S. Department of the
Interior.

28. *Permit* means a written agreement between the Navajo Nation and the applicant for the
permit, also referred to as a permittee, whereby the permittee is granted a revocable
use privilege to use Navajo Nation trust land for a specified purpose.

29. *Petition* means a written request submitted to the Secretary, after exhaustion of tribal
remedies, for the review of an action (or inaction) of the Navajo Nation that is claimed
to be in violation of the approved tribal leasing regulations.

30. *Secretary* means the Secretary of the Interior, U.S. Department of the Interior, or its
authorized representative.
31. *Sublease* means a written agreement by which the lessee grants a person a right of possession no greater than that held by the lessee under a business site lease.

32. *Surety* means one who guarantees the performance of another.

§104 Scope

A. These regulations apply to all business site leases (existing and future) approved under the authority of 25 U.S.C. § 415, and to all actions and decisions taken in connection with those leases. Nothing herein shall be construed to affect the terms and conditions of existing leases.

B. Business site leases are mandatory for all businesses operating from a permanent structure or fixed location, advertising itself as being open to the public, or collecting rent or money from vendors or other business activities, unless otherwise provided by law. Failure to comply with this section shall be addressed pursuant to Navajo Nation law.

§105 Effective Date

These regulations shall take effect upon approval by the Secretary or authorized designee.

§106 Approval

The Lessor may issue a business site lease or permit, which is subject to approval from the Approving Entity and execution from the Executing Official so long as the lease complies with these regulations, and is in the Best Interest of the Navajo Nation.

§107 Choice of Law

All disputes over leases shall be resolved under the laws of the Navajo Nation. Nothing in these regulations shall be construed to waive the Navajo Nation's sovereign immunity.

§108 Duration and Renewal

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 Lease shall not exceed 25 years except that any such lease may include an option to renew for up to two 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 year before the lease is due to expire.
Subchapter 200 Obtaining a Business Site Lease

§201 Information

Information on obtaining business site leases shall be available at the Navajo Nation Division of Economic Development (DED), Navajo Nation Shopping Centers, Inc. and the respective local government unit.

§202 Supporting documents

All applicants for business site leases shall submit the following documents to the Managing Entity: (1) financial statement; (2) site survey and legal description, if applicable; (3) environmental review; and (4) other documents as may be required by the business site leasing management plan.

§203 Records

A. The Managing Entity shall record business site leases, subleases, assignments, amendments, encumbrances, renewals, modifications and cancellations with the:

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

B. The Managing Entity is responsible for disseminating recorded lease documents as follows:

- Navajo Nation Division of Economic Development
- Navajo Nation Records Management Department
- Navajo Nation Office of the Controller
- Navajo Land Department
- The Lessee
- Navajo Nation Shopping Center, Inc. (if applicable)

C. A copy of the lease and all amendments and renewals 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 addresses provided below, pursuant to 25 U.S.C. § 415(e)(4)(A) and (B). The five agency offices are:
§204 Ownership of Records

Records of activities taken pursuant to these regulations are the property of the United States and the Lessor and its local governmental units. Records compiled, developed or received by the Lessor in the course of business with the Secretary, are the property of the Lessor.

Subchapter 300 Business Site Lease Requirements

§301 Terms and Conditions

Leases 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. The Lessee is responsible for understanding these terms and conditions.

§302 Land Descriptions

Business site leases shall contain adequate site surveys and legal descriptions based on metes and bounds, rectangular, or lot and block systems.
§303 Appraisal, Local Studies

A. The fair annual lease value shall be determined by an appraisal or equivalent procedure performed by the Managing Entity utilizing the following data: improvement cost, replacement cost, earning capacity, sales and lease data of comparable sites. An appraisal log reporting the methods of appraisal and value of trust land shall be attached to every business site lease.

B. Alternatively, the fair annual lease value shall be determined by an appraisal performed by a licensed appraiser utilizing the Uniform Standards of Professional Appraisal Practice or commonly accepted method of appraisal. An appraisal log describing the method of appraisal and value of trust land shall be attached to every business site lease.

C. For the first year these regulations are in effect, appraisals may be submitted to the OST's Navajo Region, Branch of Appraisal, for a determination as to whether the appraisal meets the requirements of these regulations. If the Branch fails to make a determination within 15 days of receipt of the appraisal, the appraisal shall be considered proper. After the first year, the Managing Entity may obtain technical assistance from the OST's Appraisal Office.

§304 Environmental Review Process

The Approving 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.

§305 Fair Annual Lease Value

A. No lease shall be approved for less than the present fair annual lease value as set forth in the appraisal, except as follows:

1. The lessee is in the development period;

2. The Managing Entity is providing an incentive for businesses to locate on the Navajo Nation, and must provide lease concessions, lease improvement credits, and lease abatements to attract such businesses; or

3. The Managing Entity determines such action is in the Best Interest of the Navajo Nation.
B. A lease may be structured at a flat lease rate.

C. A 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 lessee generates over $1,000,000.00 in gross receipts.

D. A lease may be structured based on a percentage of gross receipts, or based on a market indicator.

E. The lease shall provide for periodic review at least every five years. Such review shall give consideration to the economic conditions, exclusive of improvement or development required by the contract or the contribution value of such improvements.

F. Leases for terms of less than five years, may be structured to allow for lease rate adjustments. The 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.

G. Leases may be amended to allow for lease rate adjustments.

H. The Managing 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.

§306 Bond

A. The lessee shall obtain a satisfactory surety bond in an amount that reasonably assures performance on the lease. Such bond shall be for the purpose of guaranteeing.

1. The annual lease payment;

2. The estimated development cost of improvements; and

3. Any additional amount necessary to ensure compliance with the lease.

B. The Managing Entity may waive the bond requirement, or reduce the amount, if doing so is in the Best Interest of the Navajo Nation. The Managing Entity shall maintain written records of waivers and reductions.
§307 Insurance

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 is located. It shall cover property business interruption, liability and casualty. The amount shall be sufficient to cover the improvements, personal injury or death, and the loss of the lessee and the United States. The insurance shall expressly identify the Lessor and the United States as the insured parties.

§308 Improvements

A. Improvements to the premises shall become the property, of the Lessor, unless otherwise provided for in the lease. If improvements will be removed, the lease shall specify the maximum time allowed for such removal.

B. A lessee may develop equity value in the improvements, and sell its interest in the lease based on the equity value. The Lessor has a right of first refusal to purchase the interest.

C. The lease may provide that at expiration, cancellation or termination of the lease, the Lessor shall purchase improvements to the premises at fair market value.

§309 Subleases, Assignments, Amendments and Encumbrances

A. Subleases, assignments, amendments or encumbrances of any lease shall be by written consent of the Lessor and Lessee, as well as the sureties, unless otherwise provided herein.

B. The lease may authorize subleases, in whole or in part, without approval from the Approving Entity and execution from the Executing Official, provided a copy of the sublease is provided to the Managing Entity. This in no way relieves the parties from carrying out their duties under the lease.

C. The lease may authorize encumbrances to the leasehold interest for the purpose of financing to develop and improve the premises. Approval by the Approving Entity and execution from the Executing Official is required. If a sale or foreclosure occurs and the encumbrancer is the purchaser, the encumbrancer may assign the lease without approval of the Approving Entity or lessee, provided the assignee agrees in writing to be bound by all the terms and conditions of the lease. If the purchaser is a party other than the encumbrancer, approval by the Approving 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 lease.
Subchapter 400 Business Lease Management

§401 Management

A. The Managing Entity shall manage both existing business site leases, as well as those executed pursuant to these regulations.

B. The Managing Entity shall institute a business site leasing management plan that employs sound real estate management practices, addresses accounting, collections, monitoring, enforcement, relief, and remedies.

C. Local Government Units shall institute a business site leasing management plan in order to exercise management authority and such authority shall remain with the Navajo Nation until the Local Government Unit has obtained proper delegation to approve business site leases, from the Approving Entity, except that leases executed prior to the local government unit obtaining management authority will require lessee consent.

§402 Accounting

A. The Managing Entity shall implement an accounting system that generates invoices in advance of the due dates, accounts for payments, and dates of when rate adjustments should be made.

B. 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.

C. The Managing Entity shall provide an annual accounting to the Navajo Nation Office of the Controller and the Secretary.

D. Nothing in this section shall be construed to absolve the lessee of its duties under a lease.

§403 Administrative Fees

The Managing Entity may charge administrative fees for costs associated with issuing a lease, sublease, assignment, amendment, mortgage or other administrative transaction.
Subchapter 500 Enforcement

§501 Enforcement

A. The Managing Entity shall have all powers necessary and proper to enforce the lease terms, laws, ordinances, regulations, rules, policies, and covenants, consistent with their business site leasing management plans. This includes the power to enter the premises at a reasonable time, with or without notice, assess penalties, and assess late payments.

B. The Managing Entity may request the Navajo Nation Office of the Attorney General to assist in enforcement of leases and these regulations.

§502 Defaults

A. If the Managing Entity determines the lessee is in default, the Managing Entity shall send the lessee a notice of default within a reasonable time of the determination. The notice of default may be provided by certified mail, return receipt requested.

B. Within ten days of the mailing, the lessee shall:

1. Cure the default and notify the Managing Entity in writing that the default has been cured;

2. Dispute the Managing Entity's determination that the lease is in default and explain why the lease should not be canceled; or

3. Request additional time to cure the default.

§503 Remedies

A. If the lessee fails to cure the default within the prescribed time period, the Managing Entity may:

1. Cancel the lease pursuant to these regulations;

2. Grant an extension of time to cure the default;

3. Pursue other remedies, including execution on bonds or collection of insurance proceeds;
4. Any combination of remedies listed above; or

5. Any other remedy set forth in the business site lease management plan.

B. If the Managing Entity cancels the lease, the Managing Entity shall send the lessee a cancellation letter within a reasonable time period. The cancellation letter may be sent to the lessee by certified mail, return receipt requested. The cancellation letter shall:

1. Explain the grounds for cancellation;

2. Notify the lessee of unpaid amounts, interest charges, or late payment penalties due under the lease;

3. Notify the lessee of its right to appeal; and

4. Order the lessee to vacate the premises within 30 days of the mailing of receipt of the cancellation letter, if an appeal is not filed by that time.

C. A cancellation shall become effective 31 days after mailing. The filing of an appeal shall not change the effective date of the cancellation. Pending the outcome of an appeal, the lessee shall make all requisite payments, as well as comply with the terms of the lease.

D. If the Managing Entity decides to grant an extension of time to cure a default, the lessee shall proceed diligently to perform and complete the corrective actions within a reasonable time period.

§504 Penalties

The lease shall specify the rate of interest to be charged if the lessee fails to make payments in a timely manner. The lease shall identify additional late payment penalties. Unless the lease provides otherwise, interest charges and late payment penalties shall apply in the absence of any specific notice to the lessee from the Managing Entity, and the failure to pay such amounts shall be treated as a breach of the lease.

§505 Harmful or Threatening Activities

If a lessee or other party causes or threatens to cause immediate and significant harm to the premises, or undertakes criminal activity thereon, the Managing Entity or other party may take appropriate emergency action, which includes securing juridical relief.
§506 Holdover

If a lessee remains in possession after the expiration or cancellation of a lease, the Managing Entity shall treat such occupation as a trespass. The Managing Entity shall take action to recover possession and pursue additional remedies. Filing shall be pursuant to tribal laws, or the Managing Entity may request the BIA for resolution under federal laws; such request shall be in writing by certified mail.

§507 Trespass

If a person occupies the premises without the Managing Entity's approval, the Managing Entity may pursue appropriate remedies, including the filing of a trespass action to regain possession under Navajo Nation law.

Subchapter 600 Appeals

§601 Appeals

A. The lessee or interested party may appeal a determination of the Managing Entity, within ten days of the determination. Appeals may be filed with the Navajo Nation's Office of Hearings and Appeals (OHA), or other hearing body as set forth in the business site lease management plan. Such appeals shall be effectuated by: the filing of an appeal bond where a stay of enforcement is requested, a written notice setting forth the basis for the appeal, a short statement indicating the nature and circumstance of the appeal, and a short statement indicating the remedy being sought.

B. An appeal bond shall protect the party whose remedy has been stayed, from all financial losses that may occur as result of the appeal. Appeal bond requirements shall not be separately appealed, but may be contested during the cancellation appeal.

C. The OHA or other hearing body shall review whether the determination was arbitrary, capricious, or an abuse of discretion; not supported by substantial evidence in the record; or otherwise, not in accordance with the law.

§602 Appeals to the Navajo Nation Supreme Court

Decisions of the hearing body, or the OHA, may be appealed to the Navajo Nation Supreme Court. Review shall be limited to issues of law and the record. De novo review is not allowed.
Subchapter 700 [Reserved]

Subchapter 800 Environmental Review Process

§801 [Reserved]

§802 Threshold Determination

i. Lessee Not Subject to Environmental Review Process: If the Environmental Reviewer determines that the Leasing Decision by its nature would not affect the biological and cultural resources of the Navajo Nation, the Leasing Decision is exempt from additional requirements of the Environmental Review Process, subject to the environmental record requirements of §810.

ii. Lessee Subject to Environmental Review Process: If the Environmental Reviewer determines that the Leasing Decision might be expected to i) impact, ii) alter, iii) disturb, or iv) otherwise cause physical disturbances to the biological or cultural resources of the Nation, the Lessee must fulfill the requirements of the Environmental Review Process. The physical disturbances must be direct, such as land clearing, new building construction, or discharge of emission or effluent associated with the project.

§803 Action on Leasing Decision Subject to Completion of ERP

If the ER determines that the Leasing Decision is subject to the Environmental Review Process, the Approving Entity may not consider the Leasing Decision until the Environmental Reviewer closes the ERP in accordance with §812.

§804 Lessee Responsible for Environmental Compliance Determinations

a. The Lessee, as the entity that will occupy and operate a business on the leased land, is primarily responsible for compliance review, decision-making and action in accordance with applicable environmental laws. Therefore, pursuant to this Subchapter, Lessee must provide to Environmental Reviewer, with respect to each of the environmental laws listed below, if applicable, a Compliance Determination for the Leasing Decision:

- National Historic Preservation Act
- Floodplain Management
- Wetlands Protection
- Endangered Species Act
- Air Quality
- Sole Source Aquifer
- Abandoned Mine Lands
- Navajo Nation's Solid Waste Act
- Farmland Protection Policy Act
- Noise Abatement and Control
- Toxic or Hazardous Substances and Radioactive Materials

b. Lessee's responsibility to comply with these laws is in addition to and separate from its obligations under this Subchapter, and Lessee's compliance obligations under those laws are not extinguished upon complying with the ERP.

c. Lessee's obligation to provide the Environmental Reviewer with Compliance Determinations is not complete until the ER, in accordance with §807, has determined that the Lessee has completed the Compliance Determination process.

§805 Compliance Determinations

a. The Lessee may request a Compliance Determination from the appropriate Navajo Nation department, as determined by the Environmental Reviewer in accordance with § 813, and for providing that department with the information it requires to make the Compliance Determination.

b. The Compliance Determination must clearly describe the Leasing Decision under consideration, and provide an evaluation of the Leasing Decision's impact on the resource or condition regulated by the particular environmental law for which the Lessee requests a Compliance Determination.

c. The Compliance Determination must also include a finding by the relevant Navajo department as to whether the Leasing Decision will comply with the particular environmental law. This finding must be signed by the individual who is officially responsible for determining a project's impact on the resources or conditions regulated by that particular law.

d. A Navajo department's completion of the Compliance Determination will be timely if the ER receives the Compliance Determination within 20 working days after the later of two events:

i. the Navajo department's receipt of Lessee's request for a Compliance Determination or
ii. the Navajo department's receipt of information it requires to complete the Compliance Determination.

e. If the Environmental Reviewer does not receive a completed Compliance Determination in a timely manner from a Navajo department, the ER may conclude the ERP without that department's Determination, provided the ER documents the following conditions:

i. The ER has made reasonable efforts to obtain the Compliance Determination from the Navajo department; and

ii. The delay is not the fault of the Lessee.

§806 Compliance Determinations in Earlier or Concurrent Environmental Review Documents

a. If the Leasing Decision pertains to an existing lease that has undergone an environmental review pursuant to the Nation's Business Site Leasing Regulations or the National Environmental Policy Act (NEPA), the Lessee may use those earlier environmental review documents to meet its Compliance Determination obligations under this Subchapter, subject to the Environmental Reviewer's determination in §807 that the Compliance Determination adequately evaluates the impacts of the Leasing Decision.

b. As early in the process as possible, the ER should review the earlier environmental review documents and assess whether the Compliance Determinations in those documents sufficiently evaluate the impacts of the Leasing Decision. If disturbances associated with the Leasing Decision were not evaluated by the Compliance Documents, the Lessee must obtain a compliance update or amendment from the Navajo department that has regulatory responsibility for the resource that has not been adequately evaluated.

c. In the event a Federal agency requires the Lessee to conduct an environmental review under NEPA in connection with a Federal decision that is related to the Leasing Decision, the ER may use those NEPA documents provided the documents meet the requirements of this Subchapter.

§807 Determination That Lessee Has Completed Compliance Determination Process

a. Before the Environmental Reviewer may close the ERP, they must affirmatively find the following:

i. The Lessee has fully complied with the requirements of §804 and §805;
ii. The Lessee has submitted all Compliance Determinations required by this Subchapter; and

iii. The Compliance Determinations adequately evaluate the impacts expected from the Leasing Decision.

b. Upon making these findings, the ER will place in the Environmental Review Record a statement to the effect that Lessee has completed the Compliance Determination process.

§808 Compliance Determination Summary

a. After the Environmental Reviewer certifies that the Lessee has completed the Compliance Determination process, the ER will prepare a summary of the compliance findings. The summary will contain the following information:

i. The date of the Compliance Determination, and the identification of the source of the Compliance Determination if contained in an earlier environmental review;

ii. A summary of the government department's compliance determination for each law, including conditions of compliance, if any; and

iii. A copy of the Compliance Determination.

b. The summary will be signed and dated by the Environmental Reviewer, and the document will be included in the Environmental Review Record.

§809 Public Notice Requirements:

a. The Environmental Reviewer may determine, if necessary, publish in a general circulation newspaper a notice of the Nation's intent to certify that a Lessee has completed the environmental review process of the Nation's business site leasing program.

b. The Notice must provide for a comment period, and state that public comments timely received will be considered before the Environmental Reviewer closes the ERP. The Notice will also provide information about the Environmental Review Record and tell the public how the Record may be reviewed.

§810 Environmental Review Record

a. An Environmental Review Record (ERR) must be maintained for every Leasing Decision reviewed by the Environmental Reviewer, including Leasing Decisions the Environmental
Reviewer finds to be exempt pursuant to §802(a). The ERR must be maintained in a written format and be available for public review.

b. The Environmental Review Record must contain all documents relevant to the Environmental Review process, including but not limited to, the following:

i. Determinations (in writing) made by ER pursuant to this Subchapter;

ii. Correspondence with Lessee and government agencies;

iii. Compliance Determinations including source documents and supporting documents;

iv. The Compliance Determination Summary;

v. Public notices, if applicable;

vi. Public comments, if applicable.

§811 Environmental Reviewer's Authorities and Duties

a. The Environmental Reviewer will maintain an Environmental Review Record (ERR) in which all documents relevant to the Environmental Review Process for a particular Leasing Decision will be kept.

b. The ER has the authority to carry out all the acts that are committed to their discretion in this Subpart.

c. The ER may act as Lessee's agent for the purposes of assisting the Lessee complete the requirements of this Subchapter.

§812 Environmental Reviewer's Closure Procedures

a. Upon determining the following, the ER will conclude the Environmental Review Process, whereupon the ER will transfer the Environmental Review Record to the Approving Entity:

i. The Environmental Review Record contains all documents required by §810;

ii. The public comment period has passed, if applicable;

iii. The review process under 2 N.N.C. § 164 is completed; and
iv. The Lessee has complied with all requirements of this Subchapter.

§813 Environmental Reviewer Required to Consult with Navajo Nation Departments

a. Upon the final approval of these regulations, the Environmental Reviewer will consult with the relevant Navajo Nation departments, and determine which department will be responsible for making the compliance finding referenced in §805 for each of the environmental laws referenced in §804.

b. The Environmental Reviewer has authority under this Subchapter to establish procedures aimed at expediting the Compliance Determination process. The ER is required to consult with the relevant Navajo departments in the development and implementation of any such procedures.

Subchapter 900 Amendments; Severability

§901 Amendments

The Economic Development Committee of the Navajo Nation Council may amend these tribal regulations without the Secretary's approval, so long as the amendment is for clarification or administrative convenience, and is consistent with the Navajo Nation Trust Land Leasing Act of 2000.

§902 Severability

If the Navajo Nation's court of competent jurisdiction determines a provision in these regulations or a lease is invalid, void or unenforceable, the remainder shall remain in full force and effect without regard to the stricken portion.

§903 Appeal of a Decision

If an interested party is adversely affected by a decision of the Navajo Nation, the interested party may appeal the decision consistent with these regulations to the Secretary.
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.

Table of Contents

Chapter 100 General Provisions................................................................. 69
  §101 Definitions......................................................................................... 69
  §102 Purpose and Applicability................................................................. 70
  §103 Scope................................................................................................. 71
  §104 Effective Date ................................................................................... 71
  §105 Approval ........................................................................................... 71
  §106 Choice of Law ................................................................................... 71
  §107 Duration and Renewal................................................................. 71

Chapter 200 Obtaining Business Site Leasing Authority.............................. 71
  §201 Approval Authority ........................................................................... 71
  §202 Management Authority .................................................................... 72
  §203 Rescinding of Authority ................................................................. 73

Chapter 300 Obtaining a Business Site Lease.................................................. 74
  §301 Information ....................................................................................... 74
  §302 Supporting Documents .................................................................... 74
§303 Records ....................................................................................................................... 74
§304 Ownership of Records............................................................................................... 76

Chapter 400 Business Site Lease Requirements ............................................................... 76
§401 Terms and Conditions .............................................................................................. 76
§402 Land Description...................................................................................................... 77
§403 Appraisal, Equivalent Procedure, Local Studies...................................................... 77
§404 Fair Annual Lease Value ......................................................................................... 77
§405 Security .................................................................................................................... 78
§406 Insurance .................................................................................................................. 79
§407 Improvements ......................................................................................................... 79
§408 Subleases, Assignments, Amendments and Encumbrances .................................. 79

Chapter 500 Transfer of Business Site Leases ................................................................. 80
§501 Transfer of Records ................................................................................................. 80
§502 Novation .................................................................................................................. 80

Chapter 600 Business Site Lease Management ............................................................... 81
§601 Administrative and Business Site Leasing Management Plan .................................. 81
§602 Administrative Management Plan .......................................................................... 82
§603 Business Site Leasing Management Plan ................................................................ 82
§604 Accounting .............................................................................................................. 82
§605 Administrative Fees ............................................................................................... 83
§606 Environmental Review ............................................................................................ 83

Chapter 700 Enforcement ............................................................................................... 83
§701 Enforcement ............................................................................................................ 83
§702 Defaults .................................................................................................................... 83

Chapter 800 Administrative and Business Office ............................................................. 84
§801 Establishment .......................................................................................................... 84

Chapter 900 Miscellaneous, Amendments, Severability ................................................ 84
§901 Reports ..................................................................................................................... 84
§902 Amendments ............................................................................................................ 84
§903 Severability .............................................................................................................. 84
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.

1.9 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.
1.10 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.

1.11 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.

1.3.1. This delegation of authority is given at the discretion of the EDC and such delegation is subject to the requirements set forth in 25 V.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:
§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 complied, 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:


6.1.2. 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.
RESOLUTION OF THE  
NAVAJO NATION COUNCIL  

Adopting the Navajo Nation Privacy and Access to Information Act  

WHEREAS:  
1. Pursuant to 2 N.N.C. §102 (A) and (B), the Navajo Nation Council is the governing body of the Navajo Nation and all powers not delegated are reserved to the Navajo Nation Council; and  

2. Pursuant to 2 N.N.C. §341, the Government Services Committee of the Navajo Nation Council is established and continued as a standing committee of the Navajo Nation Council with the authority to monitor and coordinate the activities of all divisions and departments of the Executive Branch. In addition, pursuant to 2 N.N.C. §343 (B) (5), the Committee is authorized to recommend legislation to the Navajo Nation Council on matters within the Committee's jurisdiction; and  

3. The Government Services Committee of the Navajo Nation Council, by Resolution GSCAP-27-99, attached hereto and incorporated herein as Exhibit "B", has recommended that the Navajo Nation Council adopt the Navajo Nation Privacy and Access to Information Act, set forth at 2 N.N.C. Subchapter 4, §§81-91; and  

4. Pursuant to 2 N.N.C. §571, the Judiciary Committee of the Navajo Nation Council is established and continued as a standing committee of the Navajo Nation Council with oversight responsibilities for the operation of the Judicial Branch. In addition, pursuant to 2 N.N.C. §574 (E) (2), the Committee is authorized to review legislation and make recommendations regarding any proposed or current laws, procedures and regulations affecting or creating any impact on the Judicial Branch; and  

5. The Judiciary Committee of the Navajo Nation Council, by Resolution JCAP-4-99, attached hereto and incorporated herein as Exhibit "C", has recommended that the Navajo Nation Council adopt the Navajo Nation Privacy and Access to Information Act, set forth at 2 N.N.C. Subchapter 4, §§81-91; and  

6. The Navajo Nation Council recognizes that a democratic form of government requires that information related to government operations be accessible to the public, while respecting individuals right to privacy. As such, a generally applicable Navajo Nation Privacy and Access to Information Act is necessary to provide the general public with a means to access records and information relating to the operation of the Navajo Nation while preserving the privacy interests of individuals and entities.  

NOW THEREFORE BE IT RESOLVED THAT:  

1. The Navajo Nation Council hereby amends Title 2 of the Navajo Nation Code by adopting the Navajo Nation Privacy and Access to Information Act, as provided in Exhibit "A", attached hereto and incorporated herein.  

2. The amendments contained in this resolution shall become effective upon the certification of this resolution by the Speaker of the Navajo Nation Council.
CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by 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 61 in favor, 0 opposed and 0 abstained, this 23rd day of April 1999.

George Arthur, Speaker Pro Tem
Navajo Nation Council
Date Signed

Motion: Ralph Bennett
Second: Nelson Gorman, Jr.

ACTION BY THE NAVAJO NATION PRESIDENT:

1. I hereby give notice that I will not veto the foregoing legislation, pursuant to 2 N.N.C. §1005 (C) (10), on this ____ day of _______1999.

Kelsey A. Begaye, President
Navajo Nation

2. I hereby veto the foregoing legislation, pursuant to 2 N.N.C. §1005 (C) (10), this ____ day of _______, 1998 for the reason(s) expressed in the attached letter to the Speaker.

Kelsey A. Begaye, President
Navajo Nation
Title 2. Navajo Nation Government

Chapter 1. Establishment

Subchapter 4. Privacy and Access to Information

§81. Short Title
This Act shall be referred to as the "Navajo Nation Privacy Act."

§82. Declaration of Public Policy
The Navajo Nation Council finds and declares it the policy of the Navajo Nation that a democratic form of government requires that information related to government operations be accessible to the public, while recognizing that individuals have a right to privacy. It is the intent of the law that the general public be provided a means to access records and information relating to the operation of the Navajo Nation while preserving the privacy interests of individuals and entities.

§83. Definitions
As used in this subchapter:
A. "Governmental entity" means any administrative, advisory, executive judicial or legislative office or body of the Navajo Nation or its political subdivisions, including without limitation all commissions, corporations and other instrumentalities whose boards of directors are appointed or elected by the Navajo Nation or its political subdivisions. Governmental entity includes all quasi-judicial bodies and all standing, special or advisory committees or subcommittees of, or appointed by, the Navajo Nation to carry out the public's business.
B. "Person" means any individual, nonprofit or profit corporation, partnership, sole proprietorship or other type of business organization.
C. "Protected record" means any record containing data on persons or governmental entities that is private or otherwise protected as provided by 2 N.N.C. § 85.
D. "Public record" means any record that is not private or otherwise protected and that is not exempt from disclosure as provided in 2 N.N.C. § 84.
E. "Record" means all books, letters, documents, papers, maps, plans, photographs, films, cards, tapes, recordings, electronic data or other documentary materials regardless of physical form or characteristics which are prepared, owned, received or retained by a governmental entity and where all of the information in the original is reproducible by photocopy or other mechanical or electronic means. "Record" does not mean:

1. Materials that are legally owned by an individual in his private capacity;
2. Materials to which access is limited by the laws of copyright or patent unless the copyright or patent is owned by a governmental entity;
3. Junk mail or commercial publications received by a governmental entity or an official or employee of a governmental entity;
4. Books and other materials that are cataloged, indexed or inventoried and contained in the collections of libraries open to the public;
5. Daily calendars and other personal notes prepared by the originator for the originator's personal use or for the personal use of an individual for whom he is working;
6. Computer programs that are developed or purchased by or for any governmental entity for its own use; or
7. Notes or internal memoranda prepared as part of the deliberative process by a member of the judiciary or any other body charged by law with performing a quasi-judicial function.

F. "Right to Privacy" means the right of a person to be free from unwarranted intrusion by a governmental entity.

§84. Records that must be disclosed:

A. The following records are public except to the extent they contain information expressly permitted to be treated as protected as provided for 2 N.N.C. § 85:

1. Laws;
2. Names, gender, job titles, job description, business addresses, business telephone numbers, number of hours worked per pay period, dates of employment, relevant education, previous employment and similar job qualifications of the governmental entity's current and former employees and officers excluding:
   a. Undercover law enforcement personnel; and
   b. Investigative personnel if disclosure could reasonably be expected to impair the effectiveness of investigations or endanger any individual's safety.
3. Inter-office memoranda;
4. Final opinions, including concurring and dissenting opinions, and orders that are made by a governmental entity in an administrative, adjudicative or judicial proceeding except that if the proceedings were properly closed to the public, the opinion and order may be withheld to the extent that they contain information that is protected;
5. Final interpretations of statutes or rules by a governmental entity;
6. Information contained in or compiled from a transcript, minutes or report of the open portions of a meeting, excluding executive sessions, of a governmental entity, including the records of all votes of each member of the governmental entity;
7. Judicial records unless a court orders the record to be restricted under the rules of civil or criminal procedure or unless the records are protected under this subchapter;
8. Records filed with or maintained by governmental entities that give public notice of:
   a. Titles or encumbrances to real property, including homesite permits, land use permits and grazing permits; or
   b. Restrictions on the use of real property.
9. Records filed with or maintained by governmental entities that evidence incorporations, name changes and uniform commercial code filings;
10. Documentation of the compensation that a governmental entity pays to a contractor or private provider; and
11. Data on individuals that would otherwise be protected under this subchapter if the individual who is the subject of the record has given the governmental entity written permission to make the records available to the public.

B. The following records are normally public, but to the extent that a record is expressly exempt from disclosure, access may be restricted under 2 N.N.C. § 85:

1. Administrative staff manuals, instructions to staff and statements of policy;
2. Records documenting a contractor's or private provider's compliance with the terms of a contract with a governmental entity;
3. Contracts entered into by a governmental entity;
4. Any account, voucher or contract that deals with the receipt or expenditure of funds by a governmental entity;
5. Correspondence by and with a governmental entity in which the governmental entity determines or states an opinion upon the rights of the Nation, a political subdivision, the public or any person;
6. Empirical data if contained in drafts if:
   a. The data is not reasonably available to the requester elsewhere in similar form; and
   b. The governmental entity is given a reasonable opportunity to correct any errors or make non-substantive changes before release.
7. Drafts that are circulated to anyone other than a governmental entity, a federal agency if the governmental entity and the federal agency are jointly responsible for implementation of a program or a contractor or private provider;
8. Drafts that have never been finalized but were relied upon by the governmental entity in carrying out action or policy;
9. Arrest warrants after issuance, except that, for good cause, a court may order restricted access to arrest warrants prior to service;
10. Search warrants after execution and filing of the return, except that, for good cause, a court may order restricted access to search warrants prior to trial;
11. Records that would disclose information relating to formal charges or disciplinary action against a past or present governmental entity employee if:
   a. The disciplinary action has been completed and all time periods for administrative appeal have expired; and
   b. The formal charges were sustained.

C. The list of public records in this section is not exhaustive and should not be used to limit access to records.

§85. Protected records
A. The following records are private or otherwise protected and shall not be considered public for purposes of required disclosure:
1. Records concerning an individual's eligibility for social services, welfare benefits or the determination of benefit levels;
2. Records containing data on individuals describing medical history, diagnosis, condition, treatment, evaluation or similar medical data, including psychiatric or psychological data;
3. Records concerning a current or former employee of, or applicant for employment with, a governmental entity that would disclose that individual's home address, home telephone number, social security number, insurance coverage, marital status or payroll deductions;
4. Records concerning a current or former employee of, or applicant for employment with, a governmental entity, including performance evaluations and personal status information such as race, religion or disabilities, but not including records that are public under 2 N.N.C. § 84(A)(2) or (B)(11);
5. Records describing an individual's finances, except that the following are public:
   a. Records described in 2 N.N.C. § 84(A);
   b. Navajo Nation Economic Disclosure Statements filed with the Ethics and Rules Office by elected public officials and candidates for elected public office, pursuant to 2 N.N.C. § 3762;
   c. Loan applications for Navajo Nation loans to elected public officials and appointed public officials submitted to the Government Services Committee for approval, pursuant to Section 7(c) of the Personal Loan Operating Policies and Guidelines, approved by Resolution CLO-I9-88; or
   d. Records that must be disclosed in accordance with another statute or duly adopted rules and regulations of a governmental entity.
6. Attorney-client privileged information, materials and work-products, including the mental impressions or legal theories of an attorney or other representative of a governmental entity;
7. The negotiating position of the Navajo Nation before a contract, lease or other agreement is entered into;
8. Records prepared by or on behalf of a governmental entity solely in anticipation of litigation that are not available under the rules of discovery;
9. Information, research and discussions conducted by the public bodies of the Navajo Nation during executive sessions;
10. Memoranda prepared by staff and used in the decision-making process by a judge or a member of any other body charged by law with performing a Quasi-judicial function;
11. Information received in response to an invitation for bids or request for proposals before a contract is awarded. Such information will also remain unavailable to the general public after a contract is entered into provided that the information contained in the bid or proposals is proprietary in nature or otherwise to remain confidential at the request of the person submitting the bid or proposal;
12. Information contained within or related to a contract, lease or other agreement which is proprietary in nature or otherwise to remain confidential at the request of any party to the contract, lease or other agreement;
13. Records of a governmental audit agency relating to an ongoing or planned audit until the final audit is released;
14. Records which are sealed or otherwise protected by court order due to the sensitive nature of the record in which the privacy interest of the person outweighs the public interest in the information;
15. Records to which access is restricted pursuant to court rule or as a condition of participation in a state or federal program or for receiving state or federal funds;
16. Drafts, unless otherwise classified as public;
17. Information related to the location of an individual member of any threatened or endangered species, such that that individual member could be placed further at risk;
18. Information which cannot be released without interfering with an individual's right to exercise or practice his chosen religion;
19. Information otherwise protected by applicable laws;
20. Other records containing data on individuals the disclosure of which constitutes a clearly unwarranted invasion of personal privacy.

B. Upon request, a governmental entity shall disclose a private or otherwise protected record as provided for in 2 N.N.C. § 86.

§86. Access to protected documents
Upon request, protected records will be available for disclosure as follows:
A. Information shall be available for criminal and civil law enforcement for prosecution purposes, internal audit, as a result of a court order, to further an individual's medical treatment and to address public health needs.
B. Information relating to an individual shall be available to the individual who is the subject of the record, or if a minor, shall be available to the parent or guardian subject to any applicable court order.
C. Individual records may be released to third parties with the written permission, by means of a notarized release, of the individual who is the subject of those records, or his or her parent or legal guardian if a minor.
D. Individual records may be used for statistical and other purposes provided that any information which could be used to identify the individual specifically is removed or withheld.
E. Information about an individual will always be available to other Navajo Nation governmental entities subject to the general restrictions above.
F. Before releasing a protected record, the governmental entity shall obtain evidence of the requester's identity.
G. Before releasing a protected record, the governmental entity shall inform the requester that he or she is prohibited from disclosing or providing a copy of the protected record to any other person and shall obtain the requester's written acknowledgment of this prohibition.
§87. Segregation of records
A. Notwithstanding any other provision in this subchapter, if a governmental entity receives a request for access to a record that contains both information that the requester is entitled to inspect and information that the requester is not entitled to inspect, and, if the information the requester is entitled to inspect is intelligible and able to be segregated, the governmental entity:
1. Shall allow access to information in the record that the requester is entitled to inspect under this subchapter; and
2. May deny access to information in the record if the information is exempt from disclosure to the requester, issuing a notice of denial as provided in 2 N.N. C. § 89.
B. If there is more than one subject of a protected record, the portion of the record that pertains to another subject shall be segregated from the portion that the requester is entitled to inspect.

§88. Procedures
A. Every person has the right to inspect a public record free of charge, and the right to take a copy of a public record during normal working hours, subject to subsection (H).
B. All records are public unless otherwise expressly provided by statute.
C. A person making a request for a record shall furnish the governmental entity with a written request containing his name, mailing address, daytime telephone number, if available, and a description of the records requested that identifies the record with reasonable specificity. The request for information shall be addressed to the governmental entity primarily responsible for compiling such records.
D. A governmental entity is not required to create a record in response to a request. However, upon request, a governmental entity shall provide a record in a particular format if:
1. The governmental entity is able to do so without unreasonably interfering with the governmental entity's duties and responsibilities; and
2. The requester agrees to pay the governmental entity for its additional costs actually incurred in providing the record in the requested format.
E. Nothing in this section requires a governmental entity to fulfill a person's records request if the request unreasonably duplicates prior records requests from that person.
F. Within 90 days, the governmental entity shall respond to the request by:
1. Approving the request and providing the record;
2. Denying the request by providing a written explanation of why the record is protected from disclosure. In making such determinations, the governmental entity shall consult with the Department of Justice; or
3. Notifying the requester that it does not maintain the record and providing, if known, the name and address of the governmental entity that does maintain the record.
G. In the event that the governmental entity determines that the requested record is protected from disclosure, or fails to respond to the request within the 90 day period, the requesting party may make application to the District Court, as defined at 7 N.N.C. § 253, in accordance with the proper processes of the Court for an order compelling the release of the record.
1. This application must meet the notice and filing requirements of the Navajo Nation Sovereign Immunity Act, 1 N.N.C. § 551 et seq.
2. Any person who may have an interest in maintaining the confidentiality of the record may appear and demonstrate the need for maintaining the confidentiality of such record.
3. In determining the availability of any record requested, the District Court shall apply the standards set forth in 2 N.N.C. §§ 84 and 85.
H. The Navajo Nation may assess the reasonable costs for photocopying and other activities associated with providing the record against the person requesting the record.
I. The implementation of the Navajo Nation Privacy and Access to Information Act shall be subject to rules and regulations duly adopted by the Government Services Committee. Records released may be subject to reasonable restrictions on use, pursuant to such rules and regulations of the Government Services Committee.
§89. Denials
A. If the governmental entity denies the request in whole or in part, it shall provide a notice of denial to the requester either in person or by sending the notice to the requester's address.
B. The notice of denial shall contain the following information:
   1. A description of the record or portions of the record to which access was denied, provided that the description does not disclose protected information;
   2. Citations to the provisions of this subchapter, court rule or order, state or federal statute or regulation that exempt the record or portions of the record from disclosure, provided that the citations do not disclose protected information;
   3. A statement that the requester has the right to make application to the District Court for an order releasing the record and the time limits for filing the application.
C. Unless otherwise required by a court of competent jurisdiction, a governmental entity may not destroy or give up custody of any record to which access was denied until the period for an appeal has expired or the end of the appeals process.

§90. Ordinances Adopted in Compliance with Subchapter
A. Each governmental entity may adopt an ordinance or a policy applicable throughout its jurisdiction relating to information practices including access, denials, segregation and appeals.
B. If any governmental entity does not adopt and maintain an ordinance or policy, then that governmental entity is subject to this subchapter.
C. Notwithstanding the adoption of an ordinance or policy, each governmental entity is subject to 2 N.N.C. §§ 83, 84 and 85.
D. Each ordinance or policy shall establish access criteria, procedures and response times for requests to inspect or obtain records of the governmental entity and time limits for appeals.
E. Each ordinance or policy shall establish an appeals process for persons aggrieved by the access decisions, allowing petition for judicial review to the District Court as set forth at 2 N.N.C. § 88(G).

§91. Criminal Penalties
A. A public employee or other person who has lawful access to any protected record under this subchapter, who intentionally discloses or provides a copy of a protected record to any other person is guilty of an offense and upon conviction thereof shall be punished by a fine of not less than $1000 nor more than $5000.
B. It is a defense to prosecution under subsection (A) that the actor released protected information in the reasonable belief that the disclosure of the information was necessary to expose a violation of law involving government corruption, abuse of office or misappropriation of public funds or property.
C. A person who, by false pretenses, bribery or theft, gains access to or obtains a copy of any protected record to which he is not legally entitled is guilty of an offense and upon conviction thereof shall be punished by a fine of not less than $1000 nor more than $5000. No person shall be guilty who receives the record, information or copy after the fact and without prior knowledge of or participation in the false pretenses, bribery or theft.
D. A public employee who intentionally refuses to release a record the disclosure of which the employee knows is required by law or by final un-appealed order from a governmental entity or a court is guilty of an offense and upon conviction thereof shall be punished by a fine of not less than $1000 nor more than $5000.

§92. Civil Penalties
A. A non-Indian who has lawful access to any protected record under this subchapter, who intentionally discloses or provides a copy of a protected record to any other person is subject to civil penalties of not less than $1000 nor more than $5000.
B. It is a defense to a civil action under subsection (A) that the non-Indian actor released protected information in the reasonable belief that the disclosure of the information was necessary to expose a violation of law involving government corruption, abuse of office or misappropriation of public funds or property.
C. A non-Indian person who by false pretenses, bribery or theft, gains access to or obtains a copy of any protected record to which he is not legally entitled is subject to civil penalties of not less
than $1000 nor more than $5000. No person shall be subject to civil penalties who receives the record, information or copy after the fact and without prior knowledge of or participation in the false pretenses, bribery or theft.

D. A non-Indian public employee who intentionally refuses to release a record the disclosure of which the employee knows is required by law or by final unappealed order from a governmental entity or a court is subject to civil penalties of not less than $1000 nor more than $5000.

E. Any non-Navajo person within the Navajo Nation's jurisdiction, as defined at 7 N.N.C. § 254, having been found to be in repeated violation of this subchapter may be subject to the exclusionary provisions of the Navajo Nation, as provided at 17 N.N.C. § 1901 et seq.
RESOLUTION OF THE
GOVERNMENT SERVICES COMMITTEE
OF THE NAVAJO NATION COUNCIL

Recommending That the Navajo Nation Council Adopt
the Navajo Nation Privacy and Access To Information Act

WHEREAS:

1. Pursuant to 2 N.N.C. §341, the Government Services Committee is established and continued as a standing committee of the Navajo Nation Council with the authority, to monitor and coordinate the activities of all divisions and departments of the Executive Branch; and

2. Pursuant to 2 N.N.C. §343(B)(5), the Committee is authorized to recommend legislation to the Navajo Nation Council on matters within the Committee's jurisdiction; and

3. The Government Services Committee of the Navajo Nation Council recognizes that a democratic form of government requires that information related to government operations be accessible to the public, while respecting individuals right to privacy. As such, a generally applicable Navajo Nation Privacy and Access to Information Act is necessary to provide the general public with a means to access records and information relating to the operation of the Navajo Nation while preserving the privacy interests of individuals and entities.

NOW THEREFORE BE IT RESOLVED THAT:

1. The Government Services Committee of the Navajo Nation Council hereby recommends that the Navajo Nation Council amend Title II of the Navajo Nation Code by adopting the Navajo Nation Privacy Act and Access to Information Act as provided in Exhibit "A", attached hereto and incorporated herein.

2. The Government Services Committee of the Navajo Nation Council further recommends that inclusive training sessions be provided to all Navajo Nation governmental entities and political subdivisions regarding the implementation of the Navajo Nation Privacy and Access to Information Act.

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 in Window Rock, Navajo Nation (Arizona), at which a quorum was present and that same as passed by a vote of 6 in favor, 0 opposed and 0 abstained, this 13th day of April 1999.

Ervin M. Keeswood, Sr., Chairperson
Government Services Committee

Motion: Johnny Naize
Second: Orlanda S. Hodge
RESOLUTION OF THE
JUDICIARY COMMITTEE OF THE
NAVAJO NATION COUNCIL

Recommending That the Navajo Nation Council Adopt
the Navajo Nation Privacy and Access to Information Act

WHEREAS:

1. Pursuant to 2 N.N.C. §571 (A)(B), the Judiciary Committee is established and continued as a standing committee of the Navajo Nation Council with oversight responsibilities for operation of the Judicial Branch; and

2. Pursuant to 2 N.N.C. §574 (E)(2), the Committee is authorized to review legislation and make recommendations regarding any proposed or current laws, procedures and regulations affecting or creating any impact on the Judicial Branch; and

3. The Judiciary Committee of the Navajo Nation Council recognizes that a democratic form of government requires that information related to government operations be accessible to the public, while respecting individuals right to privacy. As such, a generally applicable Navajo Nation Privacy and Access to Information Act is necessary to provide the general public with a means to access records and information relating to the operation of the Navajo Nation while preserving the privacy interests of individuals and entities.

NOW THEREFORE BE IT RESOLVED THAT:

The Judiciary Committee of the Navajo Nation Council hereby recommends that the Navajo Nation Council amend Title II of the Navajo Nation Code, by adopting the Navajo Nation privacy and Access to Information Act, as provided in Exhibit "A", I attached hereto and incorporated herein.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Judiciary Committee of the Navajo Nation Council at a duly called meeting at the Fort Defiance Chapter House, Fort Defiance, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 5 in favor, 0 opposed and 0 abstained, this 13th day of April, 1999.

Kenneth L. Begay, Chairperson
Judiciary Committee

Motion: Lee C. Begay
Second: Leo Gishie
INDIAN HEALTH SERVICE SANITATION

PLEASE REFER TO CURRENT DOCUMENTS FOR THE
INDIAN HEALTH SERVICE
DIVISION OF
ENVIRONMENTAL HEALTH SERVICES
RESOLUTION OF THE
NAVAJO NATION COUNCIL

20TH NAVAJO NATION COUNCIL - Second Year, 2004

AN ACT

RELATING TO CHAPTER GOVERNMENT FINANCES; AMENDING THE ACCOUNTING AND APPROPRIATIONS PROVISIONS IN THE NAVAJO NATION LOCAL GOVERNANCE ACT, 26 N.N.C. §§2, 103 & 2003 AND THE APPROPRIATIONS ACT, 12 N.N.C. §820

BE IT ENACTED:

1. The Navajo Nation Council, subject to approval by a majority of all chapters of the Navajo Nation, hereby amends the Navajo Nation Local Governance Act, 26 N.N.C. §§2, 103, and 2003, as follows:

    ****

    Title 26, Navajo Nation Code
    Chapter 1. Navajo Nation Chapters
    Subchapter 1. Generally

    ****

$2 Definitions

2."Accounting system" means the methods and records established and maintained to identify, assemble, analyze, classify, record and report a Chapter's financial transactions and to maintain accountability, in accordance with generally accepted governmental accounting principles (GAGAP), or another comprehensive basis of accounting, other than (GAGAP) of such transactions and for the related assets and liabilities.

    ****

Subchapter 3. Navajo Nation Chapter Government

    ****

$103 Chapter authority
A. The members of each Chapter, at a duly called meeting, are authorized to oversee the authority delegated to the Chapter pursuant to this Act.

B. All authority exercised by a Chapter shall be consistent with Navajo Nation law.

C. All authority exercised by a Chapter, pursuant to this Act, may be preempted by Navajo Nation Council statutes and/or resolutions.

D. All Chapters, by Chapter resolution, may exercise the following authorities, including, but not limited to:

1. Issue home and business site leases or permits. The issuance of leases and permits shall be done in accordance with, uniform rules and regulations promulgated by the Resources Committee and the Economic Development Committee of the Navajo Nation Council. This provision shall not apply to allotments.

2. Acquire, sell or lease property of the Chapter.

3. Enter into agreements for the provision of goods and services.

4. Enter into agreements with other Chapters to undertake a common goal or interest which will benefit the Chapters.

5. Enter into intergovernmental agreements with federal, state, tribal entities and/or their agencies, subject to the approval of the Intergovernmental Relations Committee of the Navajo Nation Council.

6. Enter into contracts or sub-contracts with the Navajo Nation for federal, state, county and other funds, subject to the approval of the Intergovernmental Relations Committee. This provision is not intended to alter federal contracts between Chapters and the United States which pre-date the enactment of this Act.

7. Enter into contracts or sub-contracts for Navajo Nation general funds, with appropriate Navajo
Nation divisions, programs or agencies for service delivery programs.

8. Appropriate funds, according to conditions set forth by the Navajo Nation Council, divisions, departments or other funding sources, including Chapter claims funds and Chapter scholarship funds.


10. Establish a peacemaking system or administrative procedure for resolving disputes arising from Chapter resolutions, ordinances, or administrative action; including matters arising from personal disputes. The peacemaking system should emphasize Navajo custom for resolving disputes not otherwise contrary to Navajo law and/or custom.

11. Generate revenue through means established by the Chapter consistent with this Act.

****

Chapter 2. Chapter Government
Subchapter 7. Navajo Nation Chapter Regulations and Procedure

****

§2003 Chapter Accounting System; Chapter Appropriations; Budget Process; Chapter Insurance

A. The Chapter shall adopt an accounting system deemed acceptable by the Auditor General.

B. In accordance with the Exception provided in 12 N.N.C. §820 (N), funds appropriated" to the Chapters by the Navajo Nation Council shall not be subject to a lapse of appropriation at the end of the fiscal year provided that Chapters shall budget those funds in the subsequent fiscal year in accordance with the purposes and conditions originally set forth by" the Navajo Nation Council in its appropriations.

C. Budget Process
1. At least one month before the end of the Navajo Nation fiscal year, the manager, in consultation with the Chapter officials, shall prepare, schedule and explain the annual Chapter budget to the membership. Chapters are required to follow the annual budget instruction of the Navajo Nation Office of Management and Budget when formulating the annual Chapter budget and when the budget concerns Navajo general funds. At a duly called planning meeting, the manager shall present a proposed annual budget for the ensuing fiscal year. The manager shall, to the extent allowed by law, include the objectives of the membership in the proposed budget.

2. The budget shall consist of financial information, including but not limited to: a statement on prior financial expenditures; capital improvement funds; debts; encumbrances; and budget objectives from the current year and the status of those objectives. The manager, in consultation with the Chapter officials, shall finalize the budget for approval by the Chapter membership. The Chapter membership shall vote upon the budget at a duly called Chapter meeting in which reasonable notice has been given to the Chapter membership that said meeting will include approval of the annual budget. The budget expenditures shall not exceed the total of the estimated income for the fiscal year. No payments shall be made or obligated except in accordance with the appropriation duly enacted by the Chapter or adopted by the Navajo Nation Council.

D. To protect the interests of the Chapter, the Chapter shall participate in the Navajo Nation’s insurance and employee benefit programs, subject to the terms and conditions of such programs. In the event that a Chapter elects not to participate in the Navajo Nation's programs, the Chapter shall establish adequate coverage through the creation of a self-insurance program or the procurement of appropriate policies.

E. Chapter funds shall not be used for personal, business or other forms of loans. Per capita distribution of funds by the Chapter is prohibited. No financial transaction or expenditures of funds shall be made three months before or after the general election of Chapter officials, except for general operating costs.
F. Any person, agent, or Chapter official misappropriating or misusing Chapter funds or property shall be subject to prosecution under the applicable laws of the Navajo Nation, and, if appropriate, under the laws of the United States federal government.

2. With respect to these proposed amendments to the Local Governance Act, the Office of Navajo Government Development shall coordinate the collection of chapter resolutions. Pursuant to 26 N.N.C. §1(E), the amendments shall be deemed effective upon approval by a majority of chapters of the Navajo Nation.

3. Further, the Navajo Nation Council hereby amends the Navajo Nation Appropriations Act, 12 N.N.C. §820(N), as follows:

****

Title 12. Navajo Nation Code
Chapter 7. Appropriations

****

§820 Overall Budget Policies

N. Appropriations Lapse. Appropriations approved by the Navajo Nation Council will lapse at the end of the fiscal year unless otherwise designated by the Navajo Nation Council. Appropriations to the chapters of the Navajo Nation shall not lapse at the end of the fiscal year provided that the chapters shall budget those funds, in the subsequent fiscal year in accordance with the purposes and conditions originally set forth by the Navajo Nation Council in its appropriations.
CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona) at which a quorum was present and that the same was passed by a vote of 39 in favor and 22 opposed, this 23rd day of July 2004.

Kee Allen Begay, Speaker Pro Tem
Navajo Nation Council

Motion: Wallace Charley
Second: Harriett Becenti

ACTION BY THE NAVAJO NATION PRESIDENT:

1. I hereby sign into law the foregoing legislation, pursuant to 2 N.N.C. §1005 (C) (10), on this ______ day of ______ 2004.

Joe Shirley, Jr., President
Navajo Nation

2. I hereby veto the foregoing legislation, pursuant to 2 N.N.C. §1005 (C) (11), this ______ day of ______ 2004 for the reason(s) expressed in the attached letter to the Speaker.

Joe Shirley, Jr., President
Navajo Nation
NAVAJO NATION CODE: TITLE 26  
NAVAJO NATION LOCAL GOVERNANCE ACT

Table of Contents

CHAPTER 1 NAVAJO NATION CHAPTERS................................................................. 104
  Subchapter 1 Generally ....................................................................................... 104
    Section 1 Title; Purpose; Authorization; Prior Inconsistent Law Superseded; Amendment ............................................................. 104
    Section 2 Definitions ...................................................................................... 105
    Section 3 Chapter Certification ...................................................................... 108
    Section 101 Chapter Governance Requirements .......................................... 109
    Section 102 Governance Procedure Requirements ....................................... 109
    Section 103 Chapter Authority ....................................................................... 109

Chapter 2 CHAPTER GOVERNMENT ........................................................................... 112
  Subchapter 5 Navajo Nation Chapters, Officials and Administration – Generally.... 112
    Section 1001. Duties and Responsibilities of Certified Chapter Officials (but will not apply to governance certified Chapters who have attained alternative governance certification.) .......................................................... 112
    Section 1002. Meetings; Meeting Notice Requirement; Compensation of Chapter Officials ................................................................................. 117
    Section 1003. Order of Business .................................................................... 118
    Section 1004. Chapter Administration ............................................................ 119
  Subchapter 7 Navajo Nation Chapter Regulations and Procedure .................... 119
    Section 2001. Chapter Ordinance Procedure – Exclusively for Governance Certified Chapters ............................................................................. 119
    Section 2002. Chapter Contract Requirements ............................................. 121
    Section 2003. Chapter Accounting System; Chapter Appropriations; Budget Process; Chapter Insurance ........................................... 121
    Section 2004. Zoning; Community Based Land Use Plan; Land Use Variations ... 123
    Section 2005. Eminent Domain Requirements ............................................. 125
    Section 2006. [Reserved] ............................................................................. 128
    Section 2007. [Reserved] ............................................................................. 128
    Section 2008. [Reserved] ............................................................................. 128
  Subchapter 9 [Reserved] .................................................................................... 128
  Subchapter 11 [Reserved] .................................................................................. 128
  Subchapter 13 [Reserved] .................................................................................. 128
CHAPTER 1  NAVAJO NATION CHAPTERS

Subchapter 1   Generally

Section 1  Title; Purpose; Authorization; Prior Inconsistent Law Superseded; Amendment

A. Title
This Act shall be cited as the "Navajo Nation Local Governance Act" and herein codified in Title Twenty Six (26) of the Navajo Nation Code.

B. Purpose
1. The purpose of the Local Governance Act is to authorize governance at the local level. Through adoption of this Act, the Navajo Nation Council delegates to Chapters governmental authority with respect to local matters consistent with Navajo law, including custom and tradition. It is a known fact, that the Diné have always had inherent rights. This Act clearly defines the executive, legislative and judicial functions of the Chapter as well as the duties and responsibilities of Chapter officials and administrators consistent with the Navajo Nation's policy of "separation of powers" and "checks and balances."

2. Enactment of the Local Governance Act authorizes Chapters to make decisions over local matters. This authority, in the long run, will improve community decision making, allow communities to excel and flourish, enable Navajo leaders to lead towards a prosperous future, and improve the strength and sovereignty of the Navajo Nation. Through adoption of this Act, Chapters are compelled to govern with responsibility and accountability to the local citizens.

C. Authorization
The Navajo Nation Council, by Resolution CAP-34-98, hereby approves the Navajo Nation Local Governance Act.

D. Prior Inconsistent Law Superseded
On the effective date of the Navajo Nation Local Governance Act, all inconsistent enactments, laws, rules, policies, ordinances and regulations of the Navajo Nation and all branches, divisions, departments, offices and political subdivisions thereof are superseded hereby and/or amended to comply herewith.
E. Amendment

This Act may be amended by the Navajo Nation Council subject to approval of a majority of all Chapters of the Navajo Nation; or this Act may be amended by referendum vote of a simple majority of all Chapters as set forth in 11 N.N.C., Navajo Nation Election Code.

Section 2 Definitions

The language contained in this Section applies generally to all Chapters except as otherwise provided in this Act.

1. "Accounting system" means the methods and records established and maintained to identify, assemble, analyze, classify, record and report a Chapter's financial transactions and to maintain accountability, in accordance with generally accepted governmental accounting principles (GAGAP), or another comprehensive basis of accounting, other than (GAGAP) of such transactions and for the related assets and liabilities.

2. "Administrative functions" are those activities of the Chapter government which are non-legislative, and involve the conduct of programs.

3. "Allotment" means a parcel of land either owned by the United States in trust for an Indian (trust allotment) or owned by an Indian subject to restriction imposed by the United States against alienation (restricted fee allotment).

4. "Alternative form of Chapter governance" means a new form of government by a new design, function or organization to the existing Chapter government.

5. "Attendance" means to be present.

6. "Chapters" are units of local government which are political subdivisions of the Navajo Nation.

7. "Chapter Certification" means the process required of a community group, pursuant to Section 3, seeking to establish a certified Chapter of the Navajo Nation Government.

8. "Chapter employee" means any person working for the Chapter in return for any form of payment or other compensation or thing of value received or to be received at any time temporarily, permanently or indefinitely.
9. "Chapter meeting minutes" means the record of all action taken at a duly called meeting of the Chapter.

10. "Chapter membership" means:

   a. for voting purposes and participation in the Chapter government, all registered voters of the Chapter., or those representing such voters pursuant to governing models adopted by the Transportation and Community Development committee of the Navajo Nation Council pursuant to this Act.
   b. for purposes of services and benefits, all tribal members young and old, who either reside within or are registered in the Chapter. An individual may not be a member of more than one Chapter.

11. "Chapter official" - The President, Vice-President, and Secretary/Treasurer of a certified chapter, or, for purposes of the Election Code, other officials who may be locally elected based upon governing models adopted by the Transportation and Community Development Committee of the Navajo Nation Council pursuant to this Act.

12. "Chapter ballot measure" means the official action of a Chapter's registered voters on a proposed resolution or ordinance pursuant to Section 1003 (B) and 2001(H) et seq. of this Act.

13. "Chapter resident" means one who dwells permanently or continuously within the boundaries of a Chapter.

14. "Chapter resolution" means the document recording the official action taken by the Chapter membership at a duly call Chapter meeting.

15. "Community Based Land Use Plan" means an official document adopted by Chapter resolution setting forth current and proposed uses of land within Chapter boundaries, illustrating such uses by map or plat. It meets the requirements under 26 N.N.C. Section 102 (C).

16. "Contracting" means the act of entering into written agreements which impose legal obligations on the parties who are signatories to the agreement.

17. "Custodian" means having day to day charge of official books, records, documents, equipment, property and funds of the Chapter.
18. "Eminent domain" means the taking of land used by an individual, or legal person or entity, in which an individual, or legal person or entity, has an interest for a governmental purpose. "Just compensation" must be paid to the user for taking of such as prescribed by Navajo law.

19. "Filing System" means the system by which all Chapter documents are maintained.

20. "Five Management System" means a management system which includes: accounting, procurement, filing, personnel and property management.

21. "Governance Procedure Requirements" means the process Chapters must complete pursuant to Section 102 to begin exercising authorities pursuant to this Act.

22. "Governmental purposes" means activities carried out by the Chapter for the general health, safety and welfare of the Chapter membership.

23. "Local governance" means governance by and through Chapter governmental bodies as set forth by this Act.

24. "Manager" means the individual who is responsible for administering the Five Management System and the administration of the Chapter.

25. "Navajo Nation law" means Navajo statutes, administrative regulations and Dine fundamental law.

26. "Ordinance" means a local law, rule or regulation enacted by a Chapter pursuant to this Act.

27. "Oversight" means the general supervision of administrative functions by the Chapter officials and/or the manager or officials set by alternative government models to ensure accountability.

28. "Personal property" is all supplies, materials, equipment and other property, including expendable and nonexpendable property, capitalized and non-capitalized, but does not include real property or fixtures. Capitalized property is nonexpendable property having acquisition value of $1,000.00 or more.

29. "Personnel management" means the system by which recruitment, retention and termination of employees is administered at the Chapter.
30. "Property management" means the system by which the Chapter administers accounts for real and personal property obtained or controlled as a result of past transactions, events or circumstances.

31. "Real property" is any interest in land, together with the improvements, structures and fixtures located thereon.

32. "Registered voter" means having one's name officially placed on a list of eligible voters.

33. "Sub-contract" means the act of entering into a written agreement between a Navajo Nation Chapter and a Navajo Nation division, program or entity.

34. "Technical assistance" means services rendered by the central Navajo Nation government with respect to the authority to be exercised by Chapters as described herein.

Section 3 Chapter Certification

A. There shall be certified at least one Chapter organization in each Chapter precinct which elects delegates to the Navajo Nation Council. The list of certified Chapters is at 11 N.N.C. Part 1, Section 10.

B. Until increased by certification by the Navajo Nation Council, the number of certified Chapters shall not exceed one hundred and ten (110).

C. Additional Chapter may be certified only if all of the following are met:

1. Upon presentation of evidence to the Navajo Nation Council that the proposed Chapter represents a community group which has existed and functioned as a community for four (4) continuous years.

2. Upon presentation of evidence that the population of the area exceeds 1,000 persons for each of the existing Chapters and that there is a need to establish others.

3. Upon presentation of evidence that the topography or the unique demography of the Chapter area makes it necessary to have more than one Chapter to allow residents access to Chapter Meetings.
Section 101 Chapter Governance Requirements

A. To ensure accountability, all Chapters are required to adopt and operate under a Five Management System. Chapters shall develop policies and procedures for the Five Management System consistent with applicable Navajo Nation Law.

B. Chapters wanting to administer land, pursuant to this Act, are required to develop a community based land use plan based upon results of a community assessment.

Section 102 Governance Procedure Requirements

A. The Navajo Nation Local Governance Support Centers shall review the Chapter's Five Management System policies and procedures and recommend governance certification of the policies and procedures to the Transportation and Community Development Committee.

B. Upon review and recommendation by the Local Governance Support Centers, or Certified Public Accountant, the Transportation and Community Development Committee of the Navajo Nation Council shall certify the Five Management System policies and procedures. Also, the committee shall review, if applicable, the Chapter's community based land use plan. Upon governance certification by the Transportation and Community Development Committee, the Chapter may exercise authorities pursuant to Section 103 (D) of this Act.

C. Chapters subsequently approving a community based land use plan along with a survey must receive certification from the Transportation and Community Development Committee. Chapters should be allowed to settle boundary disputes. The Navajo Nation will pay for the survey. Certification by the Transportation and Community Development Committee authorizes Chapters to administer land pursuant to Section 103(E)(1).

Section 103 Chapter Authority

A. The members of each Chapter, at a duly called meeting, are authorized to oversee the authority delegated to the Chapter pursuant to this Act.

B. All authority exercised by a Chapter shall be consistent with Navajo Nation law.

C. All delegated authority exercised by a Chapter, pursuant to this Act, may be preempted by Navajo Nation Council statutes and/or resolutions.
D. All Chapters, whether LGA governance-certified or not, may exercise the following authorities, except that non-governance certified Chapters shall have their Five Management System approved by their respective Chapters:

1. Acquire, sell or lease property of the Chapter.

2. Enter into agreements for the provision of goods and services.

3. Enter into agreements with other Chapters to undertake a common goal or interest which will benefit the Chapters.

4. Appropriate funds, according to conditions set forth by the Navajo Nation Council. Governance Certified Chapters will budget according to the needs of the community; however, they cannot use the funds for stipend payments for officials.

5. Reallocate funds, subject to existing funding or contract requirements, provided that simple majority vote of chapter approve the reallocation. This will mean that housing discretionary funds can be reallocated provided that the funds are still spent on needs of housing discretionary funds. For example, if there are no Public Employment Program funds, housing discretionary funds can be reallocated to pay a community person to do the repairs.

6. Establish a peacemaking system or administrative procedure for resolving disputes arising from Chapter resolutions, ordinances, or administrative action; including matters arising from personal disputes. The peacemaking system should emphasize Navajo custom for resolving disputes not otherwise contrary to Navajo law and/or custom.

7. Generate revenue through means established by the Chapter consistent with this Act.

E. In addition, LGA governance certified chapters may exercise the following authorities, including, but not limited to:

1. Issue home and business site leases, mineral leases, mission sites, or permits including Right of Way easements. The issuance of leases and permits shall be done in accordance with uniform rules and regulations promulgated by the Resources Committee and the Economic Development Committee of the Navajo Nation Council. This provision shall not apply to allotments.

2. Enter into intergovernmental agreements with federal, state, tribal entities and/or their agencies, subject to the approval of the Intergovernmental Relations Committee of the Navajo Nation Council.
3. Enter into contracts or sub-contracts with the Navajo Nation for federal, state, county and other funds, subject to the approval of the Intergovernmental Relations Committee. This provision is not intended to alter federal contracts between Chapters and the United States which pre-date the enactment of this Act.

4. Enter into contracts or sub-contracts for Navajo Nation general funds, with appropriate Navajo Nation divisions, programs or agencies for service delivery programs.

5. Retain legal counsel.

6. Amend the land use plan to meet the changing needs of the community.

7. Acquire property by eminent domain, pursuant to Section 2005 of this Act. This provision shall not apply to allotments.

8. Acquire and administer capital improvement project funds.

9. Others, subject to the approval of the Transportation and Community Development Committee of the Navajo Nation Council.

F. LGA Certified Chapters may adopt the following ordinances pursuant to Section 2001 (G) of this Act.

1. Zoning ordinances consistent with the Chapter's community based land use plan.

2. Regulatory ordinances for governmental purposes, enforcement of which shall be by the Chapter, for the general health, safety and welfare of the Chapter membership, consistent with Navajo Nation law.

3. An alternative form of Chapter governance based upon models provided adopted by the Transportation and Community Development Committee of the Navajo Nation Council.

4. A municipal form of government or Chapter sub-units based upon models provided by the Transportation and Community Development Committee of the Navajo Nation Council.

5. Local taxes pursuant to a local tax code developed by the Navajo Tax Commission and approved by the Navajo Nation Council.
6. Local fees based upon guidelines established by the Navajo Nation Council. This will include Hotel Occupancy Tax, Tobacco Tax, Navajo Nation Fuel Excise Tax, Cigarette Tax and Industrial tax.

7. Issue community bonds.

8. Compensate the Chapter President, the Vice President, and the Secretary/Treasurer or other officials who maybe locally elected based upon governing models adopted by the Transportation and Community Development Committee of the Navajo Nation Council pursuant to this Act.

G. Chapter members may delegate the resolution authority to the Chapter administration through the Chapter ordinance process. The delegation of authority specifically applies to: the issuance of home, business and other site leases which will include mineral sites, mission sites, Right of Way, permits and easements, contracting, the authority to acquire, sell or lease personal property of the Chapter, and to appropriate funds.

H. The Chapter Officials and/or the Chapter membership are prohibited from granting monetary loans and approving per capita distribution of Chapter funds to the Chapter membership.

I. All residents of the Chapter, whether registered voters or not, are subject to the jurisdiction of the Chapter pursuant to this Section.

Chapter 2 CHAPTER GOVERNMENT

Subchapter 5 Navajo Nation Chapters, Officials and Administration – Generally

Section 1001. Duties and Responsibilities of Certified Chapter Officials (but will not apply to governance certified Chapters who have attained alternative governance certification.)

A. Chapter officials are elected by the Chapter membership to facilitate the conduct of Chapter meetings and guide policy making within the Chapter. The administrative functions of the Chapter government are to be left to the Chapter employees. An individual may not serve as both a Chapter official and Chapter employee at the same time.

B. The duties and responsibilities of the Chapter officials are as follows:
1. The Chapter President shall:

a. Consult with the Chapter Vice President, Secretary/Treasurer, Council Delegate(s), and Chapter staff in preparation of the agenda for each Chapter meeting. If applicable, the President shall also consider proposed agenda items from the planning meeting.

b. Preside and maintain order over Chapter meetings. All Chapter meetings shall be conducted according to the standard order of business pursuant to Section 1003 of this Act.

c. Provide all residents of the community with equal opportunity to speak on issues before the Chapter.

d. Recommend the establishment of and appointment to the standing and special committees of the Chapter to the membership for approval.

e. Adjourn or postpone a Chapter meeting in the event of:

   1. A lack of quorum;
   2. Disorder at the meeting;
   3. Unforeseen emergency;
   4. When a Chapter meeting is adjourned, recessed or postponed, the Chapter President shall provide notice to the Chapter members as to the time and place of the next or continued Chapter meeting.

f. Vote in case of a tie.

g. Call emergency or special Chapter meetings.

h. Coordinate, plan and organize to improve Chapter functions and activities.

i. Ensure that the duties and responsibilities of the Vice President and the Secretary/Treasurer are carried out in the best interest of the Chapter community.

j. Work closely with the Vice President, and Secretary/Treasurer, to ensure that the Chapter administration is adequately meeting the Chapter's directives and expending
funds according to conditions of the Navajo Nation Council and/or the Chapter's annual budgetary objectives; and shall report to the Chapter membership.

k. Follow-up with Tribal, Federal and State governments or their agencies on resolutions, ordinances, recommendations, proposals and projects of the Chapter.

l. Take action to protect the life and property of the members of the Chapter in case of an emergency or other crisis.

m. Carry out the decisions of the Chapter and not frustrate those decisions in any way.

n. Work closely with Council members, Chapter elected officials, committees and other concerned groups or agencies.

o. Encourage and promote community participation in planning and development.

p. Mediate disputes, if appropriate, of families residing within the Chapter and/or refer such family disputes to appropriate social service or law enforcement authorities, as the circumstances may require.

q. Represent the Chapter at meetings which the Chapter has interest.

r. Keep informed of all Chapter related activities and acts to advance the interests of the community in all matters.

s. Have authority to sign all contracts, leases and all other official documents upon approval by of the Chapter membership, unless otherwise stated.

t. Delegate to the Vice President certain duties and responsibilities of the presidency, when the President is otherwise incapacitated or is unavailable to perform his duties.

2. The Chapter Vice President shall:

a. Automatically assume the duties and responsibilities of the Chapter President, in the absence of the President during Chapter meetings.

b. In the event of an unforeseen situation, assume delegated duties and responsibilities of the Chapter President for a reasonable time period.
c. Assist the President and Secretary/Treasurer with their duties and responsibilities. including recording and writing the minutes of Chapter meetings and review and finalize all resolutions, proposals, letters and other important documents, record votes and other official actions of the Chapter.

d. Work closely with Chapter elected officials, committees and other concerned groups or agencies.

e. Monitor community projects.

f. Represent the Chapter at meetings of which the Chapter has interest.

g. Support and assist the President and Secretary/Treasurer in carrying out the decisions of the Chapter and not act to frustrate those decisions.

3. The Chapter Secretary/Treasurer shall:

   a. Maintain complete and accurate records of all Chapter activities and provide written information when called upon.

   b. Assist the President and Vice President in preparing the agenda.

   c. Prepare and finalize all resolutions and review proposals, letters and other important documents for distribution to appropriate agencies.

   d. Take the minutes of Chapter meetings and record in detail all resolutions, votes and other official actions of the Chapter. Discussion of all action items shall be recorded with a tape recording machine.

   e. Follow up with the Chapter President and Vice President on all referrals of resolutions, proposals, correspondence and other related matters.

   f. Represent the Chapter at meetings of which the Chapter has an interest.

   g. Work closely with the Chapter President, Vice President, and other Chapter committees.

   h. Monitor the maintenance of an adequate accounting system to ensure accountability of all funds and expenditures; and shall report to the Chapter President and membership.
i. Shall, in consultation with the Chapter President and Vice President, ensure that the administration prepares monthly financial reports of all transactions and expenditures of the Chapter by categories. The Secretary/Treasurer is responsible for providing all financial reports to the Chapter membership at duly called Chapter meetings.

j. Keep records of meeting claims, attendance and payment of Chapter officials.

k. Turn over, to the Chapter manager, within 10 working days of the official action, all resolutions, minutes and other official documents finalized by the Secretary/Treasurer.

l. Co-sign all Chapter checks along with the Chapter manager. In the event that the Secretary/Treasurer is unavailable, the Chapter President or the Vice President may co-sign Chapter checks.

C. Elected officials of the Navajo Nation Chapters shall serve for a term of four (4) years and shall not be limited to the number of terms he or she may serve. Governance Certified Chapters who have attained alternative governance models will proceed pursuant to their set ordinance.

D. Elected officials of the Navajo Nation Chapters shall take the oath of office before assuming official duties.

E. To prevent impropriety or a conflict of interest, the elected officials are prohibited from direct management and operations of the Chapter administration.

F. Elected or appointed officials of alternative governance model, immediately upon resignation, removal or expiration of the term of office, shall return to the Chapter Manager or Chapter Coordinator, all books, records, and property in his/her possession belonging to the Chapter.

G. Elected officials shall comply with all Navajo Nation laws, Chapter ordinances and resolutions. These officials shall perform the duties enumerated above, and such other duties as may be consistent with Navajo law, including this Act and applicable plans of operation enacted by the Chapter membership.

H. Elected officials of the Navajo Nation Chapters shall attend, upon taking the oath of office, a training session on Ethics in Government sponsored by the Ethics and Rules Office of the Navajo Nation. Chapter officials shall maintain a high standard of conduct in all Chapter business consistent with Navajo law, including this law, and the Navajo Nation Ethics and Government law. Chapter officials are prohibited from rendering opinions, directions or
decisions contrary to the sound practice of leadership or contrary to the best interest of the Chapter.

Section 1002. Meetings; Meeting Notice Requirement; Compensation of Chapter Officials

A. Number of meetings. Each Chapter shall determine the number of meetings to be held each month and the time and place for such meetings (subject to the authority of the Chapter President to call special or emergency meetings when necessary).

B. Meeting Notice. The Chapter officials shall post all Chapter meeting agendas within the Chapter boundaries at least 48 hours prior to the meeting.

C. Compensation of Chapter Officials

1. Chapter officials shall be compensated for only the number of meetings provided for in the Navajo Nation approved budget. It is nonetheless the obligation of Chapter officials to be present at all Chapter meetings.

2. A Chapter meeting claim form signed only by the claimant shall be attached to each of the regularly scheduled Chapter meeting reports filed by the Chapter Secretary/Treasurer with the Chapter administration.

   a. Each regularly scheduled Chapter meeting report and claim form shall be correctly filled out before it will be accepted and processed for payment by the Chapter administration;

   b. Each Chapter President, Vice President, Secretary/Treasurer (the appointed acting Secretary and/or the Chapter President Pro-Tempore) shall be paid in accordance with the approved fiscal year budget;

   c. No Chapter official shall be compensated for a Chapter meeting unless he or she was in official attendance at that meeting. Chapters shall adopt attendance and compensation policy.

   d. Reports will be furnished for all Chapter meetings, regular or special, and state whether or not Chapter officials are to be compensated for attendance at such meetings.

   e. Governance Certified Chapters who have adopted an alternative governance model will comply with their set ordinance in conducting official business.
Section 1003. Order of Business

A. The Chapter President or in the absence of the President, the Vice President shall chair all regular or special Chapter meetings. In the absence of the President and Vice President, the Chapter members present may select a Chairman Pro Tempore for that meeting only.

B. All Chapter meetings require a quorum of 25 registered Chapter members to conduct official Chapter business. Chapters, whether governance certified or not, may amend the quorum requirement, based upon models and procedural regulations adopted by the Transportation and Community Development Committee of the Navajo Nation Council. Adoption of an amended quorum requirement requires approval by chapter ballot measure in accordance with 11 N.N.C. §§401-408. NNC Resolution # CO-51-04

C. Chapters may adopt standard rules for conducting Chapter meetings.

D. Procedural Rules for Motions.

1. The approval or amendments to the agenda, minutes, report(s) and resolution(s) under old and new business of the agenda shall be done in the following manner:

   a. Upon presenting the agenda, minutes, report(s), resolution(s) and/or issue(s) of the agenda, the Chapter President shall request a motion to accept the matter before the Chapter membership and recognize a second to the main motion.

   b. Upon receiving a motion and a second to the main motion, the Chapter President shall provide an opportunity to members of the Chapter to address the matter before the Chapter membership.

   c. Any member of the Chapter may propose an amendment to the main motion which would require a second. The Chapter membership shall vote on the proposed amendment motion. If the amendment motion passes, it shall take precedence over the part of the main motion subject to a proposed amendment. Only one motion to amend the main motion shall be on the floor.

   d. Any member of the Chapter may propose a substitute motion and if it passes, it shall take the place of the main motion. The substitute motion shall be seconded and voted on.

   e. Any member of the Chapter may propose to table the legislation or issue before the Chapter. The motion to table the matter shall be seconded and voted on. If the tabling motion passes, it shall take precedence over other motions.
2. The Chapter President, Vice President, and Secretary/Treasurer, at a duly called Chapter meeting, are to refrain from making personal statements and opinions as presiding officers. Presiding officers are prohibited from making the main motions and second motions on substantive and administrative matters. They may make motions and second motions during planning meetings.

Section 1004. Chapter Administration

A. The Chapter shall enact, by resolution, plans of operation for all executive functions and administrative policies of the Chapter, including but not limited to: record-keeping, accounting, personnel, payroll, property management, contracting procurement and program management. The Five Management system shall be the basis of enacting the plans of operation and administrative policies. The Chapter administration shall follow the duties and responsibilities prescribed in the plans of operation and shall comply with all administrative policies and procedures enacted by the Chapter.

B. The Chapter manager shall co-sign all Chapter checks.

C. The Chapter manager shall be the custodian of all official books, records, documents, and funds of the Chapter. Failure of the manager to safeguard these items is cause for removal and assessment of applicable penalties pursuant to Navajo Nation law and/or local adopted FMS Policies and Procedures.

D. Members of the Chapter, individually, are prohibited from direct involvement in the management and operations of the government or administration.

Subchapter 7    Navajo Nation Chapter Regulations and Procedure

Section 2001. Chapter Ordinance Procedure – Exclusively for Governance Certified Chapters

A. All proposed ordinance(s) shall contain the following:

1. an ordinance number;

2. a title which indicates the nature of the subject matter of the ordinance;

3. a preamble which states the intent, need or reason for the ordinance;
4. the subject of the ordinance;

5. rules and regulations governing the enforcement of the ordinance, budgetary information, and where applicable, a statement indicating the penalty for violation of the ordinance;

6. a statement indicating the date when the ordinance shall become effective;

7. the signature of the Chapter President to make an official recording of the transaction or writing.

B. The proposed ordinance shall be read into the record at two consecutive Chapter meetings, of which one may be designated a special meeting, to provide information and an opportunity to discuss and comment on the proposed ordinance(s).

C. All proposed ordinances shall be read in both English and Navajo.

D. After the final reading, the proposed ordinance shall be posted at public places within the Chapter boundaries a minimum of fourteen (14) days prior to the vote. The date of the vote shall be decided upon at this time.

E. Passage of all ordinance(s), except those listed in subsection H, requires a majority of the votes cast, by the Chapter membership during a regular or a special meeting. NNC Resolution # CO-51-04

F. All ordinances shall be compiled and maintained at the Chapter for public information. Copies of ordinances shall be filed with the central Records Management Department of the Navajo Nation.

G. Ordinances shall be amended or rescinded by the process provided in this Section. All ordinances proposing amendments shall clearly indicate new language by underscoring and deletions by over striking.

H. The Chapter ballot measure shall be used for the adoption of an alternative form of Chapter governance, a municipal form of government, Chapter sub-units, local taxes and fees, issuance of community bonds and compensation of Chapter officials. Adoption of a chapter ballot measure shall be in accordance with 11 N.N.C. §§401-408.

I. Challenges to ordinances shall be pursuant to 1 N.N.C., Chapter 5, Subchapter 1, section 501 et. seq.
Section 2002. Chapter Contract Requirements

A. Except as otherwise provided in this Act, all contracts authorized to be executed on behalf of a Chapter, and utilizing Navajo Nation funds shall:

1. expressly state the liability of the Chapter under the contract;
2. be approved by the Chapter membership, before being executed on behalf of the Chapter;
3. have sufficient funds appropriated and available;
4. comply with the Business Procurement Act, 12 N.N.C. Section 1501 et seq., the Employment Preference Act, 15 N.N.C. Section 601 et seq., the Business Preference Act, 5 N.N.C. Section 201 et seq., and rules and regulations promulgated thereto;
5. be awarded only after public advertisement and bidding;
6. not waive the sovereign immunity of the Navajo Nation;
7. provide access to all contracts or papers to the public; and, if applicable
8. not exceed 10% of the accepted bid. If the 10% cap is exceeded by change orders, modifications or amendments, such change orders, modifications or amendments shall be subject to the provisions of Section 2002(A)(5) above.

B. All executed contracts and papers, and any modifications thereof, shall be filed at the Chapter.

Section 2003. Chapter Accounting System; Chapter Appropriations; Budget Process; Chapter Insurance

A. The Chapter shall adopt an accounting system deemed acceptable by the Auditor General.

B. In accordance with the exception provided in 12 N.N.C. §820 (N), funds appropriated to the Chapters by the Navajo Nation shall not be subject to a lapse of appropriation at the end of the fiscal year provided that Chapters shall budget those funds in the subsequent fiscal year in accordance with the purposes and conditions originally set forth by the Navajo Nation Council in its appropriations.

C. Budget Process
1. At least one month before the end of the Navajo Nation fiscal year, the Chapter Coordinator or the Chapter manager, in consultation with the Chapter officials, shall prepare, schedule and explain the annual Chapter budget to the membership. Chapters are required to follow the annual budget instruction of the Navajo Nation Office of Management and Budget when formulating the annual Chapter budget and when the budget concerns Navajo general funds. At a duly called planning meeting, the manager shall present a proposed annual budget for the ensuing fiscal year. The manager shall, to the extent allowed by law, include the objectives of the membership in the proposed budget.

2. The budget shall consist of financial information, including but not limited to: a statement on prior financial expenditures; capital improvement funds; debts; encumbrances, and budget objectives from the current year and the status of those objectives. NNC Resolution No. CJY-42-04

3. The Coordinator or the manager, in consultation with the Chapter officials, shall finalize the budget for approval by the Chapter membership. The Chapter membership shall vote upon the budget at a duly called Chapter meeting in which reasonable notice has been given to the Chapter membership that said meeting will include approval of the annual budget. The budget expenditures shall not exceed the total of the estimated income for the fiscal year. No payments shall be made or obligated except in accordance with the appropriation duly enacted by the Chapter or adopted by the Navajo Nation Council.

D. To protect the interests of the Chapter, the Chapter shall participate in the Navajo Nation's insurance and employee benefit programs, subject to the terms and conditions of such programs. In the event that a Chapter elects not to participate in the Navajo Nation's programs, the Chapter shall establish adequate coverage through the creation of a self-insurance program or the procurement of appropriate policies.

E. Chapter funds shall not be used for personal, business or other forms of loans. Per capita distribution of funds by the Chapter is prohibited.

F. Any person, agent, or Chapter official misappropriating or misusing Chapter funds or property shall be subject to prosecution under the applicable laws of the Navajo Nation, and, if appropriate, under the laws of the United States federal government.
Section 2004. Zoning; Community Based Land Use Plan; Land Use Variations

A. Zoning

1. Chapters may enact zoning ordinances provided that the membership adopt and implement a community based land use plan pursuant to Section 2004(B).

2. Adoption of all local zoning ordinances shall be done pursuant to Section 103(E)(4) of this Act.

3. The Chapter shall be responsible for the enforcement of all zoning ordinances adopted by the membership. The Chapter shall provide and maintain information relative to all matters arising from adopted zoning ordinances.

4. All proposed amendments to zoning ordinances shall first be reviewed by the Community Land Use Planning Committee (CLUPC), and shall require approval by the Chapter membership before becoming effective.

B. Community Based Land Use Plan

The Chapter, at a duly-called chapter meeting, shall by resolution, vote to implement a community based land use plan, after the CLUPC has educated the community on the concepts, needs, and process for planning and implementing a community based land use plan. The community based land use plan shall project future community land needs, shown by location and extent, of areas identified for residential, commercial, industrial, and public purposes. The land use plan shall be based upon the guiding principles and vision as articulated by the community; along with information revealed in inventories and assessments of the natural, cultural, human resources, and community infrastructure; and, finally with the consideration for the land-carrying capacity. Such a plan may also include the following:

1. An open space plan which preserves for the people certain areas to be retained in their natural state or developed for recreational purposes or for varying purposes. NNC Resolution CJY-41-04

2. A thoroughfare plan which provides information about the existing and proposed road network in relation to the land use of the surrounding area. NNC Resolution CJY-41-04

3. A community facilities plan which shows the location, type, capacity, and area served, of present and projected or required community facilities including, but not limited to,
recreation areas, schools, libraries, and other public buildings. It will also show related public utilities and services and indicate how these services are associated with future land use.

C. Establishment and Duties of the Community Land Use Planning Committee

1. Upon approval and passage of a Chapter resolution stating the Chapter's desire to develop and implement a community based land use plan, the Chapter shall establish a Community Land Use Planning Committee (CLUPC) to approve the processes for planning and to oversee planning activities. The CLUPC shall be comprised of voting members of the Chapter that have expertise to provide valuable contributions to the overall land planning process. Subcommittees such as technical, and public advisory committees, comprising of voting and non-voting members may be established to assist the CLUPC.

2. The CLUPC may hire a planner. The Navajo Nation shall provide funds for the chapter to hire a planner and the planner shall be responsible for preparing the community based land use plan. At a minimum, the planner shall exhibit leadership qualities and organization abilities along with experience or education in the discipline of land planning.

3. The planner shall work under the supervision of the Chapter Manager or Chapter Coordinator and with the community residents. The duties and responsibilities of the planner shall include the following:

   a) Coordinating all land planning activities.

   b) Developing a community education and participation plan describing methods that will foster public education participation through public hearing, newspaper and radio. Chapter members will be periodically informed on the progress of the land planning activities. All information pertaining to the plan shall be available to the public. The CLUPC shall approve the community participation plan.

   c) Developing and implementing a community assessment ascertaining the goals, priorities, and vision for the future of the community.

   d) Inventorying and assessing pertinent data. The planner shall request data and seek technical assistance when necessary for compilation of all available data from tribal, federal, and state agencies for inventorying and assessing natural, cultural, and human resources, as well as community infrastructure. In addition, Chapters may hire consultants to assist with the inventory and assessments.
e) The Navajo Nation shall provide funds for the chapter to hire a planner and the planner shall be responsible for conducting the duties described in this subsection.

D. Presentation and Approval of the Community Based Land Use Plan by the Chapter and Certification by the Transportation and Community Development Committee

1. Upon completion of the resource inventory, assessments, and community assessment, the CLUPC shall prepare a community based land use plan as described in Section 101. Local planning and zoning ordinances may also be presented at this time. The community based land plan shall be presented to the local residents in one or more public meetings and through various multimedia. The community members shall have 60 days to comment in writing or in testimony at a final public hearing. Upon compliance with the notice requirements, the Chapter, at a duly-called chapter meeting, shall by resolution, vote to adopt the community based land use plan.

2. The CLUPC shall make necessary adjustments, as approved by the Chapter membership, and shall submit the plan to the Transportation and Community Development Committee of the Navajo Nation Council. The Transportation and Community Development Committee by resolution shall certify the community based land use plan. Every five years the plan shall be reevaluated and readjusted to meet the needs of the changing community. Governance Certified Chapters will proceed according to their alternative governance models where they might set zoning committees, etc.

E. Land Use Variations

The utilization of all withdrawn lands of the community as defined by the adopted Community Based Land Use Plan shall be in accordance with applicable Navajo Nation and federal law, and the provisions of said plan; variations to said plan must be consistent with Section 103(E)(4).

Section 2005. Eminent Domain Requirements

A. Damages to Improvements of Individual Navajo Indians

1. Whenever a Navajo Nation Chapter disposes of land containing any improvement belonging to a Navajo Indian who will not donate the same, whether the disposition is made by surface lease, permit, consent to grant of right-of-way or consent to commencement of construction on a proposed right-of-way, or in any other manner that gives the grantee or proposed grantee exclusive use of the surface of the land containing such improvement, or authorizes the grantee or proposed grantee to use the surface of the land in such manner that
said improvement or improvements must be removed, damaged, or destroyed, the Chapter will pay damages to the rightful claimant of such improvement or improvements.

2. As used in this Section "improvement" means house, hogans sunshade, stables, storage sheds, dugouts, and sweathouses; sheep and horse corrals, and pens, and fences lawfully maintained; irrigation ditches, dams, development work on springs, and other water supply developments; any and all structures used for lawful purposes and other things having economic value. Where any improvement of a Navajo Indian is readily removable and such person has an opportunity to remove the same, damages payable on account of said improvement shall be limited to the reasonable cost of removal, if any, even though the claimant thereof may have failed to remove such improvement and it may have been destroyed or damaged in the authorized course of use of the land on which it is located.

3. No damages shall be paid to any person for any improvement, when such person at the time of building or acquiring said improvement knew or with reasonable diligence ought to have known that the area in which it was located was proposed to be disposed of by the Chapter adversely to such person's interest.

4. Damages to be paid to individual Navajo Indians under this Section shall be fixed by negotiation and consent between the Chapter President of the Chapter or his or her authorized representative and the individual involved. If no agreement satisfactory to the Chapter President or his or her representative can be reached within a reasonable time, the Chapter President shall appoint one appraiser, the individual shall appoint one appraiser, and the two appraisers so appointed shall appoint a third appraiser; but if they cannot agree upon the third appraiser within 10 days, the Chapter President may appoint him or her. The three appraisers shall examine the improvement alleged to be damaged and shall appraise and determine the damages. Their determination shall be submitted to the Natural Resources Committee of the Navajo Nation Council and when, if, and as approved by said Committee the amount thereof shall be final. The Chapter shall pay the fees of said appraisers, except where they are regular Navajo Nation employees, in which case they shall not be entitled to any fees. In addition the Chapter shall pay the reasonable and necessary expenses of said appraisers, whether or not such appraisers are Navajo Nation employees.

B. Economic Damage to Intangible Interests of Navajo Indians

1. Whenever as a result of a Navajo Nation Chapter granting any lease or permit embracing Navajo Nation land, or granting permission by the Chapter for the use of Navajo Nation land, or as a result of the use of Navajo Nation land under such lease, permit or permission, the value of any part of such land for its customary use by any Navajo Indian formally lawfully
using the same is destroyed or diminished, the Chapter will compensate the former Navajo Indian user in the manner hereinafter specified.

2. When the livelihood of the former Navajo Indian user is gravely affected by the new use, such user shall have first priority in resettling on other lands acquired by the Navajo Nation, except the area acquired pursuant to the Act of September 2, 1958 (72 Stat. 1686); and the Chapter shall pay the expense of removing said person, his or her family, and property to any new land made available for his or her use, and such shall constitute full compensation to such Navajo.

3. In all other cases involving damages under this paragraph, the amount thereof shall be fixed and determined in the manner specified in 26 N.N.C. Section 2005(A)(4) above.

4. Whereby reseeding, irrigation, or otherwise, the remaining land in the customary use area of any individual damaged by the governmental exercise of eminent domain is within a reasonable time made able to provide the same economic return as his or her former entire customary use area, no damages shall be payable to such person, except for the period, if any, between adverse disposition of the land in the customary use area and the time when the productivity of the remaining land achieves equality with the entire former customary use area.

5. Only lawful and authorized use shall be compensated under this Section. Thus, no person shall be compensated for loss of use of land for grazing animals in excess of his or her permitted number, or without a permit.

6. Every person otherwise entitled to damages under subsection (3) of this Section shall not be entitled to receive any payment thereof until that person has surrendered for cancellation that person's grazing permit as to all animal units in excess of the carrying capacity of the land remaining in that person's customary use area. Persons so surrendering their grazing permits shall be entitled to an immediate lump sum payment based on the current market value for each sheep unit canceled.

C. Adverse Disposition of Navajo Nation Land Not to be Made Until Individual Damages are Estimated

Neither lessee, permittee, or the grantee of a right-of-way or other interest in or right to use Navajo Nation lands shall commence any construction thereon, nor make any change in the grade or contour thereof or remove any surface vegetation thereon until the damages to the improvements thereon or the customary use rights of all the individuals affected thereby have been estimated by the Office of Navajo Land Administration of the Navajo Nation. Unless the
Chapter membership has previously authorized the payment of such damages from non-reimbursable funds of the Chapter, the Chapter President shall require the applicant for such lease, permit or grant of a right-of-way or other interest in or right to use Navajo Nation lands to deposit with the Chapter Manager or Chapter Coordinator an amount equal to at least double the estimate of damage made by the Office of Navajo Land Administration. After the lease, permit, or grant of right-of-way or user has become final and the damages have been determined, either by appraisal, estimate or by consent as hereinbefore provided, the Chapter President shall cause the Secretary/Treasurer to pay, from and out of this deposit, to the person or persons damaged thereby such sum as he, she or they may be entitled to under the terms of this Section, and to return to the applicant the excess thereof, except that where the individual damaged has not consented to the determination of the amount thereof, it shall be withheld in order to satisfy the excess amount, if any, determined under 26 N.N.C. Section 2005(A)(4). Such disbursements shall be made without further appropriation of the Navajo Nation Chapter membership. All sums held by the Secretary/Treasurer of the Navajo Nation Chapter, pursuant to the terms of this Section, for a period of more than 30 days shall be deposited in a Federal Savings and Loan Association or invested in the bonds of the United States until needed for disbursement.

Section 2006. [Reserved]

Section 2007. [Reserved]

Section 2008. [Reserved]

Subchapter 9 [Reserved]

Subchapter 11 [Reserved]

Subchapter 13 [Reserved]

ONGD: 9/4/97; Revised 4/28/98; As amended by the NNC on 4/20/98
Chapter 11. Navajo Nation Business Site Leasing Act

Subchapter 1. Generally

§2301. Title; policy
   A. This Chapter shall be known and cited as the Navajo Nation Business Site Leasing Act of 2000; N.N.C. §§ 2301 – 2305.
   B. It shall be the policy of the Navajo Nation that its business site leasing system should accomplish the following goals:
      1. To establish streamlined process for the Navajo Business Site Leasing;
      2. To authorize the Economic Development Committee to promulgate Navajo Business Site Leasing Regulations;
      3. To authorize the Economic Development Committee of the Navajo Nation Council to delegate its approval authority to the Division of Economic Development of the Executive Branch, an entity or chapters of the Navajo Nation according to rules and regulations governing such delegations and rescission of such delegations as developed and approved by the Committee;
      4. To protect Navajo land and resources by regulating and limiting types of land use and impacts;
      5. To protect public health and welfare by establishing terms and conditions for business activities and by prescribing sanctions for violations of those terms and conditions;
      6. To promote self-determination and encourage economic self-sufficiency, including economic development that increases employment, business activities and standard of living for members of the Navajo Nation; and
      7. To encourage business development within the Navajo Nation, and in particular, to encourage Navajos to enter and develop successful business ventures by developing streamlined leasing procedures and providing appropriate incentives and opportunities.
§2302. Navajo Business Site Leasing Regulations of 2000
A. This Act is an enabling legislation that authorizes the Economic Development Committee to promulgate the Navajo Business Site Leasing Regulations provided, however, that the Business Site Leasing Regulations contain factors that:
1. Protect and preserve Navajo trust assets from loss, damage, unlawful alienation, waste and depletion;
2. Promote the Navajo Nation control, interest of the Navajo Nation and support the use of the trust assets;
3. Provide asset management system that prudently oversees the management, tracking and inventory of tribal assets;
4. Account for and timely identify, collect, deposit and distribute income from the trust assets or reinvest income or monies into economic development activities or projects;
5. Provide for records and recording system for accounts and leases and other operational and information system; and
6. Provide other provisions that promote modern and up-to-date leasing practices.
B. The Act also authorizes the Economic Development Committee to delegate its approval authority to the Division of Economic Development of the Executive Branch, an entity or chapters of the Navajo Nation provided that the boundaries and principles of the delegation of authorities are appropriately created.
C. According to the authority of promulgating Navajo Business Site Leasing Regulations, the Economic Development Committee shall adopt Navajo Business Site Leasing Regulations governing Navajo trust lands, separate and apart, from Navajo Business Site Leasing regulations governing Navajo fee lands or other types of Navajo lands.
D. A copy of the Business Site Leasing Regulations promulgated under this Act shall be filed with the Central Records Office of the Navajo Nation and any amendments thereof.

§2303. Definitions
A. "Economic Development Committee" means a standing Committee of the Navajo Nation Council established pursuant to Navajo Nation Council Resolution CD-68-89.
B. "Secretary" means the Secretary of the Interior or his authorized representative acting under delegated authority.
C. "Navajo Nation Land" means land or any interest therein held by the United States in trust for the Navajo Nation and land that is held by the Navajo Nation subject to federal restrictions against alienation or encumbrance, excluding allotment lands. Navajo Nation land also means Navajo fee land.
D. "Business purposes" means any person, partnership, association, cooperative, company, corporation or other legal entity lawfully engaged in employment, occupation, profession, commercial or industrial activity for gain or livelihood.
E. "Regulations" means the rules and regulations duly adopted by the Economic Development Committee to govern the leasing, permitting and licensing of Navajo Nation land for business purposes under the provisions of this Act, and to govern delegation of authority.
F. "Lease" means business site lease, permits and licenses granting land use privileges in Navajo Nation land for business purposes.
G. "Asset management system" means a system that is designed for the purposes of leasing, renting, operating and maintaining the premises, managing the demised premises and structures affixed to the premises, and a system that accounts, provides for inventory of and tracking of income or money, lands and other property.
§2304. Severability
The provisions of this Act are severable and if any provision of this Act, or its application to any person or circumstance is held invalid by a final judgment of the Navajo Nation Court, such decision shall not affect the validity of the remaining portions of this Act.

§2305. Review of authority
The Economic Development Committee and the Chief of the Office of Business and Economic Development or its successor shall, from time to time, review the authority granted to them under this Act and propose amendments and additions thereto to the Navajo Nation Council in order to improve and streamline the business site leasing process.

§2306. Prior inconsistent law(s)
Upon the effective date of this Navajo Nation Business Site Leasing Act of 2000, all prior inconsistent laws, rules, policies, ordinances and regulations of the Navajo Nation branches, divisions, departments, offices and political subdivisions thereof, are hereby superseded and/or amended to comply herewith.

§§ 2310 to 2321. [Rescinded]
NAVajo Nation GoVERNMENT

PLEASE REFER TO
NAVajo Nation CoDE Title II
16.0 Appendix – Forms
1. Part I Business Site Lease
2. Part II Business Site Lease
3. Modification
4. Assignment
   a. Complex Form
   b. Simple Form
5. Revocable Use Permit
6. Collateral Assignment of Lease
7. Mutual Termination
8. Security Agreement
9. Sample business plan Outline
10. Emergency Operating Agreement
11. Conditional Use Permit
12. Indemnification Forms
13. Sample Sublease Form
14. Leasehold Credit Rules
PART I
NAVAJO NATION ECONOMIC DEVELOPMENT LEASE
(Navajo Nation Trust Land)
Standard Business Site Lease

This lease, in sextuplicate, is made and entered into this _____ day of __________, 20___, by and between THE NAVAJO NATION, hereinafter called Lessor, whose address is Post Office Box 663, Window Rock, Navajo Nation (Arizona) 86515, and __________________________________________, 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 Site 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. For and in consideration of the rents, covenants, agreements, terms and conditions contained herein, Lessor hereby leases to the Lessee the following described premises:

[LEGAL DESCRIPTION OF BUSINESS SITE TRACT]

Said Property is shown on the attached survey plat 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. There 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. PURPOSE, UNLAWFUL USES

1. Lessee shall develop, use and operate the leased premises for the following purposes only:

   [INSERT SPECIFIC PURPOSES]

2. 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.

3. 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 or an authorized designee.

Lessee may exercise options to renew for one additional term of __________ years, and a second additional term of __________ years. Both options may be granted provided the Lease is not in default. Lessee shall give written notice of its intent to renew this Lease to the Division Director of the Division of Economic Development or successor at least one year, prior to the expiration date of this Lease. Renewal of this Lease is subject to the written approval of the Division Director for the Division of Economic Development or successor, 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 Controller of the Navajo Nation for the use and benefit of the Lessor the following: [BE SPECIFIC AS TO THE RENTAL TERMS OF THE LEASE]

2. Lessee must make monthly rental payments in advance equal to at least one-twelfth of the aforementioned minimum annual rental. [For businesses which gross $1,000,000 or more annually 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. Monthly payments based on the percentage rental rate on gross receipts shall be paid not later than the tenth (10th) day after the end of the month for which rental is due.] All rental shall be deposited with the Controller of the Navajo Nation. 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 rental or percentage rental, if applicable, or if there is an overpayment, the overpayment shall be credited toward future rents.
3. Rental shall be paid on the 1st of each month, if rental is unpaid ten (10) days after the due date, the Lessee shall be subject to a late charge. Should the Lessee not pay rent within thirty (30) days after the due date, the Lessee shall be subject to a late charge of 10% of the monthly amount due, however such amount shall be prorated for each day the rent is not paid until the thirtieth day after the due date, the amount above shall be paid in full. If the Lessee does not pay the full amount within sixty (60) days the Lessee shall be subject to an additional late charge of 10% of the monthly amount due. If the Lessee does not pay the full amount within ninety (90) days, the Lessee shall be subject to an additional late charge of 10% of the monthly amount due, and the lease shall be subject to termination.

4. Upon the fifth anniversary of this Lease, the rental will be reviewed and adjusted by the Lessor and each successive five-year period thereafter. In no event will the adjusted rental be less than the amount paid during the preceding five-year period.

5. 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.

6. Lessor reserves the right to inspect the books and records of Lessee and any Sublessee or Assignee to verify the accuracy of the rentals paid.

E. IMPROVEMENTS

1. The Lessee, 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 after termination of this Lease and shall thereupon become the 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 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. Upon the expiration of the ninety (90) day extension, the Lessor has the right to grant another extension or re-enter the premises, at such time the Lessee shall have no right or interest to the premises or any remaining improvements.
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. Should Lessee fail to remove said personal property and trade fixtures prior to termination of this Lease, said property shall thereupon become property of Lessor, and may be disposed of in any manner by Lessor.

4. At the expiration or termination of the lease, the Lessor has the first right of refusal to purchase any permanent improvements to the premises at fair market value.

F. COMPLETION OF DEVELOPMENT

1. The Lessee shall complete the full improvement and development of the leases premises in accordance with the general plan and architect’s design. The date for substantial completion of development shall be _______ months from the date the Lease is executed by the Navajo Nation President. If the Lessee fails to substantially complete development within such period, such failure shall constitute a default and may be cause for termination, subject to this Section (F)(4) or unless otherwise agreed.

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 Navajo Nation Division of Economic Development.

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 good 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 a pleasant 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 an improvement can be made only with the written approval of Lessor.

3. Lessee shall indemnify and hold harmless the Lessor 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 BOND

1. Lessee agrees to post [certificate of deposit, letter of credit OR cash deposit] in the amount of $_________, which shall remain in force for the full term of this Lease. From time to time, the amount of such security may be increased or decreased by the Real Estate Department, Division of Economic Development, which shall be placed in writing and become an attachment to 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, unless granted a postponement by the Lessor. The security shall be posted within ______ [days, months or year] of execution of the lease.

I. CONSTRUCTION BOND

1. At Lessor's option, prior to the commencement of construction of any improvement on the leasehold premises, the Lessee will cause his construction contractor to post a construction bond in favor of Lessor and Lessee. If the construction contractor cannot post such a bond, the Lessee shall post the construction bond. The purpose of the construction 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. The construction contractor or the Lessee may provide security by either:

   a. Posting a corporate surety bond in an amount equal to the cost of each improvement, said bond to be deposited with the Lessor and to remain in effect until the improvement is satisfactorily completed. Said bond shall be conditioned upon faithful performance by Lessee or his construction contractor and shall give all claimants a right of action to recover upon said bond in any suit brought to foreclose on any mechanic's or materialmen's liens against the property. If United States Treasury Bonds are provided, Lessee, or his construction contractor, agrees to make up any deficiency in the value deposited that might occur due to a decrease in the value of the bonds. Interest on said bonds shall be paid to Lessee.

   b. Depositing cash with the Lessor or non-revocable letter of credit or CD at an institution acceptable to the Lessor satisfactory to Lessor in an amount sufficient to pay the entire cost of construction of each building or other improvement then to be erected on the premises. Interest on said security shall be paid to Lessee or his construction contractor. The funds so deposited may then be used, at the option of Lessor, to discharge any valid mechanic's or materialmen's liens; if no such liens exist, the withheld funds shall be disbursed to Lessee or his construction contractor.
2. If Lessee enters into a construction loan agreement with a financial institution, said loan agreement shall be subject to the approval of Lessor. Prior to such approval, Lessee shall perform all conditions precedent to the assumption of obligations under the agreement by the financial institution and Lessee shall deposit with the lending institution, or otherwise other security acceptable to the Lessor, the difference between the amount of the loan and the total cost of improvement.

J. INSURANCE

1. Lessee shall obtain Commercial General Liability Insurance within Thirty (30) days from the date of execution of the Lease, provided however it is explicitly understood and agreed 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 the minimum insurance coverage of not less than $________. Upon execution of the Lease, a certificate of insurance shall be submitted to the Lessor, unless granted a postponement by the Lessor. The insurance shall be posted [upon receipt of all approvals to commence with construction of the improvements or the first drawdown for financing is received.] OR [within ______ (days, months or year).]

K. SUBLEASES

Subleases [must be approved by the Navajo Nation and with written consent from all sureties and are subject to the requirements as set forth in the Navajo Nation Business Site Lease Management Plan.] OR [do not require approval from the Lessor and are hereby explicitly authorized, pursuant to the Navajo Nation Business Site Lease Management Plan, the Lessee shall:

1. Provide a copy of the sublease to the Division of Economic Development; and
2. Sublessee must agree to be bound by all terms and conditions of this Lease; and
3. The Sublease must not change from the purposes set forth in Section B; and
4. The term of the Sublease must not extend beyond the term and any renewals set forth in Section C.]

L. 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: President
The Navajo Nation
Post Office Box 9000
Window Rock, Navajo Nation (Arizona) 86515

Telefax: +1 (928) 871-7381

To or upon Lessee: ___________________________________
___________________________________
___________________________________
___________________________________
___________________________________

Telefax: ____________________________

Copies to: Division Director
Division of Economic Development
P.O. Box 663
Window Rock, Navajo Nation (Arizona) 86515
Telefax: +1 (928) 871-7381

2. All notices shall be given by personal delivery, by registered or certified mail, postage prepaid or by facsimile transmission, followed by surface mail. Notices shall be effective and shall be deemed delivered when dispatched and may be delivered by personal delivery, registered or certified mail, or by facsimile transmission, followed by surface mail.

3. Lessor and Lessee may at any time change its address for purposes of this Section by written notice.

M. APPLICABLE TERMS AND CONDITIONS

The Standard Terms and Conditions for Economic Development Leases on Navajo Nation Trust Land in Part II of this Lease apply to this Lease and are incorporated herein in their entirety (NOTE: The Terms and Conditions for a Standard Business Site Lease apply to all Leases. The Terms and Conditions for Business Site Leases with Underground Storage Tanks apply where they are appropriate. If Underground 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. Special Terms and Conditions for the Navajo Nation Business Site Leases Within Navajo Nation Shopping Centers, Inc. apply only to leases in Navajo Nation Shopping Centers, Inc.).

The specific Version of Standard Terms and Conditions for Navajo Nation Economic Development Leases (Trust Land) is under Resolution No. EDCO-48-07.

N. EXCEPTIONS TO STANDARD TERMS AND CONDITIONS
IN WITNESS THEREOF,

LESSEE

[\textit{name}], [\textit{title}]

Date

[\textit{name}], [\textit{title}]

Date

THE NAVAJO NATION, LESSOR

By: 

President, Navajo Nation or designee

Date: 

Lease – Part I – Page 8

Initials: _____
PART II
STANDARD TERMS AND CONDITIONS FOR
NAVAJO NATION ECONOMIC DEVELOPMENT LEASE
(Navajo Nation Trust Land)

1.0 STANDARD TERMS AND CONDITIONS FOR ALL NAVAJO
NATION BUSINESS SITE LEASES

1.1 DEFINITIONS .................................................................2
1.2 CONDITION OF LEASED PREMISES .................................2
1.3 ACCOUNTING .................................................................2
1.4 UTILITY SERVICE LINE AGREEMENTS ...............................2
1.5 SUBLEASE, ASSIGNMENT, AMENDMENT, TRANSFER ........3
1.6 ENCUMBRANCE ..............................................................3
1.7 LIENS, TAXES, ASSESSMENTS, UTILITY CHARGES ............4
1.8 LESSOR’S PAYING CLAIMS .............................................4
1.9 SANITATION .................................................................5
1.10 REGULATED SUBSTANCES .............................................5
1.11 LIABILITY INSURANCE ..................................................5
1.12 FIRE AND CASUALTY INSURANCE ....................................6
1.13 INDEMNIFY, DEFEND AND HOLD HARMLESS ...............7
1.14 EMINENT DOMAIN ......................................................7
1.15 DEFAULT ......................................................................7
1.16 REMEDIES ....................................................................8
1.17 MUTUAL TERMINATION ................................................8
1.18 ATTORNEY’S FEES .......................................................8
1.19 NO PARTNERSHIP ........................................................8
1.20 TERMINATION OF FEDERAL TRUST ...............................8
1.21 OBLIGATIONS OF LESSEE .............................................8
1.22 STATUS OF SUBLEASES ...............................................8
1.23 INSPECTION ................................................................9
1.24 HOLDING OVER ...........................................................9
1.25 LEASE REQUIREMENTS NOT EXCLUSIVE .......................9
1.26 DELIVERY OF LEASED PREMISES .................................9
1.27 NAVAJO PREFERENCE ................................................9
1.28 MINERALS .................................................................9
1.29 SUCCESSORS AND ASSIGNS .......................................9
1.30 INTEREST OF MEMBER OF CONGRESS .........................9
1.31 USE OF NAVAJO PRODUCED GOODS AND SERVICES ....9
1.32 AGREEMENT TO ABIDE BY NAVAJO AND FEDERAL LAWS ..9
1.33 GOVERNING LAW AND CHOICE OF FORUM ....................9
1.34 CONSENT TO JURISDICTION .........................................9
1.35 COVENANT NOT TO CONTEST JURISDICTION ..................10

1.36 NO WAIVER OF SOVEREIGN IMMUNITY ........................10
1.37 SAVINGS CLAUSE ........................................................10
1.38 QUALIFICATIONS OF BUSINESS .....................................10
1.39 COMPLIANCE WITH NAVAJO NATION BUSINESS SITE
LEASING REGULATIONS OF 2005 .......................................10
1.40 NO ORAL AGREEMENTS ..............................................10
1.41 VALIDITY ....................................................................10

2.0 SPECIAL TERMS AND CONDITIONS FOR NAVAJO NATION
BUSINESS SITE LEASES WITH STORAGE TANKS

2.1 DEFINITIONS .................................................................11
2.2 REGULATED SUBSTANCES .............................................11
2.3 FINANCIAL RESPONSIBILITY FOR STORAGE TANKS ........11
2.4 ENVIRONMENTAL AUDITS AND COMPLIANCE
DOCUMENTS ....................................................................11
2.5 OWNERSHIP AND REMOVAL OF STORAGE TANKS ........12

3.0 SPECIAL TERMS AND CONDITIONS FOR NAVAJO NATION
BUSINESS SITE LEASES WITHIN THE NAVAJO NATION
SHOPPING CENTERS

3.1 SPECIAL ACCOUNTING PROVISION FOR SHOPPING
CENTERS ........................................................................13
3.2 FIXTURES AND PERSONAL PROPERTY ...............................13
3.3 REPAIRS AND MAINTENANCE ........................................13
3.4 LESSEE’S RIGHT TO MAKE ALTERATIONS .......................14
3.5 POSSESSION AND USE ...............................................14
3.6 LESSEE’S CONDUCT OF BUSINESS ...............................14
3.7 ADVERTISING MEDIA ....................................................15
3.8 COMMON AREAS ........................................................15
3.9 SPECIAL SUBLEASE REQUIREMENT FOR SHOPPING
CENTERS ........................................................................16
3.10 SPECIAL INSURANCE REQUIREMENT FOR SHOPPING
CENTERS ........................................................................16
3.11 SPECIAL RECONSTRUCTION PROVISION FOR
SHOPPING CENTERS .......................................................16
3.12 SIGNS ........................................................................17
3.13 ADDITIONAL NOTICE REQUIREMENT FOR SHOPPING
CENTERS ........................................................................17
3.14 LESSOR’S RESERVATIONS AND RIGHTS .........................17
1.0 STANDARD TERMS AND CONDITIONS FOR ALL NAVAJO NATION BUSINESS SITE LEASES

1.1 DEFINITIONS.

A. "Approved Encumbrance" means an encumbrance approved in writing by the Lessor, and sureties, if any, in accordance with the terms and conditions of this Lease.

B. "Condemnation" means the taking of any real property right thereof, in condemnation proceeding, by right of eminent domain, or by conveyance in lieu of or in settlement of a condemnation or eminent domain proceeding brought by any governmental authority having jurisdiction and power over the property.

C. "Encumbrancer" means the owner and holder of an Approved Encumbrance, including all successors and assigns.

D. "Federal Laws" means all applicable federal laws, including:
   i) "CERCLA," the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9601 et. seq., and

E. "Gross Receipts" means all income, including money and other things of value, received by or paid to Lessee or its affiliates, whether individuals, corporations, partnerships, or other legal entity, or received by or paid to others for Lessee's or its affiliates use and benefit, derived from business done, sales made, or services rendered directly or indirectly or on the leased premises or any portion thereof. All income accruing from credit transactions will be treated as "gross receipts" as of the date credit is extended. Gross Receipts will not include amounts collected and paid out for a sales and excise tax imposed by any duly constituted governmental authority where such tax is billed to the purchaser as a separate item. Any taxes paid by the Lessee as a part of the cost of merchandise purchased by the Lessee are not to be excluded or deducted. It shall not include credits for the exchange of goods or merchandise between stores, if any, of Lessee or its affiliates where such exchange is made solely for the convenience operation of business and not for the purpose of consummating a sale previously made directly from or on the leased premises. It shall not include the amount of any refund where the merchandise sold, or some part thereof is returned by the purchaser and accepted by Lessee or its affiliates. It shall not include income from the sale of fixtures, or the sale of improvements, including, but not limited to, corrals, buildings, livestock scales, and holding pens.

F. "Lessor" means the Navajo Nation who conveys property under a lease agreement.

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 execution 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.

B. The independent investigation, which shall be conducted prior to entering into the Lease, shall include an environmental review which provides the Lessee with knowledge of the environmental status of the leased premises, including the status of the storage tanks and/or other regulated substances.

1.3 ACCOUNTING.

A. Lessee shall maintain full and adequate books of account and such other records as are necessary to reliably reflect the financial position and results of the operation in accordance with Generally Accepted Accounting Principles ("GAAP") or other comprehensive basis of accounting deemed acceptable by the Navajo Nation Office of Auditor General.

B. The Navajo Nation Office of Auditor General or any of its duly authorized representatives, shall at any time up until the expiration of five (5) years after the expiration of this Lease, have access to and the right to examine any of Lessee's books of account, documents, papers, and records, including Federal and State income tax returns, and such documents of any affiliated companies of Lessee, in connection with any transaction related to this Lease. Lessee shall insert a similar provision in all subleases and shall make available to said representative, agent, or agents, all books and records of Lessee's tenants which may be requested or may be necessary for completion of a full audit of all business conducted on the leased premises.

1.4 UTILITY SERVICE LINE AGREEMENTS.

A. Lessee will identify the rights-of-way necessary or appropriate for construction, operation and maintenance of any improvements. Lessee shall obtain approval from any third parties, Lessor and Secretary as may be necessary or appropriate as required by 25 U.S.C. §415 and 25 C.F.R. § 169.

B. Lessee is authorized to enter into appropriate service line agreements with utility companies for the provision of necessary or appropriate utility services to the leased premises, including gas, water, sewer, electricity, telephone, television, internet, and other utilities, without further consent by Lessor, on the condition that:
   (1) such agreements are for the sole purpose of supplying utility services to the leased premises; and
   (2) such agreements authorize utility service lines only within the leased premises; and
   (3) such agreements do not extend beyond the term of this Lease, including any extensions thereof; and
   (4) executed copies of such agreements, together with plats or diagrams showing with particularity the location, size and extent of such service lines are filed by the
utility companies with Lessor within thirty (30) days of their execution; and

(5) such agreements are in accordance with the provisions of 25 C.F.R. § 169.22, including any amendments or successors thereto.

C. 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 in any manner whatsoever transfer this Lease or any right to or interest in this Lease or any of the improvements on the leased premises, or sell, assign or transfer more than forty-nine percent (49%) of the corporate stock of any corporation named as Lessee without the written consent of the Lessor and Lessee, as well as the sureties. Lessor, however, in its sole discretion may authorize the Lessee to enter into subleases without further consent from Lessor, which must be specifically provided for in Part I. Unless otherwise provided for in Part I, no such sublease, assignment, sale, amendment or transfer shall be valid or binding without such approval and then only upon the condition that the Sublessee, Assignee or other successor in interest, excepting an approved encumbrancer(s), shall agree in writing to be bound by each and all of the covenants and conditions of this Lease. Should Lessee attempt to make any such sublease, assignment, sale, amendment, or transfer, except as, set forth herein, such action shall be deemed a breach of this Lease, excluding that an encumbrancer may enforce his rights in the manner hereinafter provided. Unless otherwise provided for in Part I, approval of one sublease, assignment, sale, 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. For purposes of this Section, the creation of a partnership, corporation, joint venture, management agreement or other arrangement under which any person or entity other than Lessee is entitled to share in profits derived directly or indirectly from the leased premises or activities carried out thereon, shall require the written consent of Lessor and Lessee, unless Lessee is the majority owner (i.e. majority shareholder, majority partner, etc) of the business that is reorganized, then only written notice will be required.

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

1.6 ENCUMBRANCE.

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

B. Any encumbrance will:

(1) be limited to the leasehold interest of the Lessee or subleasehold interest of the Sublessee; 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 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 performance by the encumbrancer for covenants or other obligations under the Lease or Sublease, with the same force and effect as though performed by the Lessee or Sublessee.

E. In the event of default by Sublessee, an encumbrancer of any Sublease may exercise any rights provided in such approved encumbrance, provided that before any sale of subleasehold, whether under power of sale or foreclosure, the encumbrancer shall give to Lessor and Lessee notice of the same character and duration as is required to be given to the Sublessee by the encumbrancer. If notice of such sale is given and the Lessee fails to act, Lessor shall have the following rights which may be exercised at any time prior to the completion of sale proceedings:

(1) to pay the encumbrancer the full unpaid principal amount of the approved encumbrance, plus unpaid interest accrued to the date of such payment, plus foreclosure or sale costs incurred to the date of such payment; and

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

F. Each encumbrancer must provide, if Lessee or Lessor exercises the foregoing rights, all of the right, title, and interest of the Sublessee in the Sublease shall automatically terminate on the same date the right is exercised and the 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 any of the above rights and a sale occurs, whether by power of sale or foreclosure, the purchaser at such sale shall succeed to all of the rights, title, and interest of the Sublessee in the subleasehold covered by said encumbrance. It is further agreed that if the purchaser at such a sale is the encumbrancer, the encumbrancer may assign the subleasehold without any further approval, provided that the assignee shall agree in writing to be bound by all the terms and conditions of the Sublease. If the encumbrancer is the purchaser, it shall be required to perform the Sublease only so long as it retains title thereto. If a sale, of the subleasehold interest, under the approved encumbrance occurs and the purchaser is a party other than the encumbrancer, approval by Lessor will be required and said purchaser, as successor in interest to the Sublessee, shall be bound by all the terms and conditions of the sublease and will assume in writing all the obligations thereunder.

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

1. To pay to the encumbrancer the full unpaid principal amount of the approved encumbrance plus unpaid interest accrued to the date of such payment, plus sale costs incurred to the date of such payment.

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

I. Each encumbrancer must provide, if Lessor exercises the foregoing rights, all right, title and interest of Lessee in 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 will be required and said purchaser, as successor in interest to the Lessee, shall be bound by all the terms and conditions of this Lease and will assume in writing all the obligations thereunder.

1.7 LIENS, TAXES, ASSESSMENTS, UTILITY CHARGES.

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

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

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

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

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
1.10 REGULATED SUBSTANCES.

Lessee shall not cause or permit any regulated substance (as defined under the U.S. Environmental Protection Agency’s regulations) to be used, stored, generated or disposed of, on or in the leased premises without obtaining written consent from the Lessor. If the Lessor grants consent, the Lessee shall be responsible for all costs and expenses incurred by the Lessor in connection with such activities, including, but not limited to, investigation, cleanup, removal, restoration or any other costs or expenses incurred related to such activities. Failure to comply with these provisions shall constitute a breach of this Lease.

1.11 LIABILITY INSURANCE

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 leased space, and Employers’ Liability insurance with a minimum amount as is required and regulated by the state in which the leased premises is located. All insurers must be a Nationally Accredited Insurance Company accepted by the Lessor until all obligations under this Lease are satisfied. Coverage will be provided with forms and insurers acceptable to the Lessor until all obligations under this Lease are satisfied. All policies required under this Lease shall name the Lessor and the United States as additional named insureds. These coverages are as follows:

1. Lessee or a Sublessee as applicable shall maintain records to demonstrate compliance with this requirement.

2. Lessee must obtain the appropriate permits and licenses to operate on the leased premises. Non-compliance with Section 1.9 shall constitute a breach of this Lease.

3. Lessee 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.

4. Lessee hereby agrees to comply with all applicable sanitation codes, requirements, or laws which may be related to the purpose of this document as set forth in Section B(1). 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.

5. 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.

6. 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.

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

This indemnification includes, without limitation, any and all costs incurred due to any investigation of the site or any cleanup, removal, restoration or other costs of regulatory compliance mandated by the federal government or Navajo Nation. Without limiting the foregoing, if Lessee caused or permitted the presence of any regulated substance on the leased 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 shall promptly, at its sole expense, take any and all necessary actions to return the leased premises to the condition existing prior to the contamination by any such regulated substance on the leased premises. Lessees will first obtain Lessor’s approval for any such remedial action.

8. If the leased premise is undeveloped, the Lessee must obtain the appropriate insurance, which shall include the Lessor and the United States as additional named insureds.

9. If the leased premise is developed, the Lessee shall carry Professional Liability insurance in an amount as is required and regulated under the state in which the leased premises is located. All policies required under this Lease shall name the Lessor and the United States as additional named insureds.

10. 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 leased premises is located.

11. 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.

12. 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 Navajo Nation, its agents, representatives, officers, directors, officials and employees and the United States as additional insureds and shall require that the insurance provided by Lessee shall be primary insurance and that any insurance carried by the Navajo Nation its agents, officials or employees shall be excess and not contributory insurance to that provided by Lessee.

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

Certificates of insurance shall be addressed as follows: Navajo Nation Division of Economic Development, P.O. Box 663 Window Rock, Arizona 86515

H. The Lessee may request to postpone the insurance requirements until either (a) the receipt of all approvals to commence with construction of the improvements and/or (b) the first drawdown for financing is received; subject to Section 1.11 (B)(3). Such postponement shall be provided for in Part I and shall be at the sole discretion of the Division of Economic Development and shall not be unreasonably withheld.

I. Failure on the part of the Lessee to procure or maintain required insurance shall constitute a material breach of contract upon which the Lessor may immediately terminate this Lease.

J. Lessor reserves the right to request and receive certified copies of any or all of the above policies and/or endorsements.

K. Lessee and its insurers providing the required coverages shall waive all rights of recovery against the Navajo Nation and its agents, officials and employees, and the United States.

L. 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.

M. The Lessee shall not do or commit to be done anything in or upon any portions of the leased premises or bring or keep anything there which would in any way conflict with the conditions of any insurance policy upon the leased premises or in any way increase the rate of insurance upon the leased premises or on property kept there.

N. Lessor will not be responsible for any omissions or inadequacies of insurance coverage and amounts in the event the insurance purchased by Lessee proves to be inadequate or otherwise insufficient for any reason whatsoever.

1.12 FIRE AND CASUALTY INSURANCE.

A. Lessee shall carry from the date the lease is approved, the minimum insurance coverages, unless granted a postponement, which shall be provided for in Part I, for either (a) the receipt of all approvals to commence with construction of the improvements and/or (b) the first drawdown for financing is received. Lessee shall carry fire and casualty insurance with extended coverage endorsements, covering not less than full insurable value of all improvements on the leased premises. Said policy shall be obtained from a Nationally Accredited Insurance Company, with a financial rating of A or equivalent, licensed to do business in the State in which the leased premises are located and shall be written jointly to protect Lessee, Lessor 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 non-payment of premiums.

A copy of said policy shall be sent to Lessor at the following address: Navajo Nation Division of Economic Development, P.O. Box 663, 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. 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 with 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 architects', engineer's, or contractor's certificates. All money in escrow after reconstruction has been completed shall be paid to Lessee.

C. In the event of damage to the extent of seventy-five percent (75%) or more of the total value of all improvements on the leased premises during the last five (5) years of the term of this Lease, Lessee shall have the option to reconstruct said improvements. Lessee shall provide Lessor with a written notice of the exercise of Lessee's reconstruction option within thirty (30) days of the event of damage giving rise to Lessee's reconstruction option. Should Lessee exercise its option to reconstruct, Lessee shall commence reconstruction of the damaged improvements within ninety (90) days of the event of damage giving rise to Lessee's reconstruction option. Should Lessee not exercise its option to reconstruct, this Lease shall terminate one hundred and twenty (120) days after the event of damage giving rise to Lessee's reconstruction option. The leased premises shall be cleared of debris at Lessee's expense prior to termination of the Lease. Lessee shall not be charged rent during the period of debris removal unless Lessee occupies the leased premises beyond the Lease termination date, after which the Lessee will be charged hold over rental as provided herein. In the event Lessee does not reconstruct, all insurance proceeds shall be paid to Lessor.

D. Any encumbrancer shall be named as a beneficiary under all insurance policies required by this paragraph and in the event of loss or damage to the buildings on the leased property while an approved encumbrance remains unpaid, the amount of such loss or damage (but not exceeding the remaining balance of the approved encumbrance) shall be paid to the encumbrancer on the condition that the encumbrancer agrees to comply with the reconstruction obligations set forth herein. If such
1.13 INDEMNIFY, DEFEND AND HOLD HARMLESS.

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

1.14 EMINENT DOMAIN.

If, at any time during the term of this Lease, the leased premises or any part thereof is taken or condemned under the laws of eminent domain, then and in every such case, the leasehold estate and interest of the Lessee in said leased premises or part thereof taken shall forthwith cease and terminate. All compensation awarded by reason of any takings of the leased land and any taking of or injury to the buildings or improvements located thereon shall be awarded to the Lessee and 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.

1.15 DEFAULT.

A. Time is declared to be of the essence of this Lease.

B. Lessor may determine the Lessee is in default for the following:

1. Lessee 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 notice of default is sent to Lessee.

2. Lessee fails to perform any of its material non-monetary obligations or duties under the lease when required and such failure continues for a period of ten (10) days after notice of default is sent to Lessee that such obligation or duty has not been performed; provided that if such failure is not reasonably susceptible to cure within ten (10) days, there is no default for such longer period of time as is reasonably required to cure such failure provided that Lessee commences a cure within ten (10) days after the notice of default is mailed and Lessee diligently pursues the cure.

3. Lessee abandons or surrenders the leased premises and if the operations required hereunder are not operated for a period of sixty (60) consecutive days for any reason other than a closure for major repairs or renovation, acts of god, casualty, war or insurrection, strikes or labor disputes or other matters beyond the reasonable control of Lessee after written notice thereof has been received by Lessee from Lessor.

C. Lessee shall, within ten (10) days, from the mailing of the notice of default either:

1. Notify in writing 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 unless found not reasonably susceptible to cure within ten (10) days there is no default for such longer period of time as is reasonably required to cure. Any additional time granted to cure shall be in the discretion of the Division of Economic Development.

D. Should a default occur the Lessor may take any action in accordance with § 503 of the Navajo Nation Business Site Leasing Regulations of 2005. Additionally, Lessor may exercise the following options upon Lessee's default:

1. Collect, by suit or otherwise, all monies as they become due hereunder, or enforce, by suit or otherwise, Lessee's compliance with all terms of this Lease; or

2. Re-enter the leased premises if the
Lessee has abandoned the leased premises or has failed to conduct business for a period of time without notice and remove all persons and property therefrom, excluding the property belonging to authorized Sublessees, and re-let the leased premises without terminating this Lease as the agent and for the account of Lessee, but without prejudice to the right to terminate the Lease thereafter, and without invalidating any right of Lessor or any obligations of Lessee hereunder. The terms and conditions of such re-letting shall be in the sole discretion of Lessor who shall have the right to alter and repair the leased premises as it deems advisable and to re-let with or without any equipment or fixtures situated thereon. Rents from any such re-letting shall be applied first to the expense of re-letting, collection, altering, and repairing, including attorney's fees and any real estate commissions actually paid, insurance, taxes and assessments and thereafter toward payment to liquidate the total liability of Lessee. Lessee shall pay to Lessor monthly when due, any deficiency and Lessor may sue thereafter as each monthly deficiency shall arise; or

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. Exercise of any of the remedies outlined in this Section shall not be construed to be a waiver of any succeeding breach of the same or any other covenant of this Lease. Lessee agrees to pay and discharge all reasonable costs, attorney's fees and expenses that may be incurred by Lessor in enforcing provisions of this Lease.

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

1.16 REMEDIES

A. If the Lessee fails to cure pursuant to Section 1.15 the Lessor may at its option pursue the following:

(1) terminate this Lease, as a matter of law; or

(2) grant an extension of time 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 business site lease management plan.

B. If the Lessor terminates the Lease, the Lessor shall send a termination letter to Lessee within a reasonable time period from the date of determination by the Lessor to terminate, by certified mail, return receipt requested. Lessee shall vacate the premises within thirty (30) days upon receipt of the termination letter, unless an appeal has been filed.

C. The termination shall become effective 31 days after mailing the letter. Any filing of an appeal shall not change the effective date of a cancellation. Pending the outcome of an appeal, the Lessee shall make all requisite payments, as well as comply with the terms of the Lease.

D. If a grant of extension for time to cure is given, the Lessee shall diligently perform and complete the corrective actions within a time frame agreed, in writing, between the Lessor and Lessee.

1.17 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 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 thirty (30) days prior to the expiration of the development period.

1.18 ATTORNEY’S FEES.

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

1.19 NO PARTNERSHIP.

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

1.20 TERMINATION OF FEDERAL TRUST.

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

1.21 OBLIGATIONS OF LESSEE.

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

1.22 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 subtenancies, until a lease can be obtained between the Sublessee, Assignee, and the Lessor, which such parties shall diligently pursue.
1.23 INSPECTION.

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

1.24 HOLDING OVER.

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

1.25 LEASE REQUIREMENTS NOT EXCLUSIVE.

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

1.26 DELIVERY OF LEASED PREMISES.

A. At the termination or expiration of this Lease, Lessee will peaceably and without legal process deliver up the possession of the leased premises, in good condition, usual wear and tear excepted.

B. Lessee agrees to allow the Navajo Nation Environmental Protection Agency to conduct an environmental audit 360 days prior to the expiration or termination of such Lease. Such assessment shall be delivered to the Navajo Nation Division of Economic Development sixty (60) days prior to the expiration or termination or the delivery of the leased premises, whichever occurs first, in turn the Division of Economic Development shall submit to the Lessee a copy of such audit within ten (10) days of receipt.

1.27 NAVAJO PREFERENCE.

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

1.28 MINERALS.

All minerals, including sand and gravel, contained in or on the 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.

1.29 SUCCESSORS AND ASSIGNS.

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

1.30 INTEREST OF MEMBER OF CONGRESS.

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

1.31 USE OF NAVAJO PRODUCED GOODS AND SERVICES.

Lessee agrees to make all purchases of materials, equipment, goods, services and transportation from Navajo-owned businesses, whenever such purchase is economically feasible, as required by Navajo law.

1.32 AGREEMENT TO ABIDE BY NAVAJO AND FEDERAL LAWS.

The Lessee and the Lessee’s employees, agents, and sublessees and their employees and agents agree to abide by all laws, regulations, and ordinances of the Navajo Nation, and all applicable laws, regulations and ordinances of the United States, now in force and effect or as may become hereafter in force and effect.

1.33 GOVERNING LAW AND CHOICE OF FORUM.

Except as may be prohibited by federal applicable law, the laws of the Navajo Nation shall govern the construction, performance and enforcement of this Lease. All actions or proceedings brought by Lessee against the 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.

1.34 CONSENT TO JURISDICTION.

Initials: _____
Lessee hereby consents to the legislative, executive and judicial jurisdiction of the Navajo Nation in connection with all activities conducted by the Lessee within the Navajo Nation.

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

1.36 NO WAIVER OF SOVEREIGN IMMUNITY.
Nothing in this Lease shall be interpreted as constituting a waiver, express or implied, of the sovereign immunity of the Navajo Nation.

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

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

1.39 COMPLIANCE WITH Navajo Nation BUSINESS SITE LEASING REGULATIONS OF 2005.
Lessee, its sublessees and assignees and other successors in interest shall comply with the provisions of the Navajo Nation Business Site Leasing Regulations of 2005, which prescribe rules for the regulation of reservation business for the protection of Indian consumers on the Navajo Nation as required by 25 U.S.C. §415(e).

1.40 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.

1.41 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 Economic Development Committee of the Navajo Nation Council and/or any other appropriate oversight committees and the President of the Navajo Nation, pursuant to Navajo Law.
2.0 SPECIAL TERMS AND CONDITIONS FOR NAVAJO NATION BUSINESS SITE LEASES WITH STORAGE TANKS

2.1 DEFINITIONS.


B. "Storage Tank" is any tank which is defined by either of the following subsections.

1. An underground storage tank as defined at 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. Any above ground storage tank as defined in the proposed Navajo Nation Above Ground Storage Tank Act or underground storage tank as defined in the proposed Navajo Nation Underground Storage Tank Act upon passage of each respective proposed Act.

2.2 REGULATED SUBSTANCES.

A. Lessee shall not cause or permit any regulated substance (as defined in 2.1(A)) to be used, stored, generated or disposed of on or in the premises without first obtaining 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 premises, or if the premises become contaminated in any manner for which Lessee or a Sublessee is legally liable, Lessee shall indemnify and hold harmless the Lessor from and any 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.

This indemnification includes, without limitation, any and all costs incurred due to any investigation of the site or any cleanup, removal, restoration or other costs of regulatory compliance mandated by the federal government or Navajo Nation. Without limitation of the foregoing, if Lessee causes or permits the presence of any 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 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. Lessee shall first obtain Lessor's approval for any such remedial action.

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

U.S. Environmental Protection Agency
Navajo Nation Environmental Protection Agency
Post Office Box 339
Window Rock, Navajo Nation (Arizona) 86515

and,

Navajo Nation Division of Economic Development
Post Office Box 663
Window Rock, Navajo Nation (Arizona) 86515
or their respective institutional successors.

2.3 FINANCIAL RESPONSIBILITY FOR STORAGE TANKS.

If Lessee or Sublessee installs or operates storage tanks on the leased property, the Lessee or Sublessee shall post a bond, obtain insurance or provide such other evidence of financial responsibility that meets all the requirements of 40 C.F.R. Part 280, Subpart H regardless of whether the storage tank in question is an aboveground or underground storage tank. Lessee shall provide proof of this bond, insurance, or other qualifying financial responsibility mechanism to the Division of Economic Development. 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 Division of Economic Development 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 of the Lessee and the Sublessee to provide the Navajo Nation Division of Economic Development with all proof required for release of bond or termination of insurance coverage.

2.4 ENVIRONMENTAL AUDITS AND COMPLIANCE DOCUMENTS.

A. Entry Audit: If storage tanks are located at the Lease site, the Lessee will supply the Navajo Nation Environmental Protection Agency and the Navajo Nation Division of Economic Development with a complete copy of the report and underlying data generated in preparation of a Phase Two environmental audit before Lessee places any regulated substance in the storage tanks or releases any regulated substances from the storage tanks but no later than ninety (90) days after the Lease is approved by the Lessor.
The Lessee shall notify the Navajo Nation Environmental Protection Agency and the Division of Economic Development, or any institutional successor, of the firm chosen to perform the Phase Two Environmental audit prior to the performance of such audit. Lessor may accept or decline the choice of environmental auditor within twenty (20) days of written notice by Lessee. If Lessor does not respond within twenty (20) days of receipt of the Lessee's written notice, the environmental auditor is deemed accepted. If, however, the most recent prior Lessee of the 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 Lessee agrees to be conclusively legally bound by the findings of the above referenced Phase Two environmental audit.

B. Environmental Audit(s): Lessee shall pay to the Navajo Nation the amount of $15,000 which will be held by the Navajo Nation during the term of the Lease. One year after Lessee's rental 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 rent payment obligation.

The amounts shall be deposited at the Navajo Nation Division of Economic Development:

P.O. Box 663
Window Rock, Arizona 86515

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 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 with Lessor an amount sufficient to pay for the environmental audit or to bring Lessee's deposit to $15,000, whichever is less. If Lessor performs an environmental audit pursuant to this article during the term of the Lease which finds regulated substances unlawfully present and which is financed by 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 for any amount 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 Navajo Nation Division of Finance 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, the Navajo Nation shall return any of the money deposited to the Lessee which was not spent to conduct environmental audits of the leased premises or to remediate or remove regulated substances which were released on the leased premises.

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

2.5 OWNERSHIP AND REMOVAL OF STORAGE TANKS

A. The ownership and removal responsibility for any regulated substances or petroleum 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 the appropriate Division of Economic Development department 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 or upon the expiration of the Lease. Lessee is the owner for RCRA, 42 U.S.C. 6991(3), purposes of any storage tanks placed on the leased premises. Petroleum manufacturing, processing, storage, storage tanks, or conveyance facilities shall be removed by Lessee unless notified by Lessor in writing not to remove all of part of such property.

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 as described above and below, 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.
3.0 SPECIAL TERMS AND CONDITIONS FOR NAVAJO NATION BUSINESS SITE LEASES WITHIN THE NAVAJO NATION SHOPPING CENTERS

3.1 SPECIAL ACCOUNTING PROVISION FOR SHOPPING CENTERS.

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, 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 cancellation. With said statements, Lessee shall tender payment of any balance due under the percentage rental fee as set forth in Section D. Said statement shall be prepared by a Certified Public Accountant, licensed in the State of Arizona, New Mexico or Utah, in conformity with GAAP. Any duly authorized representative of the United States Government, or any qualified accounting agent or agents appointed by the Lessor, shall have access to and the right to examine and audit any pertinent books, documents, papers, and records of Lessee’s tenants, if any, relating to this Lease during the normal business hours of any working day. Lessee shall insert a similar provision in all subleases and shall make available to said representative, agent, or agents, all books and records of Lessee’s tenants which may be requested or may be necessary for completion of a full audit of all business conducted on the leased premises. The acceptance by the Lessor of any monies paid to Lessor 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 at any time 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 hereinbefore described. 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, 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.

3.2 FIXTURES AND PERSONAL PROPERTY.

Any trade fixtures, signs, and other personal property of Lessee not permanently affixed to the premises shall remain the property of Lessee and Lessor agrees that Lessee shall have the right, provided that Lessee be not in default under the terms of this Lease, at any time, and from time to time, to remove any and all of its trade fixtures, signs, and other personal property which it may have stored or installed in the premises, including but not limited to counters, shelves, showcases, mirrors, and other movable personal property. Nothing contained in this Article shall be deemed or construed to permit or allow the Lessee to move such personal property, without the immediate replacement thereof with similar personal property or better quality, as to render the premises unsuitable for conducting the type of business specified in this Lease. Lessee, at its expense, shall immediately repair any damage occasioned to the premises by reason of the removal of any such trade fixtures, signs, and other personal property, and upon the last day of the Lease Term or a date of earlier termination of this Lease, shall leave the premises in a neat and clean condition, free of debris.

All improvements to the premises by Lessee including, but not limited to, light fixtures, floor coverings, and partitions, but excluding trade fixtures and signs, shall be considered as improvements and shall become the property of Lessor upon expiration or earlier termination of this Lease, unless Lessor by written notice given prior to the date of expiration or upon the date of earlier termination of this Lease shall require Lessee to remove such improvements in which case Lessee shall repair any damage caused to the premises by such removal so as to return the premises to its original condition, ordinary wear and tear excepted.

Lessee shall pay before delinquency all taxes, assessments, license fees, and public charges levied, assessed, or imposed upon its business operation, as well as upon its trade fixtures, leasehold improvements (including, but not limited to, those which Lessee is required to make in accordance with the provisions of this Lease), merchandise, and the like. The risk of loss of, or damage to, such improvements, personal property, and goods which may be stored in the premises. In the event such items of property are assessed within property of the Lessor, then, and in such event, such assessment shall be equitably divided between Lessor and Lessee to the end that Lessee shall pay only its equitable proportion of such assessments. Lessor shall determine the basis of prorating of any such assessments and such determination shall be binding upon both Lessor and Lessee.

3.3 REPAIRS AND MAINTENANCE.

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, except that portion of the premises to be maintained by Lessor as hereinafter provided, and 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 repairs, 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.

On default of Lessee in making such repairs, replacements, or maintenance work and upon reasonable written notice to Lessee, not less than 30 days, Lessor may, but shall not be required to make such repairs, replacements and other such work for Lessee’s account, and the expense thereof shall constitute and be collectible as additional rent.

A. Lessee shall keep and maintain in good and leasable condition the roof, exterior walls, structural parts of the premises, the fire protection system, structural floor, and pipes and conduits outside the premises for the furnishments to the premises of various utilities (except to the extent that the same are the obligations of the appropriate public utility company); provided, however, that Lessor shall not be required to make repairs necessitated by reason of the negligence of Lessee or anyone claiming under Lessee, or by reason of the failure of Lessee to perform or observe any conditions or agreements in this Lease contained, or caused by alterations, additions, or improvements made by Lessee or anyone claiming under Lessee. Anything to the contrary notwithstanding contained in this Lease, Lessor shall not in any way be liable to Lessee for failure to make repairs as herein specifically required unless the Lessee has previously notified Lessor in writing of the need of such repairs and Lessor has failed to commence and complete said repairs within a reasonable period of time following receipt of the Lessee’s written notification. As used in this Section, the expression “exterior walls” shall not be deemed to include store fronts, plate glass windows, interior walls, doors, and all glass, both exterior and interior.
glass, window cases, or window frames, door or door frames, security gates, or similar enclosures. It is understood and agreed that Lessor shall be under no obligation to make any repairs, alterations, renewals, replacements, or improvements to and upon the premises of property installed or kept thereon by Lessee.

3.4 LESSEE'S RIGHT TO MAKE ALTERATIONS.

B. Lessee agrees to permit Lessor 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 incidental to any portion of the Shopping Center adjacent to, above, or below the premises. 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 Lessor'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.

3.5 POSSESSION AND USE.

Possession of the premises shall be delivered to Lessee free and clear of all tenants and occupants and the rights of either. Lessor shall use the premises solely for the purposes and uses above the trade names specified in Article I hereof. Lessee shall not use or permit the premises to be used for any other purpose or purposes or under any other trade name whatsoever without the written consent of the Lessor. Lessee shall not, without the prior written consent of Lessor, sell merchandise from vending machines or allow any coin operated vending machines on the premises without the written consent of the Lessor. Lessee further covenants and agrees that it will not use or suffer or permit any person or persons to use the premises or any part thereof for conducting therein a secondhand store, auction, distress or fire sale or bankruptcy or going-out-of-business sale, or for any use or purpose in violation of the laws of the United States of America, or any of the states, counties, and cities wherein the premises are a part, nor shall Lessor be required under any insurance policy or policies or (ii) that Lessor may agree that none of such alterations, additions, or improvements shall be permitted by Lessor under such insurance it may carry upon the building of which the premises are a part, nor shall Lessor be required under any provisions for reconstruction of the premises to reinstall any such alterations, improvements, or additions.

Lessee covenants and agrees that, continuously and uninterruptedly after the initial opening for business, it will 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 disposed of in 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 remain outside the defined exterior walls or roof, permanent portable signs, devices or any other object to be stored or to remain outside the defined exterior walls or roof, permanent doorways of the premises, or in hallways. No aerial or antenna shall be erected on the roof or exterior walls of the premises without the written consent of the Lessor. Any aerial or antenna so installed without such written consent shall be subject to removal without notice at any time. In addition, Lessee shall not solicit in any manner in any of the automobile parking lots and common areas of the enclosed mall of the Shopping Center without having first obtained the written approval of Lessor. Lessor reserves the right to further regulate the activities of Lessee in regard to deliveries and servicing of the premises, and Lessee agrees to abide by such further regulations of Lessor.

Lessee covenants and agrees that, continuously and uninterruptedly 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 disposed of in 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 remain outside the defined exterior walls or roof, permanent portable signs, devices or any other object to be stored or to remain outside the defined exterior walls or roof, permanent doorways of the premises, or in hallways. No aerial or antenna shall be erected on the roof or exterior walls of the premises without the written consent of the Lessor. Any aerial or antenna so installed without such written consent shall be subject to removal without notice at any time. In addition, Lessee shall not solicit in any manner in any of the automobile parking lots and common areas of the enclosed mall of the Shopping Center without having first obtained the written approval of Lessor. Lessor reserves the right to further regulate the activities of Lessee in regard to deliveries and servicing of the premises, and Lessee agrees to abide by such further regulations of Lessor.

Lessee covenants and agrees that, continuously and uninterruptedly 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 disposed of in 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 remain outside the defined exterior walls or roof, permanent portable signs, devices or any other object to be stored or to remain outside the defined exterior walls or roof, permanent doorways of the premises, or in hallways. No aerial or antenna shall be erected on the roof or exterior walls of the premises without the written consent of the Lessor. Any aerial or antenna so installed without such written consent shall be subject to removal without notice at any time. In addition, Lessee shall not solicit in any manner in any of the automobile parking lots and common areas of the enclosed mall of the Shopping Center without having first obtained the written approval of Lessor. Lessor reserves the right to further regulate the activities of Lessee in regard to deliveries and servicing of the premises, and Lessee agrees to abide by such further regulations of Lessor.
be emptied and trash removed at Lessee’s cost and expense as set out in Article 11 hereof.

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 for business those hours and days which are regular and customary for such business. Lessee further agrees to have its window displays, exterior signs and exterior advertising displays adequately illuminated continuously during such hours. 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.

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. 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. Lessee shall use only such space in the premises for office, clerical and other non-selling purposes (vi) as is reasonably required for Lessee’s business on the premises.

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.

3.7 ADVERTISING MEDIA.

Lessee shall not affix or maintain upon the glass panes and supports of the show windows (and within 24 inches of any window), doors and the exterior walls of the premises, any signs, advertising placards, names, insignia, trademarks, descriptive material or any other such like item or items unless Lessee shall have first received the written approval of Lessor as to size, type, color, location, copy, nature and display qualities. Anything to the contrary of this Lease notwithstanding, Lessee shall not affix any sign to the roof of the premises. In addition, no advertising medium shall be utilized by Lessee which can be heard or experienced outside Lessee’s premises, including without limiting the generality of the foregoing: flash lights, searchlights, loudspeakers, phonographs, radios or televisions; nor shall Lessee display, paint or place or cause to be displayed, painted or placed, any handbills, bumper stickers or other advertising devices on any vehicle parked in the parking area of the Shopping Center, whether belonging to Lessee, or to Lessee’s agent or to any other person; nor shall Lessee distribute, or cause to be distributed, in the Shopping Center, any handbills or other advertising devices without having first obtained the written approval of Lessor.

3.8 COMMON AREAS.

The term “common areas” refers to all areas within the exterior boundaries of the Shopping Center which are now or hereafter made available for general use, convenience and benefit of Lessor and other persons entitled to occupy said common areas generally as are necessary for the successful operation of the Shopping Center 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 owners of Lessee, and other owners and occupants of the Land 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 be 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, sweeping and janitorial services; maintenance and repair of sidewalks, curbs, and Shopping Center signs; maintenance and repair of sprinkler systems, planting and landscaping; (v) directional signs and other markers and bumpers; (vi) personnel to implement such services including, if Lessor deems necessary, the cost of security guards; (vii) 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 Lessees in the Shopping Center; (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 installations of the common areas shall be at the sole cost and expense of Lessor of the Shopping Center and shall not in any event be charged to Lessee.

Should Lessor add to or make available additional common areas not originally contemplated as part of the Shopping Center, 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.

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 said 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 thereof. Nothing contained herein shall be deemed to create any liability upon Lessor or the United States for any damage to motor vehicles of customers or employees, or for loss of property within such motor vehicles.

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 nonvalidated parking.
Lessor reserves the right, to utilize portions of the common areas entitled to the use of said automobile parking facilities. The rights of Lessor shall apply equally and without discrimination to all parties affected by the 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.

Lessor shall have the right to designate the particular parking areas of the common areas within the Shopping Center parking area, or reasonably close thereto. Lessor shall have the right to designate the particular parking area 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 continued in all force and effect; or

Lessor shall at all times during the term of this Lease have the sole and exclusive control of the common areas, and may at any time 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.

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.

It is understood that the employees of Lessee and the other Lessees of Lessor within the Shopping Center and the employees of other businesses within the Shopping Center 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 Shopping Center. Lessor agrees to furnish and/or cause to be furnished either within the Shopping Center 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 continued. Lessee and its employees shall park their cars only in those portions of the common areas, if any, designated by Lessor.

Lessee's share of common area expenses shall be equal to Lessee's proportionate percentage. The term "Lessee's proportionate percentage" as used through this Lease shall be equal to a fraction the numerator of which is the Floor Area of the premises and the denominator of which shall be the Floor Area of all the areas available for exclusive use and occupancy by the Lessees of the Shopping Center.

The term "Floor Area" as used throughout this Lease shall be deemed to mean and include all areas for the exclusive use and occupancy by the Lessees of the Shopping Center 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. 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 (i) through (xii) of this Article. 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. If paid payments exceed Lessee's share of said common area expenses, Lessee shall be entitled to offset the excess against payments made therefor.

Failure of Lessee to pay any of the charges required to be paid under this Article shall constitute a default under the terms hereof in like manner as failure to pay rental when due.

3.9 SPECIAL SUBLEASE REQUIREMENT FOR SHOPPING CENTERS.

The Lessee may enter into subleases, in whole or in part, without the approval of the Lessor, provided:

A. Lessee provides a copy of the sublease to the Lessor; and

B. Lessor receives a portion of the rent from the subleasing, as agreed between the Lessor and Lessee; and

C. the purposes set forth in the sublease is legitimate and for lawful purposes.

3.10 SPECIAL INSURANCE REQUIREMENT FOR SHOPPING CENTERS.

Certificates of insurance shall be addressed as follows: Navajo Nation Shopping Centers, P.O. Box 478, Window Rock, Arizona 86515.

3.11 SPECIAL RECONSTRUCTION PROVISION FOR SHOPPING CENTERS.

In the event the premises be damaged by fire or other peril, covered by Lessor's Fire and Extended Coverage Insurance, Lessor shall:

A. Within a period of one hundred and eighty (180) days thereafter, commence repairs, reconstruction and restoration of said premises and prosecute the same diligently to completion, in which event this Lease shall continue in full force and effect; or

B. In the event of a partial or total destruction of the premises, only during the last three (3) years of the term hereof, Lessor and Lessee shall each have the option to terminate this Lease upon giving written notice to the other of exercise thereof within thirty (30) days after such destruction. For the purposes of this paragraph, "partial destruction" shall be a destruction of an extent of at least thirty-three and one-third percent (33 1/3%) of the then full replacement cost of the premises as of the date of destruction. All insurance proceeds, in the case of reconstruction shall be held in trust and applied to the payment of such reconstruction, as such reconstruction progresses.

C. In the event the premises shall be damaged as a result of any flood, earthquake, act of war, nuclear reaction, non-nuclear radiation or radioactive contamination, or from any other casualty not covered by Lessor's Fire and Extended Coverage Insurance, to any extent whatsoever, the Lessor may, within one
hundred and eighty (180) days following the date of such damage, commence repair, reconstruction or restoration of said premises and prosecute the same diligently to completion, in which event this Lease shall continue in full force and effect, or within said period elect not to so repair, reconstruct or restore said premises in which event this Lease shall cease and terminate. In either such event, Lessor shall give the Lessee written notice of its intention within said period.

D. In the event of any reconstruction of the premises under this Article said reconstruction shall be in strict conformity with the provisions of this Lease set forth as "Description of Lessor's Work" and "Description of Lessee's Work." Notwithstanding that all reconstruction work shall be performed by Lessor's contractor, unless Lessor shall otherwise agree in writing, Lessor's obligation to reconstruct the premises shall be only to the extent of the work as described in "Description of Lessor's Work," Lessee, at its sole cost and expense, shall be responsible for the repairs and restorations of all items set forth in "Description of Lessee's Work" and the replacement of its stock in trade, trade fixtures, furniture, furnishings and equipment. Lessee shall commence such installation of fixtures, equipment and merchandise promptly, upon delivery to it of possession of the premises and shall diligently prosecute such installation to completion.

E. Upon any termination of this Lease under any of the provisions of this Article, the parties shall be released thereby without further obligations to the other party coincident with the surrender of possession of the premises to the Lessor, except for items which have theretofore accrued and be then unpaid. In the event of termination, all proceeds from Lessor's Fire and Extended Coverage Insurance covering items set forth in "Description of Lessor's Work" and Lessor's premises shall go to Lessor.

F. All items of rent must abate for any period of time that Lessee is prevented from operating in the Premises due to such damage and destruction.

3.12 SIGNS.

Subject to specific requirements for each shopping center included as an attachment to each shopping center lease, and incorporated therein as a material term, Lessee shall, at its own cost and expense, install a suitable identification sign of such size, design and character as Lessor shall first approve in writing at a place or places designated by Lessor. Lessee shall maintain any such sign or other installation in good condition and repair. Other than such permitted signs, Lessee shall not place or install or suffer to be placed or installed or maintain any sign upon or outside the Premises or in the Shopping Center. Lessee shall not place or install or suffer to be placed or installed on the exterior of the Premises any awning, canopy, banner, flag, pennant, aerial, antenna or the like; nor shall Lessee place or maintain on the glass of any window or door of the Premises any sign, decoration, lettering, advertising matter, shade or blind or other thing of any kind. Lessor shall have the right, without liability and with or without notice to Lessee, to remove any signs installed by Lessee in violation of this Paragraph and to charge Lessee for the cost of such removal and/or any repairs necessitated thereby.

3.13 ADDITIONAL NOTICE REQUIREMENT FOR SHOPPING CENTERS.

In addition to all other Notice requirements in the Lease, Notices relating to Navajo Nation Shopping Centers shall be sent to:

General Manager
Navajo Nation Shopping Centers
P.O. Box 478
Window Rock, (Navajo Nation) Arizona 86515

3.14 LESSOR’S RESERVATIONS AND RIGHTS

Lessor reserves the absolute right to effect such other tenancies in the Shopping Center as Lessor, in the exercise of its sole business judgment, shall determine to best promote the interests of the Shopping Center, 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 space 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.

**** END OF PART II ****
LEASE MODIFICATION
BUSINESS SITE LEASE NO. ______________

It is hereby agreed by and between the Navajo Nation, Lessor, and ________________________________, Lessee, and ________________________, Surety, that Business Site Lease No. ________________, be modified this _____ day of ____________, 20___.

WHEREAS ___________________ _______________________________________________________
___________________________________________________________________________________
WHEREAS ___________________ _______________________________________________________
___________________________________________________________________________________
WHEREAS ___________________ _______________________________________________________
___________________________________________________________________________________
WHEREAS ___________________ _______________________________________________________
___________________________________________________________________________________

NOW THEREFORE

An amendment to Paragraph _______; to [read, delete, etc.]:

This modification does not change any of the terms and conditions of the base lease or stipulations except as specifically set forth herein. All other terms and conditions shall remain in force and effect.

_________________________ Date
Surety-in-fact

_________________________ Date
Lessee(s)

_________________________ Date
Lessee(s)

Navajo Nation, Lessor

By: __________________________
    President/Vice-President

Date: _________________________
ASSIGNMENT OF BUSINESS SITE 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 Navajo Nation Business Site 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 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 but otherwise shall be of full force and effect irrevocable by me.

Name of Assignor(s):
_________________________________________________________  Signature of Assignor  Date

Address of Assignor(s):
_________________________________________________________
_________________________________________________________

Name of Assignee(s):
_________________________________________________________  Signature of Assignee  Date

Address of Assignee(s):
_________________________________________________________
_________________________________________________________

ASSUMPTION OF LEASE

I, the Assignee named below, for in consideration of the approval of the above Assignment by the Navajo Nation, 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 Navajo Nation Business Site 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 but otherwise shall be of full force and effect irrevocable by me.

DATED this ______ day of ____________, 20____.

STATE OF ____________ ) §
COUNTY OF ____________)

This instrument was acknowledged before me this _____ day of __________2009, by ____________________________.

In witness whereof, I have hereunto set my hand and seal.

MY COMMISSION EXPIRES:

_________________________________________________________  Notary Public
Date of Original Lease Being Assigned: _____________
Business Site Lease No.: ________________________

DESCRIPTION OF PREMISES
(Must agree exactly with description appearing in Lease)

The above assignment and assumption are hereby approved.

NAVAJO NATION, LESSOR

By: ____________________________
    President/Vice-President

Date: __________________________

VERSION 8/05/09 [COMPLEX]
EDCAU-39-09
ASSIGNMENT OF BUSINESS SITE 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 Navajo Nation Business Site Lease No. ____________, describe 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 for portion of the term mentioned in said lease, together with all the rights 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 but otherwise shall be of full force and effect irrevocable by me.

Name of Assignor(s):

__________________________________________  Signature of Assignor  Date

Address of Assignor(s):

__________________________________________  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, 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 Navajo Nation Business Site 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 but otherwise shall be of full force and effect irrevocable by me.

DATED this ______ day of ____________, 20____.

Name of Assignee(s):

__________________________________________  Signature of Assignee  Date

Address of Assignee(s):

__________________________________________  Signature of Assignee  Date

STATE OF _________)

COUNTY OF ____________)

This instrument was acknowledged before me this _____ day of ___________ 2009, by _______

In witness whereof, I have hereunto set my hand and seal.

MY COMMISSION EXPIRES:

__________________________________________  Notary Public
Date of Original Lease Being Assigned: _____________
Business Site Lease No.: ________________________

DESCRIPTION OF PREMISES
(Must agree exactly with description appearing in Lease)

The above assignment and assumption are hereby approved.

NAVAJO NATION, LESSOR

By: ______________________________
   President/Vice-President

Date: _____________________________
REVOCABLE USE PERMIT
DIVISION OF ECONOMIC DEVELOPMENT

This Permit entered into by and between the Navajo Nation, hereinafter called the Permitter, whose
Address is: Division of Economic Development, P.O. Box 663, Window Rock, Arizona 86515, and ______
__________________________, hereinafter called Permittee, whose address is: ___________________
__________________________ under the provision of the Navajo Nation Business Leasing Regulations of
2005, hereinafter referred to as the "Tribal Regulations".

1. The Permitter hereby permits the Permittee to use a tract of tribal trust land being 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 ______ [days, months or year], with an option
to renew of ______ [days, months or year], beginning on the date of approval by the Navajo Nation. To
exercise an option the Permittee must notify the Permitter five (5) days before the Permit expires,
otherwise, the Permitter may select another Permittee.

3. RENTAL. The Permittee shall pay to the Permitter $______ per [days, months or year] for the use
of the premises described above for the term of the permit, unless otherwise agreed in writing. Payments
shall be made payable to the Navajo Nation by cashier’s check or money order.

4. UTILITY SERVICE LINE AGREEMENT. Permittee specifically is authorized to enter into appropriate
service agreement with utility companies for the provision of 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. Upon signing the agreement the Permittee
agrees that it has had sufficient opportunity to examine and inspect the condition of the premises. Upon
termination of this permit, the Permittee will clean up all refuse in the permitted areas, reseed denuded
areas, and leave it in a neat and presentable condition satisfactory to the Permitter. The Navajo
Environmental Protection Agency will be responsible for inspection of the areas and determining that the
Permittee has complied with provisions of the Permit to the satisfaction of the Permitter.

6. UNLAWFUL CONDUCT/ACTIVITIES. The Permittee further agrees not to use or allow any part of
said property and/or premises for any unlawful conduct/activities. Violation of this clause by the Permittee
shall void the Permit.

7. LIABILITY FOR USE. [Permittee shall obtain General Liability Insurance, Fire and Casualty
Insurance coverage with the minimum coverage acceptable to the Division of Economic
Development until the Permit expires, upon approval of the Permit. All insurers must be from a
Nationally Accredited Insurance Company with a financial strength rating of "Au or equivalent,
and authorized to do business in the state where the premises are located. All policies required
under this Permit shall name the Navajo Nation and United States as an additional named insured
and certificates shall be sent to the Division of Economic Development.] OR [Permittee shall agree
to fully indemnify the Navajo Nation and the United States and agree-to-the terms and conditions
of the Indemnification Form, attached hereto as Exhibit "B."] It is further understood and agreed that
the Permitter shall hold the Permit holder harmless from any and all claims or liabilities arising out of the use,
occupancy, or 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. All improvements placed on the permitted premises shall be constructed in a good 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 a pleasant appearance as determined by Permitter and all service areas shall be screened from public view to the satisfaction of Permitter. Permittee shall, at all times during the term of this Permit and at Permitter'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.

9. 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 his surety or sureties, as well as to the Permitter.

10. 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 his surety shall be notified of any such changes in the status of the land.

11. TERMINATION: This Permit shall be terminated by either party by giving a thirty (30) days notice in writing to the other party by certified mail. 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 express written consent. Except as otherwise provided in this Permit, all buildings and improvements, excluding removable personal property and trade fixtures, on the leased property shall remain on said property after termination of this Permit and shall thereupon become the property of Permitter. However, Permitter may require Permittee, at Permitter's expense, to remove improvements and restore the premises to the original state, within reason, upon termination of this Permit. Any removal of property by Permittee must be completed within ninety (90) days after termination of this Permit, such presence on the property shall not be deemed a holdover or trespass, provided Permittee is acting in a diligent manner to remove such property. Upon the expiration of the ninety (90) day extension, the Permitter has the right to grant another extension or re-enter the premises, at such time the Permittee shall have no right or interest to the premises or any remaining improvements.

12. INTEREST OF MEMBER OF CONGRESS. No member of Congress shall be admitted to any share or part of this Permit or to any benefit that may arise therefrom. This provision shall not be constructed to extend to this Permit if made with a corporation or company for its general benefit.

13. ENVIRONMENT. Permittee shall take all necessary measures to assure compliance with applicable Federal and Tribal laws including the Navajo Nation Environmental Review in accordance with the Navajo Nation Business Leasing Rules and Regulations now in force and effect and any amendments thereto which by this reference are made a part hereof. This shall include, but shall not be limited to, aesthetics, erosion controls and protection of timber or other vegetation.

14. SECURITY. Except when prohibited by law or regulations, Permittee shall provide Security to the Navajo Nation or its authorized representative for the faithful performance of this Permit as described in the terms and conditions. The Security amount shall be equal to ______ [days, months or year] rent.

15. TRANSFER, SUBLEASING. The leased premises shall not be subleased, assigned nor transferred, by the Permitter; such action shall be a material violation of the Permit.

16. 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.

17. 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 Nation 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.

18. PERMIT REQUIREMENTS NOT EXCLUSIVE. Nothing in this 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 at a later date.

19. 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 Navajo Nation in connection with or arising out of the terms and conditions of this Permit Lease shall be brought only in the Courts of the Navajo Nation, and no action or proceeding shall be brought by Permit against the Navajo Nation, in any court or administrative body of any state.

20. 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.

21. VALIDITY. Any modification thereof or amendment to this Permit shall not be valid or binding upon either party hereto, until approved by the Navajo Nation. A sub-permit, assignment, modification or amendments may not be entered into without the written consent of Division of Economic Development.

22. 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.

23. 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:

{name}
{address1}
{address2}
[phone number]
[fax number]

Permittee (s):

{name}
{address1}
{address2}
[phone number]
[fax number]
IN WITNESS WHEREOF, the parties hereto have executed the Permit this _____ day of __________, 20____.

Name of Permittee(s):

___________________________________________  Signature of Permittee(s)  Date

Address of Permittee(s):

___________________________________________  Signature of Permittee(s)  Date

___________________________________________  Signature of Permittee(s)  Date

NAVAJO NATION, PERMITTER

By: ________________________________________
    Executive Director
    Division of Economic Development

Date: ________________________________________
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 Business Site Lease has been previously approved by the Navajo Nation as Lease No. __________________.

WITNESS

SECTION I. RECITALS

A. The Assignor, also the Lessee, under a certain Lease Agreement Number __________________, a copy of which is attached as Exhibit "A", has been approved by the Navajo Nation and has been issued for a period of __________________ commencing on the date the Lease was approved by the Navajo Nation. The Lessor under this Lease was the Navajo Nation ("Lessor") and the Lease was approved on, __________________, 20____.

B. Assignee has agreed to make a pre-development loan in the amount of $_____________ to finance planning and pre-development of _________________________________ and is an amount sufficient to assure completion of the project. The pre-development loan will be made pursuant to a Loan Agreement dated ___________________, 20____, and a Promissory Note ("Note") as evidence of its repayment obligation in connection with the Loan Agreement. The Loan Agreement and Promissory Note will be amended at such time as the financing needs for the entire project have been determined by the pre-development study.

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 interest in, 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 as they fall due under 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, change, supplement, alter or amend the Lease, either orally or in writing, without the express written consent of the Assignee. Any such termination, cancellation, modification, change, supplement, alteration, or amendment, of the Lease 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 requested changes or amendments to the Lease which do 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 all covenants, terms and conditions imposed on or assumed under the Lease.

B. If Assignor fails to fully perform and comply with the Lease and the Lessor notifies the Assignee in writing of the default under the terms provided for in Lease No. ________________, Assignee shall not take action against the Navajo Nation in the event of such a default, but shall have the option, in its sole discretion, but not the obligation, to take any actions it deems necessary or desirable to cure the default by the Assignor. On receipt by Assignee of any written notice of default of the Lease by the Lessor, Assignee may rely on the notice and take any reasonable action to cure the default even though the existence of such a default, or the nature thereof, is questioned or denied by the Assignor, or by any party on behalf of the Assignor, including taking possession of the leased premises. If Assignee takes possession of the premises it shall have the right to enforce the Lease to the same extent as if it were the original Lessee under 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.

D. Assignee may pay and expend reasonable sums of money that are necessary to prevent or cure any default on the Lease by the Assignor and the Assignor in turn, agrees to pay to Assignee, immediately and without demand, all sums paid and expended by Assignee in preventing or curing a default of the Lease by the Assignor together with interest thereon from the date of each such payment by Assignee at the rate of the Wall Street Journal Prime Rate plus two percent adjusted daily from the date of Assignee payment. All sums so paid and expended by Assignee and the interest thereon shall be secured by this assignment.

SECTION V. RELEASE OR FORBEARANCE

No release or forbearance by Assignee of any of the Assignor 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. ACCELERATION AND RIGHT OF POSSESSION OR SALE

Upon the event of default, as defined in the Loan Agreement and Note, and upon the Assignor's failure to cure within the period provided in the Loan Agreement and Note, Assignee shall be entitled to immediate possession of the leased premises subject to the terms and conditions of the Lease, to which Assignee expressly agrees. Assignee further expressly 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 this Assignment.
SECTION VIII. 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 exercise its right to pay Assignee the full unpaid amount and interest due under the Loan Agreement and Note, plus reasonable sale and enforcement costs incurred through the date of payment, this Assignment shall automatically terminate on the date such right is exercise, 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, avail 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 Lessee 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 of the terms and conditions of the Lease and shall expressly assume those terms and conditions as a condition of the sale. Any purported sale where the purchaser does not expressly assume the terms and conditions of the Lease shall be null and void and without effect.

SECTION IX. 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 cease 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 X. 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.
IN WITNESS WHEREOF, the parties have executed this Collateral Assignment on the day and year first above written.

FOR THE ASSIGNOR:

__________________________________________
[name], [title]
[name of business]

DATE: ________________________________

FOR THE ASSIGNEE:

__________________________________________
[name], [title]
[name of business]

DATE: ________________________________

APPROVED

By: ________________________________
    President/Vice-President

Date: ________________________________
MUTUAL TERMINATION
BUSINESS SITE LEASE NO. ______________

THIS TERMINATION, in sextuplicate, is made and entered into this _____ day of _________________, 20____, by and between THE NAVAJO NATION, hereinafter called Lessor, whose address is: P.O. Box 663, Window Rock, Navajo Nation (Arizona) 86515, and, 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 Site Leasing Regulations of 2005, hereinafter called the Tribal Regulations.

WHEREAS:

1. The Navajo Nation ("Lessor") and ___________________________________ ("Lessees") made and entered into Business Site Lease No. ____________________ ("Lease") effective __________________, 20____.

2. Reason(s) for mutual termination:

NOW THEREFORE:

1. The Lessees and the Lessor mutually agree that it is in the best interest of all parties to terminate Business Site Lease No. ________________

2. The lease is terminated under the following terms and conditions.
   a. This mutual termination shall not be valid until approved by the Navajo Nation.
   b. This mutual termination shall not relieve the Lessee of their environmental cleanup obligation, if any, to the Navajo Nation incurred prior to the termination.
   c. This mutual termination shall not relieve the Lessee of any financial obligation to the Navajo Nation.

IN WITNESS WHEREOF, the parties hereto have set their hands.

Surety-in-fact Date   Lessee(s) Date

Navajo Nation, Lessor

By: __________________________
    President/Vice-President

Date: _________________________
SECURITY DEPOSIT AGREEMENT

The Navajo Nation Regional Business Development Office, Division of Economic Development, hereinafter named "Lessor," Post Office Box 663, Window Rock, Arizona 86515 entered into a Business Site Lease No. __________________, hereinafter named "Lease" (Attached hereto) with ______________ ______________________, hereinafter named "Lessee," whose address is: ______________________ ______________________, for a term of___________ years at an annual rental value of $ _____.

Terms and Conditions:

1. The Lessee has deposited with the Lessor the sum of $______, [one quarter OR one half] of one year of annual rental payment, hereinafter referred as a "Security Deposit" as security and performance for the prompt and full payment of the annual rent of the above-mentioned lease, and any modifications or amendments to the lease.

2. In accordance with the Intra-Departmental Deposit Account Agreement, the Real Estate Department, Division of Economic Development shall deposit this security with the Cashier's Office of the Division of Finance.

3. The Security Deposit 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.

4. Provided the Lessee has paid all of the rent required under the lease and meet all other applicable terms and conditions of the lease, the Lessor shall return any remaining balance (security deposit) of the security upon the expiration, or earlier termination, extension or renewal, of this lease.

5. Upon default of the lease by the Lessee, the Lessor shall retain the Security Deposit to remedy the default. The Lessor shall use the security deposit to pay the outstanding balance of the lease and thereby transfer the funds from the "Security Deposit Agreement" account to the "General Funds" account.

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 one (1) of this agreement or any other agreed amount.

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 both parties.

1 Default is defined pursuant to Section7.1 (1), Business Management Plan.
9. Any disputes arising under this agreement shall be settled administratively under the laws of the Navajo Nation

10. Nothing herein shall be construed, expressly or impliedly, as a waiver of the sovereign immunity of the Navajo Nation.

FOR THE LESSOR:

__________________________________________  DATE: __________________________

[name], Department Manager
Real Estate Department
Navajo Nation

FOR THE LESSEE:

__________________________________________  DATE: __________________________

[name], [title]
[name of business]
Sample Business Plan Outline

Cover Sheet: name and business, names, owners, phone, date.

Table of Contents:

I. Statement of Purpose – brief statement of the objectives of the business plan, including the amount, type, terms and proposed uses of any financing requested.

II. Executive Summary: overview summarizing key points and major findings in the business plan sections that follow.

III. Description of Business:
   a. Business Concept – type of business (agricultural, construction, manufacturing, retail or service), current status (startup, expansion, or buyout), form of ownership (sole proprietorship, partnership, corporation, joint venture, or cooperative).
   b. Product/Service Description – major products or services, including proposed new products/services.
   c. Key Production Factors – raw materials, utilities, transportation and labor availability; Environmental and safety considerations; technical and equipment requirements.
   d. Location and Physical Facilities – regional, local and site-specific location factors; Description of existing or proposed facilities. Layout plans of the building and facilities.
   e. Include a Map of the Location – access road.
   f. Status of Current Operation (for business expansions and buyouts) – existing products, historic and current financial indicators (sales and profits), employment statistics.
   g. Tribal and Other Local Benefits – expected revenues, employment and other beneficial impacts on the economy.
   h. Relationship to Tribal Economic Development Strategy – applies primarily to tribally sponsored and reservation-based projects.

IV. Market analysis
   a. Market Description – key market determinants (price, quality, service, method of delivery); local, regional, or national market area; private and/or public market sectors.
   b. General Market Trend – overall economic conditions in the defined market area; industry and business-specific market trends.
   c. Competition – relative strengths and weaknesses of major competitors; basis for competing successfully (e.g., better price, quality of service).
   d. Market Projections – realistically projected market share and sales volume (based upon the ongoing market considerations).

V. Organization and management:
   a. Legal form of organization (refer to the attached business structures for the following)
      • Sole Proprietor
      • Partnership
      • Limited Partnership
      • Limited Liability Company
      • S Corporation
      • C Corporation
b. Management plan – key management position descriptions and reporting relationships; names of key management personnel and brief descriptions of qualifications; organizational chart depicting reporting relationships; number of personnel needed.
c. Training plan – applies primarily to start-ups and expansions.

VI. Financial analysis
a. Capital Requirement – funds needed for business startup (renovation, equipment purchase, inventory purchases, etc.), expansion or buyout; working capital required for ongoing operations.
b. Structure of Financing – equity and debt financing secured or requested to meet capital requirements.
c. Financial Forecast – forecasted for the next three years
   • Income Statement
   • Cash Flow Forecast
   • Balance Sheet
d. Explanatory Notes to Financial Forecast – statements regarding the research data and key assumptions on which the financial forecasts are based.
e. Key Financial Ratios and Measures of Performance – debt/equity and debt coverage ratios; rate of return on equity and assets; accounts receivable and inventory turnover rates.
f. Break-Even Analysis
g. Historic Financial Statements – for existing businesses.

VII. Supporting documents:
Detailed product descriptions, technical specifications, photographs and promotional materials; tentative business buy/sell agreement; cost quotations from building contractors, equipment dealers, insurance agents and other suppliers; inventories of existing business equipment and property, appraisals of business equipment and property; letters of intent to hire, contracts in hand or in progress; franchise or marketing agreements; management agreements resumes of key personnel; organizational documents (partnership, joint venture of cooperative agreement, or articles of incorporation and by-laws); contract and lease agreements; loans payable; loan amortization schedules, current personal financial statements and credit profile(s) of owner(s); federal income tax return(s) of owner(s) and business for the past three years.
EMERGENCY OPERATING AGREEMENT

EMERGENCY OPERATING AGREEMENT made this _____ day of ____________, 20___, by and between DIVISION OF ECONOMIC DEVELOPMENT, hereinafter referred to as "DED", and, _______________________, hereinafter referred to as "Operator".

Recitals

WHEREAS ________________ Business Site is not currently being used and existing structures are subject to vandalism;

WHEREAS ________________ Business Site is within the jurisdiction of the Navajo Nation;

WHEREAS ________________ Business Site includes approximately _______ acres;

WHEREAS the property is available as a business site lease it needs to be occupied for security and maintenance of the business so that the Navajo Nation continues to benefit from the business opportunities.

WHEREAS Navajo Nation desires to engage the services of the Operator to manage and operate this site, on a temporary and emergency basis, until a Business Site Lease can be issued, which may be incumbent upon the operator being able to exercise the development efforts and or related interest of the Navajo Nation. 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 Business Site until a formal lease from the Navajo Nation for the premises is executed and approved.

2. TERM AND RENTAL: The use of this Agreement will be limited to a term of ______ [days, months or year] following the date this Agreement is signed; however, may be renewed. Operator must give the DED Division Director 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].

Rent shall be waived, but shall not be construed to be the annual rental for a Business Site Lease or Permit.

3. 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 Nation.

4. EMPLOYEES: Operator shall employ, discharge, and supervise all on-site employees or contractors required for the efficient operation and maintenance of _____________________
Business Site. 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 Nation preference in employment laws in hiring, supervising, and discharging the on-site personnel at Business Site.

5. 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 Navajo Nation and the United States as additional named insureds.

   b. Workers compensation and employer liability insurance to cover the Operator, the employees of the Operator.

6. TERMINATION: This Agreement may be terminated by either party by giving not less than thirty (30) day notice in writing to the other party.

7. CONDEMNATION: This Agreement shall terminate in the event of a total condemnation of Business Site. If a partial condemnation of the property reduces the compensation of Operator by more than ten per cent (10%), Operator may terminate this Agreement.

8. NO PROPERTY INTEREST CREATED: Nothing contained in this Agreement shall be deemed to create or shall be construed as creating in Operator any property interest in the land.

9. 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.

10. OPERATOR AS INDEPENDENT CONTRACTOR: Operator is an independent contractor and not an employee of the Navajo Nation for any purpose.

11. COVENANTS AND CONDITIONS: All of the terms and conditions of this Agreement are expressly intended to be construed as covenants as well as conditions.

12. 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 actually delivered to

   Navajo Nation, Division of Economic Development at P. O. Box 663, 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.

13. 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 Navajo Nation.

Anything in the foregoing to the contrary notwithstanding, Operator may, without the consent of the Navajo Nation, delegate the performance of (but not responsibility for) any duties and obligations of Operator to any independent contractor or entity.

14. 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.

15. SOVEREIGN IMMUNITY: Nothing herein shall be construed to waive the sovereign immunity of the Navajo Nation, explicitly or implicitly.

16. 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.

17. INTEGRATION: The drafting, execution and delivery of this Agreement by the parties have been induces 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.

18. 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: __________________________

{name}, {title}
{name of business}

DIVISION OF ECONOMIC DEVELOPMENT:

_________________________________________________________ DATE: __________________________

{name}, Department Manager

_________________________________________________________ DATE: __________________________

{name}, Division Director
CONDITIONAL USE PERMIT
BY AND BETWEEN
THE NAVAJO NATION AND ________________________________

This Conditional Use Permit ("Permit") is entered into between ________________________________ and the Navajo Nation ("Nation")

WHEREAS ________________________________ is a current Holder of a business site lease in _______________ , Navajo Nation, [New Mexico, Arizona, Utah]; and

WHEREAS ________________________________ is in [e.g. need of additional space for the purpose of expansion of the business] for purposes set forth in the business site lease between the Navajo Nation and ____________________________; and

WHEREAS a ______ acre lot located immediately ____________________________ is vacant and unused; and

WHEREAS this vacant lot is in need of security and maintenance for the development of the land for business purposes and to prevent vandalism; and

WHEREAS this ______ acre lot is currently designated as for [residential, grazing, etc.] purposes under the _______________________ Chapter and has not been withdrawn for business purposes; and

WHEREAS the _______________________ Chapter pursuant to Resolution No. ____________ _________ supports this Permit as in the best interest of the Nation to allow ________________________________ to [e.g. expand its business] onto this lot to increase the number of jobs for the ________ ____________________________ residents and for other surrounding communities; and

WHEREAS the Division of Economic Development ("DED") is currently withdrawing the land for business purposes and in negotiations with ________________________________ to enter into a business site lease for this lot, but requires a temporary permit in place until the business site lease is completed and executed by the Navajo Nation's President.

NOW THEREFORE, the parties under this Permit agree to the following:

1. ________________________________ agrees:
   a. to use the ______ acre lot only for the purposes of ________________________________ ____________; and
   b. to maintain liability, fire and casualty insurance at all times while occupying the ______ acre lot, up to an aggregate amount of $1,000,000 with limits of $300,000 per occurrence. This Insurance must include the Nation and the United States as additional insured parties. A copy of the certificates must be provided to the DED prior to entering on the site; and
c. to provide security and routine maintenance on the ______ acre lot and will be responsible for any and all costs associated with occupation of this lot, including but not limited to utilities.

2. The Nation agrees:

   a. [that no rent will be charged to for use of the ______ acre lot, under this Permit, only, nor assumes rent will not be charged once a business site lease for this lot is obtained] or

   a. [Rent will be charged (BE SPECIFIC, IN ACCORDANCE WITH THE NAVAJO NATION BUSINESS SITE LEASE MANAGEMENT PLAN) rental per (day, month, year, etc.)]

3. The Term of this Permit shall be for ______ [days, months or year] from the date this Permit is signed by the Navajo Nation, however, this term may be extended for another ______ [days, months or year], only if ________________________________is diligently acquiring a business site lease.

4. This Permit may be terminated for any breach of the terms and conditions set forth in this Permit or in the current business site lease by giving a 30 day notice to vacate, from the DED.

5. It is explicitly understood, that the ________________________________ is the primary candidate for a business site lease on this ______ acre lot, however should negotiations fail or lease is not approved the Nation may seek another tenant for the site.

6. This Permit constitutes a complete, final, and fully integrated document, and supersedes any previous agreements, whether written or oral, on this subject matter.

7. The parties agree that this Permit may be specifically enforced through recourse to the Courts of the Navajo Nation, whose laws shall govern the course of dealing between the parties. Any disputes under this Agreement which cannot be informally resolved between the parties may be settled by way of lawsuit in the [Alamo/Tó’ahjílee, Chinle, Crownpoint, Dilkon, Kayenta, Aneth, Ramah, Shiprock, Tuba City or Window Rock] District Court of the Navajo Nation and may, at the discretion of the District Court, be settled by means of referral to the Peacemaker Court. The parties to such a dispute are to bear their own attorney's fees and costs.

8. Should any term of this Permit be found to be invalid under Navajo Nation law by a Court of the Navajo Nation the remainder of the Agreement will remain in full force and effect, and shall be construed as an entire document without the offending clause.

9. Nothing in this Permit shall constitute a waiver, express or implied, of the sovereignty and/or the sovereign immunity of the Nation.
IN WITNESS THEREOF,

PERMITEE:

______________________________
[name], [title]
[name of business]

DATE: ________________________

DIVISION OF ECONOMIC DEVELOPMENT:

______________________________
[name], Division Director

DATE: ________________________
EMERGENCY OPERATING AGREEMENT
CONDITIONAL USE PERMIT
OR REVOCABLE USE PERMIT

INSURANCE PROVISION

I, __________________________________________, [Operator or Permittee], for Business Site Lease No. _______ has been advised by [name], [title], Real Estate Department, Division of Economic Development that pursuant to the Navajo Nation Business Site Lease Administrative Management Plan, Section [12.3(3) (FOR REVOCABLE USE PERMITS) 13.3(3) (FOR CONDITIONAL USE PERMITS) or 14.3(3) (FOR EMERGENCY OPERATING AGREEMENTS)], I will be subject to the following if I do not provide appropriate insurance coverage: (1) Subject to Lawsuit by injured party, for compensatory, consequential, and incidental damages; (2) Subject to loss of personal property: money, car, house; and (3) Indemnify the Nation for all of the above.

DIVISION OF ECONOMIC DEVELOPMENT:

__________________________________________
[operator or permittee], [name]
[title], [name of business]

DATE: ________________________________

[operator or permittee]:

__________________________________________
[operator or permittee], [name]
[title], [name of business]

DATE: ________________________________
Pursuant to the Navajo Nation Business Site Lease Administrative Management Plan, Section [12.3(3) (FOR REVOCABLE USE PERMIT) 13.3(3) (FOR CONDITIONAL USE PERMIT) or 14.3(3) (FOR EMERGENCY OPERATING AGREEMENT)], _____________________________, [Operator or Permittee], shall indemnify, protect, defend and hold harmless the Navajo Nation, Division of Economic Development 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 or Permittee], the conduct of the [Operator or Permittee]'s business, any act, omission, neglect or misconduct of [Operator or Permittee], its agents, contractors, employees or invitees, and out of any Default or Breach by [Operator or Permittee] in the performance in a timely manner of any obligation on the [Operator or Permittee]'s part to be performed under this [Revocable Use Permit, Conditional Use Permit] or 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 Navajo Nation Division of Economic Development by reason of any of the foregoing matters, [Operator or Permittee], upon notice from any Navajo Nation, Division of Economic Development, shall defend the same at [Operator or Permittee]'s expense by counsel reasonably satisfactory to Navajo Nation, Division of Economic Development, and the Navajo Nation, Division of Economic Development shall cooperate with [Operator or Permittee] in such defense. [Operator or Permittee] shall have the right to control such defense and to settle or compromise the claim in cooperation with Navajo Nation, Division of Economic Development as long as such defense, settlement or compromise does not unduly prejudice Navajo Nation Division of Economic Development.

[OPERATOR or PERMITTEE]:

__________________________          _____________________________
[name], [Operator or Permittee]     DATE: __________________________
[name of business]
SUBLEASE

THIS INDENTURE made and entered this ______ day of ___________, 20____, by and between _____
_____________ whose address is: _______________________________________
_________ hereinafter called "Sublessor" and __________________________________ whose address
is: _________________________________________________ hereinafter called "Sublessee."

WITNESSETH:

1. PROPERTY SUBLEASED

For and in consideration of rents and covenants hereinafter specified to be paid or performed by the
Sublessee, the Sublessor hereby subleases and lets to the Sublessee his 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:

[LEGAL DESCRIPTION OF
BUSINESS SITE TRACT]

2. AUTHORIZED PURPOSES

During the term of this Sublease, the Sublessee may provide the following facilities and services and
engage in those enterprises which are specified in the Lease to:

[AUTHORIZED PURPOSES]

3. TERM

This Sublease shall be for the term of __________ years commencing ________________,
20____, except as it may be terminated or extended as provided in Business Site Lease No. ________
___________. The term shall not exceed the Base Lease term.

4. RENTAL

The Sublessee shall pay $______ monthly rent to the Sublessor.

The Sublessee shall pay $______ monthly rent to the Navajo Nation. The rent shall be due on the
first day of the month and if rental is not received on the tenth day of the month a late charge of 10%
of the rental shall be applied. If rental is not received on the 30th day after the day rent is charged, the
Sublease shall be subject to termination. Upon the __________ anniversary of the Lease, the rental shall be reviewed and adjusted by the Lessor in the following manner:

5. **SECURITY**
Lessee agrees to post \[**certificate of deposit, surety bond, letter of credit or cash deposit**\] in the amount of $______, which shall remain in full force for the term of this Sublease. This security shall be posted ______ \[**days or months**\] from execution of the Lease.

6. **ASSIGNMENT**
The Sublessee may assign or transfer the sublease during the term of this Sublease, subject to the written approval of the Sublessor and the Navajo Nation. In the event an assignment or transfer is completed the rent may be subject to re-negotiation.

7. **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, and all improvements hereafter constructed upon or affixed to the land by Sublessee as approved in compliance accordance with the Base Lease and applicable Navajo law. Sublessee is authorized to make any renovations, repairs or alterations unless these exceed $______, then it shall require the consent of the Sublessor and the Navajo Nation. Any demolition or removal of the improvements shall require written approval from the Navajo Nation. Sublessee and the Sublessor shall indemnify and hold harmless the Lessor 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 regulations applicable thereto.

8. **TERMINATION**
This Sublease and all rights hereunder may be terminated in one of the following ways:

a. Upon the expiration of the original term of the Base Lease.

b. Expiration of Sublease term or any renewal or extension thereof.

c. For cause: This Sublease may be terminated for 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.

9. **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 damage by fire. The Sublessee shall, during the full term of this Sublease, and at their own cost and expense, carry appropriate general liability insurance. Said policy to be written jointly to protect the Navajo Nation, Sublessor, Sublessee and the United States. A copy of said policies shall be provided to Lessor or his authorized representative. Any changes or termination to the policy shall be communicated to the Lessor, before any actions are taken.
10. SOVEREIGN IMMUNITY
Nothing herein shall be deemed a waiver of sovereign immunity, expressed or implied, of the Navajo Nation.

11. INCORPORATION OF LEASE
This Sublease is expressly made subject to all of the terms, conditions, and limitations contained in the Lease between the Sublessor and the Navajo Nation. In case of conflict between this Sublease and the Base Lease, the provisions of the Base Lease or any amendments thereto shall govern.

12. NOTICES AND DEMANDS
a. 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 Sublessee:

   To or upon Sublessor:

   To or upon the Navajo Nation (Lessor):
   President
   The Navajo Nation
   Post Office Box 9000
   Window Rock, Navajo Nation (Arizona) 86515
   Telefax: 1-928-971-7381

b. All notices shall be given by personal delivery, registered or certified mail, postage, prepaid or by facsimile transmission, followed by surface mail. Sublessee, Sublessor or the Lessor may at any time change its address for purposes of this Section by written notice.
IN WITNESS WHEREOF, the parties have set their hands and seals this _____ day of ___________, 20____.

______________________________ Date  ______________________________
[Name], Surety                      [Name], Sublessor

______________________________ Date
[Name], Sublessor

______________________________ Date
[Name], Sublessee

______________________________ Date
[Name], Sublessee

The foregoing Sublease agreement is hereby approved.

NAVAJO NATION, LESSOR

By: _______________________________________
    President/Vice-President

______________________________ Date:

LEASEHOLD CREDIT RULES

The following is how the Division of Economic Development implements leasehold credits regarding business site leases on the Navajo Nation:

1. The Navajo Nation encourages private investment on the Navajo Nation for economic development purposes. The Division of Economic Development acknowledges private investment of a Lessee through leasehold credits. The Division negotiates with the Lessee the amount of the improvements needed for the Lessee to begin their business on the Navajo Nation by amortizing the improvements amount over the monthly rental amount and by the number of months of a calendar year.

2. Elements for leasehold credits include amount of investment by the Lessee; amount of rental negotiated per month and the months of a calendar year determined the number of year's leasehold credits is imposed.

3. The following is the equation to determine leasehold credits:

\[
\frac{\text{Dollar Amount of the Improvements/Amount of Monthly Rental Negotiated}}{12 \text{ Months (months in calendar year)}} = \text{Number of Years of Leasehold Credits}
\]

For the XXX, Incorporated:

\[
\frac{\$150,000 \text{ Improvements}/\$1,500 \text{ Monthly Rental Negotiated}}{12 \text{ Months}} = 8.3 \text{ Years}
\]

Thus, for eight years and three months, the Lessee, XXX, will receive leasehold credits for the amount of their investment of $150,000 improvements to the Navajo Nation's asset, the XXX Industrial Building and site at the YYYY Industrial Park'.
DIVISION OF ECONOMIC DEVELOPMENT

Plan of Operation
RESOLUTION OF THE
GOVERNMENT SERVICES COMMITTEE
OF THE NAVAJO NATION COUNCIL

21ST NAVAJO NATION COUNCIL - First Year, 2007

Legislation No.: 0213-07
Sponsored by Roy Dempsey, Council Delegate

AN ACTION

RELATING TO ECONOMIC DEVELOPMENT AND GOVERNMENT SERVICES;
AMENDING THE MASTER PLAN OF OPERATION FOR THE DIVISION OF
ECONOMIC DEVELOPMENT

BE IT ENACTED:

The Navajo Nation hereby amends the Master Plan of Operation for the Division of Economic Development, which was last amended by Resolution GSCF-13-96. The amended Master Plan of Operation for the Division of Economic Development is set forth in the attached Exhibit A.

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 in Window Rock, Navajo Nation (Arizona), at which a quorum was present and that the same was passed by a vote of 7 in favor and 0 opposed, this 10th day of April, 2007.

[Signature]
Leonard Teller, Vice-Chairperson
Government Services Committee

Motion: Roy Laughter
Second: Lee Jack, Sr.
**DIVISION OF ECONOMIC DEVELOPMENT**  
**MASTER PLAN OF OPERATION**

**TABLE OF CONTENTS**

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>I. ESTABLISHMENT</td>
<td>3</td>
</tr>
<tr>
<td>II. PURPOSE</td>
<td>3</td>
</tr>
<tr>
<td>III. OBJECTIVES</td>
<td>3</td>
</tr>
<tr>
<td>IV. PERSONNEL AND ORGANIZATION</td>
<td>3</td>
</tr>
<tr>
<td>A. PERSONNEL</td>
<td>3</td>
</tr>
<tr>
<td>B. ORGANIZATION</td>
<td>4</td>
</tr>
<tr>
<td>V. AUTHORITY AND RESPONSIBILITY OF THE DIVISION</td>
<td>5</td>
</tr>
<tr>
<td>VI. ADMINISTRATION DEPARTMENT</td>
<td>6</td>
</tr>
<tr>
<td>VII. PROJECT DEVELOPMENT DEPARTMENT</td>
<td>6</td>
</tr>
<tr>
<td>A. DUTIES AND RESPONSIBILITIES</td>
<td>6</td>
</tr>
<tr>
<td>B. PERSONNEL</td>
<td>7</td>
</tr>
<tr>
<td>VIII. BUSINESS REGULATORY DEPARTMENT</td>
<td>8</td>
</tr>
<tr>
<td>A. DUTIES AND RESPONSIBILITIES</td>
<td>8</td>
</tr>
<tr>
<td>B. PERSONNEL</td>
<td>9</td>
</tr>
<tr>
<td>IX. SUPPORT SERVICES DEPARTMENT</td>
<td>9</td>
</tr>
<tr>
<td>A. DUTIES AND RESPONSIBILITIES</td>
<td>9</td>
</tr>
<tr>
<td>B. PERSONNEL</td>
<td>10</td>
</tr>
<tr>
<td>X. SMALL BUSINESS DEVELOPMENT DEPARTMENT</td>
<td>11</td>
</tr>
<tr>
<td>A. DUTIES AND RESPONSIBILITIES</td>
<td>11</td>
</tr>
<tr>
<td>B. PERSONNEL</td>
<td>12</td>
</tr>
<tr>
<td>XI. NAVAJO TOURISM DEPARTMENT</td>
<td>12</td>
</tr>
<tr>
<td>A. ESTABLISHMENT</td>
<td>12</td>
</tr>
<tr>
<td>B. PURPOSE</td>
<td>12</td>
</tr>
<tr>
<td>C. OBJECTIVES</td>
<td>12</td>
</tr>
<tr>
<td>D. PERSONNEL</td>
<td>13</td>
</tr>
<tr>
<td>XII. NAVAJO REAL ESTATE DEPARTMENT</td>
<td>13</td>
</tr>
<tr>
<td>A. ESTABLISHMENT</td>
<td>13</td>
</tr>
<tr>
<td>B. PURPOSE</td>
<td>14</td>
</tr>
<tr>
<td>C. OBJECTIVES</td>
<td>14</td>
</tr>
<tr>
<td>D. PERSONNEL</td>
<td>15</td>
</tr>
<tr>
<td>XIII. LEGISLATIVE OVERSIGHT</td>
<td>15</td>
</tr>
<tr>
<td>XIV. AMENDMENTS</td>
<td>15</td>
</tr>
<tr>
<td>Department</td>
<td>Page</td>
</tr>
<tr>
<td>------------------------------------------------</td>
<td>------</td>
</tr>
<tr>
<td>Organization Charts</td>
<td>16</td>
</tr>
<tr>
<td>Division of Economic Development</td>
<td>16</td>
</tr>
<tr>
<td>Division of Economic Development Administration</td>
<td>17</td>
</tr>
<tr>
<td>Business Regulatory Department</td>
<td>18</td>
</tr>
<tr>
<td>Support Services Department</td>
<td>19</td>
</tr>
<tr>
<td>Project Development Department</td>
<td>20</td>
</tr>
<tr>
<td>Navajo Tourism Department</td>
<td>21</td>
</tr>
<tr>
<td>Small Business Development Department</td>
<td>22</td>
</tr>
<tr>
<td>Real Estate Department</td>
<td>23</td>
</tr>
</tbody>
</table>
I. ESTABLISHMENT
The Division of Economic Development (hereinafter "Division") is hereby established within the Executive Branch of the Navajo Nation Government.

II. PURPOSE
The Division is established for the purpose of creating an environment that is conducive to promote and develop businesses in the commercial, tourism, industrial and other sectors of the Navajo Nation economy, to enhance the creation of jobs and business opportunities.

III. OBJECTIVES
To carry out its purpose, the following Division objectives are established:

A. To promote and support an environment that leads to the creation and retention of jobs and business opportunities in the commercial, industrial, tourism and other private sectors of the Navajo economy; and

B. To recommend the enactment, amendment, or rescission of laws and promulgation and/or reduction of regulations to enhance economic development on the Navajo Nation and to create a positive business environment; and

C. To maintain a decentralized network of business development offices in the primary growth centers of the Navajo Nation that provides individuals and organizations with technical assistance to develop business plans, feasibility studies, financing, planning, loan and grant packaging, business site lease processing, Business Preference Certification, and industrial park management; and

D. To develop and manage a comprehensive financing program to expand or develop new economic initiatives and plans for the Navajo Nation; and

E. Seek and secure financing from the Navajo Nation, state, federal, and other agencies for commercial and industrial development projects, monitor and administer grants and loans received for such projects; and

F. Seek and implement new business opportunities and economic development projects for the Navajo Nation.

IV. PERSONNEL AND ORGANIZATION

A. PERSONNEL
The position of Executive Director of the Division is hereby established. The Executive Director shall be appointed by the President of the Navajo Nation and confirmed by the Navajo Nation Council, pursuant to 2 N.N.C. § 102 (f). The Executive Director shall serve at the pleasure and under the general direction and guidance of the President of the Navajo Nation and shall coordinate with the Economic Development Committee of the Navajo Nation Council and Navajo Nation Chapters to promote and encourage economic development on the Navajo Nation. In order to achieve the purposes and objectives of this Plan of Operation, the Executive Director shall have the authority to:
1. Recommend the creation, merger, separation, amendment or abolishment of programs, or specific functions within the Division, in accordance with Navajo Nation law, budgetary and personnel policies and procedures of the Navajo Nation; and

2. Hire, direct, supervise, and evaluate employees and reclassify positions within the Division in accordance with personnel policies and procedures of the Navajo Nation; and

3. Oversee the management of the Division's programs, including but not limited to management of the Navajo Nation Business and Industrial Development Fund, the Micro-Enterprise Lending Fund, or any other new program established within the Division, in accordance with the rules, regulations, guidelines, policies, procedures and laws of the Navajo Nation; and

4. Negotiate economic development-related agreements under the jurisdiction of the Division on behalf of the Navajo Nation in accordance with and subject to applicable rules, regulations, guidelines, policies, procedures and laws of the Navajo Nation; and

5. Delegate authority pertaining to the operation of the Division and its programs to subordinate directors of the Division, to the extent permitted by the laws and policies of the Navajo Nation; and

6. Delegate authority pertaining to the management of business site leases under the jurisdiction of the Division to Chapters, Townships, or other forms of government, to the extent permitted by law and policies of the Navajo Nation conditioned upon approval of a business site leasing management plan by the Economic Development Committee; and

7. Delegate authority pertaining to the administrative management of business site leases under the jurisdiction of the Division to Chapters, Townships, or other forms of government, to the extent permitted by law and policies of the Navajo Nation conditioned upon approval of an administrative business site lease management plan by the Economic Development Committee; and

8. Recommend additional professional, technical and clerical positions as needed to carry out the organization purposes as stated herein. Additional positions shall be acquired in accordance with applicable Personnel Policies and Procedures and applicable budget rules established for conducting the annual Navajo Nation budget process; and

9. Execute such directives and authorities as may be directed and/or authorized by the appropriate authority of the Navajo Nation.

B. ORGANIZATION

Seven departments of the Division are hereby established, each with specific duties and responsibilities as outlined hereinafter (see Organization Chart attached hereto as Exhibit I):

1. Administrative Department; and

2. Project Development Department; and

3. Business Regulatory Department; and
4. Support Services Department; and

5. Small Business Development Department;

6. Tourism Department; and

7. Real Estate Department.

V. AUTHORITY AND RESPONSIBILITY OF THE DIVISION

The general authorities and responsibilities of the Division are as follows:

A. Manage all funds identified for economic development in a fiscally responsible manner and
   administer the Navajo Nation Business and Industrial Development Fund and Micro-Enterprise
   Lending Fund pursuant to the approved Fund Management Plans; and

B. Identify and recommend changes in the laws and regulations of the Navajo Nation or other
   government agencies to reduce or eliminate barriers to entry and expansion faced by new and
   growing business enterprises and to eliminate regulatory and jurisdictional conflicts which inhibit
   the location of major industries within the Navajo Nation; and

C. Manage and develop industrial parks, business sites, and other lands dedicated to economic
   development; and

D. Manage and recommend changes to the environmental review as the Environmental Reviewer
   under the Navajo Nation Business Site Leasing Regulations of 2005; and

E. Solicit proposals from outside businesses and industries to locate facilities and operations in
   Navajo Nation industrial parks and to assist them in implementing proposed projects; and

F. Collect, maintain, analyze and disseminate information relevant to business and economic activity
   on the Navajo Nation (such as socio-economic data, labor market data, land use data, etc.) and
   conduct economic feasibility studies and other technical studies to enhance economic
   development; and

G. Propose, plan, and undertake economic development projects by investing resources in ventures
   that adds to Navajo Nation assets and provide opportunities for related business development and
   employment, including, but not limited to:

   1. expand, diversify, and privatize the operations of Navajo Nation Enterprises or other Navajo
      Nation owned business entities; and

   2. develop tourism facilities and services to capture a major share of the tourism market of the
      southwest; and

   3. improve industrial parks and related infrastructure to increase the attractiveness and suitability
      of the Navajo Nation as a place to locate business; and

   4. develop facilities and services to enhance commercial development.
H. Seek federal, state, and conventional financing for commercial, industrial, and tourism projects and develop other economic programs to enhance economic activity within the Navajo Nation; and

I. Execute such directives as may be directed or authorized by the appropriate authority of the Navajo Nation consistent with Navajo and federal law; and

J. Assist Navajo Nation Chapters in the execution of economic development functions and authorities which are properly delegated.

VI. ADMINISTRATION DEPARTMENT

The purpose of the Administration Department is to provide for overall management of the Division in terms of both administrative and program functions. The specific duties and responsibilities of the Administration Department are as follows:

A. Provide overall direction to the Division by maintaining short and long range plans, goals, and objectives; and

B. Respond to community needs and plans relating to economic development; and

C. Ensure the implementation of duties and functions, authorities, and responsibilities of the Division; and

D. Work in concert with the Economic Development Committee of the Navajo Nation Council, other standing committees of the Navajo Nation Council, and the Navajo Nation Council; and

E. Negotiate agreements related to economic development in accordance with applicable policies and laws.

VII. PROJECT DEVELOPMENT DEPARTMENT

A. THE DUTIES AND RESPONSIBILITIES OF THE PROJECT DEVELOPMENT DEPARTMENT ARE AS FOLLOWS:

1. Plan commercial and industrial projects throughout the Navajo Nation. Planning activities may include, but are not limited to, conducting surveys, withdrawing land, obtaining feasibility studies, securing financing, conducting site assessments and all other necessary planning activities; and

2. Develop and market commercial and industrial projects throughout the Navajo Nation. Procure and manage architectural and engineering, construction and other professional services contracts. Procure and manage infrastructure, facilities, site improvements and other capital improvement construction contracts; and

3. Seek and secure financing from the Navajo Nation, state, federal, and other agencies for commercial and industrial development projects, monitor and administer grants and loans received for such projects; and

4. Seek, implement, and retain business opportunities and economic development projects for the Navajo Nation; and
5. Develop and implement a marketing plan to promote the Navajo Nation to attract, secure, and retain commercial and industrial businesses; and

6. Improve and upgrade commercial sites, industrial parks and related infrastructure to accommodate present and future economic development activities for the Navajo Nation; and

7. Negotiate and finalize business site leases and economic development-related agreements on behalf of the Navajo Nation, in accordance with applicable rules, regulations, policies and procedures adopted pursuant to the laws of the Navajo Nation; and

8. Provide technical assistance and support to tribal and non-tribal entities to plan and develop commercial and industrial projects and related infrastructure on the Navajo Nation; and

9. Conduct technical and financial analysis of potential commercial and industrial development projects for the Navajo Nation; and

10. Provide construction management duties on commercial and industrial projects that may include; land withdrawal procedures, site clearances, and preparation of proposal and bid documents, collaborative efforts with professional entities (Architects, Engineers, Project Inspectors, Certified Appraisers, etc.) on development of commercial and industrial projects; and

11. Develop and administer the annual operating budget for the department, which includes day to day accounting activities.

B. PERSONNEL

1. There shall be a position of Department Manager who shall direct the Department, to ensure the policies, procedures, and guidelines are followed to the upmost; and

2. The Department Manager shall possess the following qualifications: a bachelor's degree and/or a minimum of five years experience in any business or administration field; and

3. The Department Manager shall report directly to the Executive Director of the Division; and

4. The Department Manager shall have the authority to hire staff as is necessary to carry out the purposes and objectives set forth herein and as is provided in the program budget, in accordance with the Navajo Nation Policies and Procedures; and

5. Recommend, develop, implement, and administer programs in accordance with the laws, budgetary and personnel policies and procedures of the Navajo Nation; and

6. The Department Manager shall have the authority to delegate authority to department staff to carry out the objective and functions of the department; and

7. All personnel shall be employed, supervised and compensated including evaluation and reclassification in accordance with Navajo Nation Personnel Policies and Procedures.
VIII. BUSINESS REGULATORY DEPARTMENT

A. THE DUTIES AND RESPONSIBILITIES OF THE BUSINESS REGULATORY DEPARTMENT (HEREINAFTER "BRD") ARE AS FOLLOWS:

1. Administer, implement, and enforce the Navajo Business Opportunity Act, (hereinafter "NBOA") 5 N.N.C. §§ 201 et seq., which provides first preference to certified economic vendors conducting business within the Navajo Nation. In accordance with the NBOA, BRD shall maintain a certification program for the purposes of determining the eligibility of all Navajo and/or Indian owned economic enterprises; and

2. Draft and implement rules and regulations consistent with the NBOA. BRD may conduct public hearings during the Draft phase of the rules and regulations; and

3. Administer, implement and enforce the Navajo Nation Corporation Code, (hereinafter "Code") 5 N.N.C. §§ 3100 et seq., which requires all legal corporate entities to formally file and register all required documents with BRD; and

4. Administer, implement and enforce the Navajo Nation Uniform Commercial Code, (hereinafter "Navajo UCC") Title 5A of the N.N.C. In accordance with the Navajo UCC, BRD shall maintain a file of all secured transactions entered between buyer and seller; and

5. Administer and implement the Navajo Weights and Measure Program, which enforces the implementation of the National Institute of Standards and Technology (hereinafter "NIST"). The Weights and Measure Program will inspect and certify all measuring devices used in commercial transactions for legal trade; and

6. Administer and implement policies and procedures for the issuance of business licenses, once delegated from the Oversight Committee; and

7. Develop and implement intergovernmental agreements between the Navajo Nation and States of Arizona, New Mexico and Utah to carry out the purpose and goals of the Weights and Measures Program; and

8. Reviews and renders decisions on any violation in accordance with the NBOA and Code. Upon BRD's written decision, all decisions may be appealed to the Office of Hearing and Appeals within ten (10 days); and

9. Serve as the filing agent for all corporate, NBOA and Navajo UCC filings; and

10. Coordinate regulatory activities with all federal, state, tribal, and local governmental entities that require Navajo and/or Indian preference programs; and

11. Provide educational programs, information, and related training sessions to appropriate tribal and non-tribal entities as may be necessary for the continued understanding of the policies, procedures, duties, and responsibilities of BRD.
B. PERSONNEL

1. There shall be a position of Department Manager who shall oversee the Department to ensure the policies procedures, and guidelines are followed to the upmost and conduct the following duties:

   a. The Department Manager shall report directly to the Executive Director of the Division; and

   b. The Department Manager shall have the authority to hire staff as is necessary to carry out the purposes and objectives set forth herein and as is provided in the program budget, in accordance with the Navajo Nation Policies and Procedures Manual; and

   c. Recommend, develop, implement, and administer programs in accordance with the laws, budgetary and personnel policies and procedures of the Navajo Nation; and

   d. Delegate authority to Department staff to carry out the objective and functions of the Department.

2. There shall be a position of Economic Development Specialist who shall administer, monitor and enforce the regulatory laws and provide technical and administrative assistance to all businesses, commercial and industrial entities; and

3. There shall be a position of Weights and Measures Inspectors who shall perform administrative and technical tasks by conducting periodic inspections of all measuring devices and dispensers in accordance with NIST. Recommend corrective actions on any discrepancies; and

4. All personnel shall be employed, supervised and compensated including evaluation and reclassification in accordance with Navajo Nation Personnel Policies and Procedures Manual.

IX. SUPPORT SERVICES DEPARTMENT

A. THE DUTIES AND RESPONSIBILITIES OF THE SUPPORT SERVICES DEPARTMENT ARE AS FOLLOWS:

1. Administer the Navajo Nation Business and Industrial Development Fund, hereinafter “BIDF,” coordinate management of the BIDF with the Division of Finance, and formulate, develop, and recommend policies, procedures, and guidelines to improve the administration of the BIDF; and

2. Administer and oversee the financing of investment opportunities offered under the BIDF in accordance to the Fund Management Plan and coordinate the return of investments due to the BIDF with respective Programs which may include lease modifications, entering into contractual agreements, and maintaining an annual budget; and

3. Administer all loan programs and funds offered under BIDF and coordinate with other departments, programs and agencies pursuant to the applicable financial assistance guidelines, including providing loan application review for all loans, except the Micro-Enterprise Loans, to ensure compliance with loan guidelines; and
4. Develop and oversee the administration of the annual operating budgets, in coordination with the Division and departments. Provide technical assistance on day to day accounting operations for the Division; and

5. Collect data on micro-economics, economic strategy and information for the Navajo Nation to prepare reports that are used for Economic Development Administration Funding and for the Bureau of Indian Affairs, Department of Interior for additional funding; and

6. Coordinate with Credit Services Department, Division of Finance to provide credit and collection reports for loan programs and carry out the quick and orderly disposition of collateral repossessed under business loan programs in accordance with applicable Navajo law; and

7. Provide loan application review for all loans, except the Micro-Enterprise Loans, and to ensure compliance with loan guidelines; and

8. Develop and maintain an efficient central data base to monitor small business, commercial, and industrial activity, and to generate socio-economic and other statistical information; and

9. Provide information technology services, for the managing and processing information, in particular the use of electronic computers and computer software to convert, store, protect, process, transmit and retrieve information for the Division, including maintaining a division-wide network (LAN, WAN and MAN); and

10. Administer the maintenance of all the Division of Economic Development facilities, both interior and exterior, including groundwork within the perimeter of the facility, janitorial, HVAC, and elevator upkeep, security, and any other duties necessary for the maintenance of the buildings.

B. PERSONNEL

1. There shall be a position of Department Manager who shall oversee the Department, to ensure the policies, procedures, and guidelines are followed to the upmost; and

2. The Department Manager shall possess the following qualifications: a bachelor's degree and/or a minimum of five years experience in any business or administration field; and

3. The Department Manager shall report directly to the Executive Director of the Division; and

4. The Department Manager shall have the authority to hire staff as is necessary to carry out the purposes and objectives set forth herein and as is provided in the program budget, in accordance with the Navajo Nation Policies and Procedures;

5. Recommend, develop, implement, and administer programs in accordance with the laws, budgetary and personnel policies and procedures of the Navajo Nation; and

6. The Department Manager shall have the authority to delegate authority to department staff to carry out the objective and functions of the department; and

7. All personnel shall be employed, supervised and compensated including evaluation and reclassification in accordance with Navajo Nation Personnel Policies and Procedures.
X. SMALL BUSINESS DEVELOPMENT DEPARTMENT

A. THE DUTIES AND RESPONSIBILITIES OF THE SMALL BUSINESS DEVELOPMENT DEPARTMENT ARE AS FOLLOWS:

1. Maintain a network of Regional Business Development Offices, hereinafter "RBDO", as established to serve as a direct link to local communities and to assist and promote Navajo individuals, chapters, and organizations with business and economic development matters and concerns; and

2. Exercise business site lease, sublease, assignment, encumbrance, permit and any modification approval authority as delegated by the Economic Development Committee of the Navajo Nation Council, pursuant to Navajo Nation Business Site Lease Administrative and Management Plan; and

3. Provide technical assistance through the Regional Business Development Offices to individuals, small businesses, chapters and other organizations in processing land withdrawals, developing business plans, obtaining financing, negotiating, and processing business site leases, permits, obtaining business preference certifications, administering educational seminars, and processing any other business site leasing activities and addressing other business concerns; and

4. Provide technical assistance to chapters, communities, business associations, and other organizations in local planning and promotion of business and economic development activities; and

5. RBDO may in coordination with the appropriate department, work with tribal and non-tribal entities to plan and develop commercial, industrial and tourism projects and related infrastructure; and

6. RBDO may provide technical assistance on commercial and industrial projects that may include, land withdrawal procedures, site clearances, and preparation of proposal and bid documents, collaborative efforts with professional entities, including but not limited to, Architects, Engineers, and Certified Appraisers on development of commercial and industrial projects; and

7. Administer the Micro-Enterprise Loan Fund and approve those loan documents at the applicable RBDO, pursuant to applicable guidelines and the fund management plan; and

8. Provide technical assistance through the Regional Business Development Offices to individuals, small businesses, chapters and other organizations in the application and processing of BIDF loan documents in accordance with the guidelines for the administration of the BIDF; and

9. Provide loan application review for all Micro-Enterprise Loan Fund and Navajo Nation Small Business Lending Program for loans $250,000 or less, originating at the RBDO to ensure compliance with loan guidelines; and

10. Produce brochures, conduct management counseling, business training for Navajo individual entrepreneurs, organizations, chapters; and
11. RBDO shall maintain records, for all leasing activities, which include renewals, modifications, subleases, assignments, encumbrances, amendments and terminations of Business Site Leases and coordinate with the Navajo Real Estate Department in its record-keeping duty; and

12. Develop and administer the annual operating budget for the department, which includes day to day accounting activities.

B. PERSONNEL

1. The position of Department Director of the Department is hereby established. The director shall have the authority to:
   a. Reports directly to the Executive Director of the Division; and
   b. The Department Manager shall possess the following qualifications: a bachelor’s degree and/or a minimum of five years experience in any business or administration field; and
   c. Recommend, develop, implement and administer programs in accordance with the laws, budgetary and personnel policies and procedures of the Navajo Nation; and
   d. Delegate authority to department staff to carry out operations of the department; and

2. The Department shall be sufficiently staffed to accomplish the purpose and objectives of the department; and

3. All personnel shall be employed, supervised and compensated including evaluation and reclassification in accordance with Navajo Nation Personnel Policies and Procedures.

XI. NAVAJO TOURISM DEPARTMENT

A. ESTABLISHMENT
   The Navajo Tourism Department (hereinafter referred to as the "Department") is hereby established under the Executive Branch of the Navajo Nation government.

B. PURPOSE
   The Department is established to promote and develop tourism related business thereby creating jobs and business opportunities.

C. OBJECTIVES
   To carry out the department's purpose, the following objectives are established
   1. To develop projects that will provide accommodations and infrastructure for such projects as resorts, visitor centers, restaurants, roadside rest areas, recreational vehicle park, and other developments; and
   2. To prevent leakage of tourism dollars off the Navajo reservation by creating Navajo businesses; and
3. To develop and implement a tourism development strategy that will increase the number of tourist destinations within the Navajo Nation; and

4. To provide funds for tourism promotion, tourism department operational funds, and for project development which includes the following, but is not limited to, the advertisement of Navajo people, scenery and facilities and for acquisition, construction, renovation and maintenance of tourism related attractions and recreational facilities; and

5. To promote economic development opportunities and projects related to tourism through programs including education and training, visitor information, services, sales promotion, publicity, advertising, marketing, research, and travel development; and

6. To initiate and cooperate with the Division Administration, the amendment, development, and implementation of new and existing tribal, state, and federal legislation, policies, and regulations that benefit the tourism industry; and

7. To manage and administer the Navajo Nation Tourism Fund Management Plan approved by Resolution BFO-56-93, which includes an annual budget with an expenditure plan; and

8. In conjunction with Division, the Department may develop and recommend to the Budget and Finance Committee of the Navajo Nation Council the fund's management plan, after review by the Economic Development Committee.

D. PERSONNEL

1. The position of Department Director of the Department is hereby established. The director shall have the authority to:

   a. Reports directly to the Executive Director of the Division; and

   b. Recommend, develop, implement, and administer programs in accordance with the laws, budgetary and personnel policies and procedures of the Navajo Nation; and

   c. Delegate authority to department staff to carry out operations of the department.

2. The Department shall be sufficiently staffed to accomplish the purpose and objectives of the Department.

3. All personnel shall be employed, supervised and compensated including evaluation and reclassification in accordance with Navajo Nation Personnel Policies and Procedures.

XII. NAVAJO REAL ESTATE DEPARTMENT

A. ESTABLISHMENT

The Navajo Real Estate Department (hereinafter referred to as the "Realty Department") is hereby established under the Executive Branch of the Navajo Nation Government.
B. PURPOSE
To implement the Navajo Nation Business Site Leasing Regulations of 2005 (“Tribal Regulations”), as amended, that was approved on July 10, 2006, by assuming the authorities of the Bureau of Indian Affairs on management and enforcement of Business Site Leases.

C. OBJECTIVES

1. Manage Business Site Leases, which includes, ensuring the Lessee provides all required documents within the agreed time frame, monitor the Lessee’s compliance with all the terms and conditions of Business Site Leases during the term of the Lease, and any other necessary functions pursuant to the Navajo Business Site Lease Management Plan and coordinate with Division of Finance for all accounting matters; and

2. Enforce all terms and conditions of Business Site Leases, which include assessing late charges, debt collections, obtaining insurance proceeds, execution of bonds, and any other activities or remedies allowable under the Navajo Business Site Lease Management Plan; and

3. Negotiate with Lessees, including acting as a mediator for any arising disputes between the Navajo Nation and any aggrieved interested party, as defined and provided in the Tribal Regulations and in the Navajo Business Site Lease Management Plan, as amended; and

4. Recommend relief for business site leases, permits, subleases, assignments and encumbrances in default, if necessary coordinate with the Navajo Department of Justice for further legal actions, remedy and relief; and

5. Exercise its authority to terminate any business site lease, permit, sublease, assignment and encumbrances, in default, in accordance with the Navajo Business Site Lease Management Plan and the regulations of the Navajo Nation; and

6. Manage the Navajo Real Estate Records, which includes the disbursement of all Business Site Leases, assignment of Lease numbers to all Business Site Leases, and cooperate with the Secretary of Interior in the transfer of records received from the Secretary and with the Navajo Land Department for title recording upon the establishment of a title plant; and

7. Develop and maintain a record of all leasing activities, which includes executions, renewals, modifications, subleasing, assigning, encumbering, amendments and terminations of Business Site Leases, for all Business Site Leases including Chapters, Townships, other municipal forms of government and entities; and

8. Provide status reports to the RBDO and Project Development Department before any actions, to the extent possible, legal or non-legal taken against any Business Site Lease in default; and

9. Provide annual accounting to the Office of the Controller for the Navajo Nation and the Secretary and shall coordinate with all Chapters, Townships, other municipal forms of government and entities in obtaining and reviewing such accounting; and

10. Administer, certify and maintain the record of Environmental Review, which includes the review of environmental impacts of certain proposed leasing activities and coordinate with the other departments and other Divisions as is required, in accordance with the environmental review policy and procedures; and
11. Provide environmental review for all business site leases to ensure compliance with the standard format for the environmental review; and

12. Administer the Navajo Nation Appraisal Office, for conducting appraisals for certain proposed leasing and business activities based on requests from departments, which includes developing an appraisal log to report methods of conducting appraisals and providing any technical assistance to departments and interested individuals with respect to economic development projects to determine the fair annual lease value, fair market value and assess property and other assets for collateral assignments of lease; and

13. Provide appraisal review for all appraisals conducted on the Navajo Nation to ensure compliance with the appraisal policy and procedures; and

14. Manage and administer the Navajo Nation Real Estate Fund Management Plan which must be recommended by the Economic Development Committee and approved by the Budget and Finance Committee of the Navajo Nation Council.

D. PERSONNEL

1. There shall be a position of Department Manager who shall oversee the department and ensure sound real estate management practices are followed; and

2. The Department Manager shall possess the following qualifications: a bachelor's degree, and a minimum of five years of experience in business, real estate and/or finance; and

3. The Department Manager shall report directly to the Executive Director of the Division; and

4. The Department Manager shall have the authority to hire staff as is necessary to carry out the purposes and objectives set forth herein and as is provided in the program budget, in accordance with the Navajo Nation Personnel Policies and Procedures and division policies and plans; and

5. Recommend, develop, implement, and administer programs in accordance with the laws, budgetary and personnel policies and procedures of the Navajo Nation; and

6. The Department Manager shall have the authority to delegate authority to department staff to carry out the objectives and functions of the department; and

7. All personnel shall be employed, supervised and compensated including evaluation and reclassification in accordance with Navajo Nation Personnel Policies and Procedures.

XIII. LEGISLATIVE OVERSIGHT
Pursuant to 2 N.N.C. § 724 (g), the Economic Development Committee of the Navajo Nation Council is the oversight committee for the Division.

XIV. AMENDMENTS
This Plan of Operation may be amended from time to time upon recommendation of the Economic Development Committee of the Navajo Nation Council and approval by the Government Services Committee of the Navajo Nation Council.
NAVAJO NATION DIVISION OF ECONOMIC DEVELOPMENT
REAL ESTATE DEPARTMENT

Navajo Nation Council

OFFICE OF THE PRESIDENT AND VICE PRESIDENT

Economic Development Committee

DIVISION OF ECONOMIC DEVELOPMENT
Division Director

REAL ESTATE DEPARTMENT
Department Manager

Office Specialist

Collections Officer
Compliance Officer (2)

Record Manager (1)

Accountant (1)
NAVAJO BUSINESS AND PROCUREMENT ACT

TITLE 12, NTC Chapter 15, Section 1501 (et seq.)
# Table of Content

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§1501</td>
<td>TITLE</td>
<td>2</td>
</tr>
<tr>
<td>§1502</td>
<td>PURPOSE</td>
<td>2</td>
</tr>
<tr>
<td>§1503</td>
<td>DEFINITIONS</td>
<td>2</td>
</tr>
<tr>
<td>§1504</td>
<td>ELIGIBILITY AND COMPLIANCE UNDER THE ACT</td>
<td>3</td>
</tr>
<tr>
<td>§1505</td>
<td>INELIGIBILITY</td>
<td>4</td>
</tr>
<tr>
<td>§1506</td>
<td>REMOVAL OF INELIGIBILITY</td>
<td>4</td>
</tr>
<tr>
<td>§1507</td>
<td>RIGHT OF OFFSET</td>
<td>4</td>
</tr>
<tr>
<td>§1508</td>
<td>ADMINISTRATIVE REVIEW PROCESS</td>
<td>5</td>
</tr>
<tr>
<td>§1509</td>
<td>FINAL APPEAL</td>
<td>5</td>
</tr>
<tr>
<td>§1510</td>
<td>CONSTRUCTION OF THE ACT</td>
<td>5</td>
</tr>
<tr>
<td>§1511</td>
<td>DELEGATION OF AUTHORITY &amp; RESPONSIBILITY FOR MONITORING AND ENFORCEMENT</td>
<td>5</td>
</tr>
<tr>
<td>§1512</td>
<td>PRIOR INCONSISTENT LAW REPEALED</td>
<td>5</td>
</tr>
<tr>
<td>§1513</td>
<td>SEVERABILITY OF THE ACT</td>
<td>5</td>
</tr>
<tr>
<td>§1514</td>
<td>EXPRESS EXCEPTIONS UNDER THE ACT</td>
<td>6</td>
</tr>
<tr>
<td>§1515</td>
<td>NO WAIVERS OR OTHER EXCEPTIONS</td>
<td>6</td>
</tr>
<tr>
<td>§1516</td>
<td>EFFECTIVE DATE AND AMENDMENT</td>
<td>6</td>
</tr>
</tbody>
</table>
NAVAJO BUSINESS AND PROCUREMENT ACT

§1501 TITLE

This Act shall be known and cited as the Navajo Business and Procurement Act and is hereby codified as Title 12, Chapter 15 of the Navajo Tribal Code.

§1502 PURPOSE

The purpose of this Act is to protect the resources and financial integrity of the Navajo Nation and to promote sound governmental practices. Therefore, compliance with this Act shall be a condition precedent to transacting or granting any business opportunity, contract, procurement activity; or processing any easement, permit, lease transaction; or considering any loan application by or from the Navajo Nation to any individual, Business, corporation, partnership or other entity -other than the Navajo Nation.

§1503 DEFINITIONS

a. For purposes of this subchapter, "Navajo Nation" shall be defined as:

   (1) The Navajo Tribal Council and its Standing Committees;
   (2) The Chairman, Vice-Chairman and delegates to the Navajo Tribal Council;
   (3) All Committees, Boards and Commissions of the Navajo Nation Government;
   (4) All Certified Chapters of the Navajo Nations;
   (5) All Grazing Committees, Land Boards and Farm Boards of the Navajo Nation;
   (6) All Divisions, Departments and Programs operating under the authority of and within the Executive Branch of the Navajo Nation Government;
   (7) All Programs under and within the Judicial Branch of the Navajo Nation Government;
   (8) All Tribal Enterprises of the Navajo Nation; Navajo Community College, Navajo Skill Center, and any other entity owned in whole or part by the Navajo Nation;
   (9) All other programs and entities who receive at least fifty-one percent (51 %) of their funding either directly from the Navajo Tribal Government or are authorized by the Navajo Tribal Government to receive federal or state grants or other monies on behalf of the Navajo Nation.

b. "Business" shall mean any individual or association of individuals engaged in commerce trade or the buying and selling of commodities or services whether or not for profit; and shall include each person associated with such Business for eligibility identification purposes.

c. "Business Opportunity" shall mean:

   (1) The availability of any opportunity from the Navajo Nation to engage in or provide governmental or administrative services; procurement, business commerce or trade activities or the buying and selling of commodities or services; or
   (2) The receipt of any business certification or advantage pursuant to the Navajo Business Preference Law; or
   (3) The receipt of any contract, lease, casement, permit, loan, monies or funds from the Navajo Nation not expressly exempted.

d. "Contract" shall include but not be limited to any subcontract; or grant/sub grant of funds for a specific purpose.
e. "Corporation" shall mean any corporate or chartered entity formed under any tribal, state or federal law; and shall include for eligibility identification purposes, all of its Board of Directors, officers and controlling shareholders [persons owning of record or beneficially at least 25 percent (25%) of the issued and outstanding stock or beneficial interest of the corporation].

f. "Delinquent Accounts Receivable" shall mean any monetary amount owed to the Navajo Nation which is not expressly exempted and is at least thirty (30) days past due.

g. "Easement" shall mean any right-of-way or limited right to use tribal realty including any transfer, assignment or extension thereof.

h. "Individual" shall mean any natural person and shall include the person's spouse pursuant to applicable principles of community property law.

i. "Lease" shall mean any lease, sub-lease or operating agreement (or any transfer, assignment or extension thereof) 'for 'the possession and use of tribal realty excluding homesite leases.

j. "Other Entity" shall mean any other individual, business, company or other organization or entity not covered in paragraphs b, e, h and k excluding the Federal Government and its instrumentalities; and shall include each associated individual for eligibility identification purposes.

k. "Partnership" shall mean any partnership formed under any tribal or state law or any group of two (2) or more individuals who hold themselves out as a partnership, formally or informally including but not limited to joint venture partners, brokers, dealers, etc.; and shall include each individual partner for eligibility purposes.

l. "Permit" shall mean any permit (excluding grazing and land use permits), license, or revocable agreement for the temporary use of tribal realty or personality or the grant of authority to allow specific acts including any transfer, assignment or extension thereof.

m. "Procurement" shall mean the purchase or lease of goods and services by the Navajo Nation.

§1504 ELIGIBILITY AND COMPLIANCE UNDER THE ACT

a. The determination of eligibility of an applicant for each and every transaction subject to this Act shall be made initially by the appropriate Tribal Department or entity of the Navajo Nation as defined in §1503a which receives an applicant's request for consideration for a business opportunity, procurement activity or loan.

b. As a condition precedent to further review and processing by-the Navajo Nation, such eligibility of the applicant shall be confirmed by either;

(1) Evidence of compliance verifying the initial eligibility of the applicant in that none of the conditions cited in Section 1505a-d below are applicable; or

(2) Evidence of clearance verifying that the applicant has since remedied all applicable bases for previous ineligibility cited in Section 1505a-d below and is now eligible as an applicant in conformance with this Act.
§1505 INELIGIBILITY

No applicant individual, Business, corporation, partnership, or other entity shall be eligible to do any business with the Navajo Nation as set forth in Section 1502 (i.e. as contractor, grantee, consultant broker, dealer, vendor, supplier, permittee, lessee, easement or loan recipient, etc.); or receive any certification or advantage under the Navajo Nation Business Preference Law; or receive any contract, Purchase Order (PO), Request for Direct Payment (RDP), or other accounts payable order for procurement from the Navajo Nation; or be granted a Tribal easement, permit or lease or loan of any type from the Navajo Nation if any one of the following circumstances apply:

a. If there is an outstanding money judgment in favor of the Navajo Nation from a court of competent jurisdiction or a valid delinquent accounts receivable debt which is due and owing to the Navajo Nation from that applicant entity either in its present form or in any other identifiable capacity as an individual. Business, corporation, partnership or other entity; or

b. If under any transaction, contract or legal relationship with the Navajo Nation, there has been evidence of default or materially deficient business practices or failure to meet a material contractual or financial obligation to the Navajo Nation or failure to materially comply with applicable laws or material delay by that applicant entity either in its present form or in any other identifiable capacity as an individual, Business, corporation, partnership or other entity, resulting in monetary or other detriment to the Navajo Nation remains uncured;

c. If that applicant entity either in its present form or in any other identifiable capacity as an individual, Business, corporation, partnership or other entity, has been found to have engaged in unlawful or criminal actions or other activities which adversely reflects on the honesty and moral character of said party(ies) so as to make any dealings with the Navajo Nation undesirable; or

d. If the individual or any individual(s) of the applicant entity either in its present form or in any other identifiable capacity as an individual, Business, corporation, partnership or other entity, has been convicted of a criminal offense within the previous ten (10) years under any tribal, state or federal law for embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or committing a criminal offense relating to obtaining a public/private contract or in the performance of such contract.

§1506 REMOVAL OF INELIGIBILITY.

a. Any individual, Business, corporation, partnership, or other entity may remove a determination of ineligibility based on Section 1505a of this Act by paying in full all outstanding amounts owed to the Navajo Nation. Such payment shall not be contingent in any way on the future eligibility of the party(ies) under this Act. Only upon full and complete payment, will the individual Business, corporation, partnership, or entity be considered eligible under Section IS0Sa for application for business opportunities, procurement activities and loans from the Navajo Nation.

b. Removal of a determination of ineligibility based on Sections 1505b, 1505c, and 1505d shall be set forth in Rules and Regulations promulgated pursuant to Section 1500 herein.

§1507 RIGHT OF OFFSET

If the applicant entity in its present form or in any other identifiable capacity as an individual, Business, corporation, partnership or other entity, has an outstanding money judgment against it in
favor of the Navajo Nation or a delinquent accounts receivable debt which is due and owing to the Navajo Nation, upon due notice the Navajo Nation may offset its money claim against any amount it owes to or has an account payable to the individual, Business, corporation, partnership or other entity.

§1508 ADMINISTRATIVE REVIEW PROCESS.

Any applicant may file a written appeal within seven (7) calendar days of receipt of a determination of ineligibility or notice of intent to offset with a Hearing Officer appointed for this purpose. The Hearing Officer shall act upon and render a final decision within thirty (30) days from the date of receipt of the protest. All final decisions shall include a statement of findings of fact, conclusions and the reasons therefor.

The Hearing Officer shall be appointed by the Chairman of the Navajo Tribal Council

§1509 FINAL APPEAL

A final decision of the Hearing Officer may be appealed to the Navajo Nation Courts. Such appeal shall be limited to questions of law and the Hearing Officer's findings of fact shall be sustained, provided there is some basis in the evidence for such findings.

§1510 CONSTRUCTION OF THE ACT

Eligibility and compliance under this Act shall be construed as an additional requirement which is a condition precedent to the application of other appropriate Navajo Nation laws, rules, regulations and program requirements. Nothing in this Act shall be construed to waive or supersede such other applicable law, program or Navajo Nation requirements unless said requirements are inconsistent with this Act, in which event Section 1512 shall apply. Any action(s) by employees or officials of the Navajo Nation in violation of this statute shall be null and void.

§1511 DELEGATION OF AUTHORITY & RESPONSIBILITY FOR MONITORING AND ENFORCEMENT

The Division of Administration and Finance, the Division of Economic Development and the Department of Justice in conjunction with the Office of the Attorney General is delegated the authority and responsibility to promulgate rules and regulations as necessary, and to monitor, enforce and implement the intent of this Act. Said rules and regulations shall require the approval of the Advisory Commission of the Navajo Tribal Council.

§1512 PRIOR INCONSISTENT LAW REPEALED

All prior tribal laws and, regulations, rules and provisions of the Navajo Tribal Council previously adopted to the extent they are inconsistent with this Act are repealed.

§1513 SEVERABILITY OF THE ACT

If any provisions of this Act is held invalid by any court of competent jurisdiction, the remaining provisions of the Act shall have full force and effect.
§1514 EXPRESS EXCEPTIONS UNDER THE ACT

The following transactions are expressly exempted from compliance and consideration under this Act: Gifts, Homesite Leases, Grazing and Land Use Permits, Educational Scholarships, Education Loans, and Water Use Assessments for Navajo owned farms and irrigation projects.

§1515 NO WAIVERS OR OTHER EXCEPTIONS

No waiver of or other exception to any requirement of this law shall be granted except by valid resolution of the Navajo Tribal Council.

§1516 EFFECTIVE DATE AND AMENDMENT

The effective date of this Act shall be 30 days after adoption by the Navajo Tribal Council and shall remain in effect until modified or repealed by the Navajo Tribal Council.
THE
NAVAJO PREFERENCE
IN
EMPLOYMENT ACT

(Amended August 1, 1985)
(Amended October 25, 1990)

The Office of Navajo Labor Relations
The Navajo Nation
P.O. Drawer 1943
Window Rock, Arizona 86515
Phone (928) 871-6800-6801
Section 1. TITLE

A. This Act shall be cited as the Navajo Preference in Employment Act and is hereby codified as Title 15 Chapter 7 of the Navajo Tribal Code.

Section 2. PURPOSE

A. The purposes of the Navajo Preference in Employment Act are:

1. To provide employment opportunities for the Navajo work force;

2. To provide training for the Navajo people;
3. To promote the economic development of the Navajo Nation;

4. To lessen the Navajo Nation's dependence upon off reservation sources of employment, income, goods and services;

5. To foster the economic self-sufficiency of Navajo families; and

6. To protect the health, safety, and welfare of Navajo workers;

7. To foster cooperative efforts with employers to assure expanded employment opportunities for the Navajo work force.

B. It is the intention of the Navajo Nation that the provisions of this Act be construed and applied to accomplish the purposes set forth above.

Section 3. DEFINITIONS

1. The term "Commission" shall mean the Navajo Nation Labor Commission.

2. The term "employment" shall include, but is not limited to, the recruitment, hiring, promotion, transfer, training, upgrading, reduction-in-force, retention and recall of employees.

3. The term "employer" shall include all persons, firms, associations, corporations, and the Navajo Nation and all of its agencies and instrumentalities, who engage the services of any person for compensation, whether as employee, agent, or servant.

4. The term "Navajo" means any enrolled member of the Navajo Nation.

5. The term "ONLR" means the Office of Navajo Labor Relations.

6. The term "probable cause" shall mean a reasonable ground for belief in the existence of facts warranting the proceedings complained of.

7. The term "territorial jurisdiction" means the territorial jurisdiction of the Navajo Nation as defined in 7 NTC §254.

8. The term "counsel" or "legal counsel" shall mean (a) a person who is an active member in good standing of the Navajo Nation Bar Association and duly authorized to practice law in the courts of the Navajo Nation; and (b) for the sole purpose of co-counseling in association with a person described in clause (a), an attorney duly authorized, currently licensed and in good standing to practice law in any State of the United States who has, pursuant to written request demonstrating the foregoing qualifications and good cause, obtained written approval of the Commission to appear and participate as co-counsel in a particular Commission proceeding.

9. The term "necessary qualifications" shall mean those job-related qualifications which are essential to the performance of the basic responsibilities designated for each employment position, including any essential qualifications concerning education, training and job-related experience, but excluding any qualifications relating to ability or aptitude to perform responsibilities in other
employment positions. Demonstrated ability to perform essential and basic responsibilities shall be deemed satisfaction of necessary qualifications.

10. The term "qualifications" shall include the ability to speak and/or understand the Navajo language, and familiarity with Navajo culture, customs and traditions.

11. The term "person" shall include individuals; labor organizations; tribal, federal, state and local governments, their agencies, subdivisions, instrumentalities and enterprises; and private and public, profit and non-profit, entities of all kinds having recognized legal capacity or authority to act, whether organized as corporations, partnerships, associations, committees or in any other form.

12. The term "employee" means an individual employed by an employer.

13. The term "employment agency" means a person regularly undertaking, with or without compensation, to procure employees for an employer or to obtain for employees opportunities to work for an employer.

14. The term "labor organization" or "union" means an organization in which employees participate or by which employees are represented and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours or other terms and conditions of employment, including a national or international labor organization and all subordinate conference, general committee, joint or system board, or joint council.

15. The term "petitioner" means a person who files a complaint seeking to initiate a Commission proceeding under the Act.

16. The term "respondent" means the person against whom a complaint is filed by a petitioner.

17. The term "Act" means the Navajo Preference in Employment Act.

Section 4. NAVAJO EMPLOYMENT PREFERENCE

A. All employers doing business within the territorial jurisdiction of the Navajo Nation, or engaged in any contract with the Navajo Nation shall:

1. Give preference in employment to Navajos. Preference in employment shall include specific Navajo affirmative action plans and timetables for all phases of employment to achieve the tribal goal of employing Navajos in all job classifications including supervisor and management positions.

2. Within 90 days after the later of the effective date of this Section 4(A)(2) or the date on which an employer commences business within the territorial jurisdiction of the Navajo Nation, the employer shall file with ONLR a written Navajo affirmative action plan which complies with this Section and other provisions of the Act. In any case where a labor organization represents employees of the employer, the plan shall be jointly filed by the employer and labor organization. Any such associated labor organization shall have obligations under this Section equivalent to those of the employer as to employees represented by such organization. Failure to file such a plan within the prescribed time limit, submission of a plan which does not comply with the requirements of the Act, or failing to implement or comply with the terms of a conforming plan shall constitute a violation of the Act. In the event of a required joint plan by an employer and associated labor organization, only
the non-complying party shall be deemed in violation of the Act, as long as the other party has demonstrated a willingness and commitment to comply with the Act.

3. Subject to the availability of adequate resources, ONLR shall provide reasonable guidance and assistance to employers and associated labor organizations in connection with the development and implementation of a Navajo affirmative action plan. Upon request, ONLR shall either approve or disapprove any plan in whole or in part. In the event of approval thereof by ONLR, no Charge shall be filed hereunder with respect to alleged unlawful provisions or omissions in the plan, except upon 30 days prior written notice to the employer and any associated labor organization to enable voluntary correction of any stated deficiencies in such plan. No Charge shall be filed against an employer and any associated labor organization for submitting a non-conforming plan, except upon 30 days prior notice by ONLR identifying deficiencies in the plan which requires correction.

B. Specific Requirements for Navajo Preference

1. All employers shall include and specify a Navajo employment preference policy statement in all job announcements and advertisements and employer policies covered by this Act.

2. All employers shall post in a conspicuous place on its premises for its employees and applicants a Navajo preference policy notice prepared by ONLR.

3. Any seniority system of an employer shall be subject to this Act and all other labor laws of the Navajo Nation. Such a seniority system shall not operate to defeat nor prevent the application of the Act; provided, however, that nothing in this Act shall be interpreted as invalidating an otherwise lawful and bona fide seniority system which is used as a selection or retention criterion with respect to any employment opportunity where the pool of applicants or candidates is exclusively composed of Navajos or non-Navajos.

4. The Navajo Nation when contracting with the federal or state government or one of its entities shall include provisions for Navajo preference in all phases of employment as provided herein. When contracting with any federal agency, the term Indian preference may be substituted for Navajo preference for federal purposes; provided that any such voluntary substitution shall not be construed as an implicit or express waiver of any provision of the Act nor a concession by the Navajo Nation that this Act is not fully applicable to the federal contract as a matter of law.

5. All employers shall utilize Navajo Nation employment sources and job services for employee recruitment and referrals; provided, however, that employers do not have the foregoing obligations in the event a Navajo is selected for the employment opportunity who is a current employee of the employer.

6. All employers shall advertise and announce all job vacancies in at least one newspaper and radio station serving the Navajo Nation; provided, however, that employers do not have the foregoing obligations in the event a Navajo is selected for the employment opportunity who is a current employee of the employer.

7. All employers shall use non-discriminatory job qualifications and selection criteria in employment.

8. All employers shall not penalize, discipline, discharge nor take any adverse action against any Navajo employee without just cause. A written notification to the employee citing such cause for any of the above actions is required in all cases.
9. All employers shall maintain a safe and clean working environment and provide employment conditions which are free of prejudice, intimidation and harassment.

10. Training shall be an integral part of the specific affirmative action plans or activities for Navajo preference in employment.

11. An employer-sponsored cross-cultural program shall be an essential part of the affirmative action plans required under the Act. Such program shall primarily focus on the education of non-Navajo employees, including management and supervisory personnel regarding the cultural and religious traditions or beliefs of Navajos and their relationship to the development of employment policies which accommodate such traditions and beliefs. The cross-cultural program shall be developed and implemented through a process which involves the substantial and continuing participation of an employer's Navajo employees, or representative Navajo employees.

12. No fringe benefit plan addressing medical or other benefits, sick leave program or any other personnel policy of an employer, including policies jointly maintained by an employer and associated labor organization, shall discriminate against Navajos in terms or coverage as a result of Navajo cultural or religious traditions or beliefs. To the maximum extent feasible, all of the foregoing policies shall accommodate and recognize in coverage such Navajo traditions and beliefs.

C. Irrespective of the qualifications of any non-Navajo applicant or candidate, any Navajo applicant or candidate who demonstrates the necessary qualifications for an employment position:

1. Shall be selected by the employer in the case of hiring, promotion, transfer, upgrading, recall and other employment opportunities with respect to such position; and

2. Shall be retained by the employer in the case of a reduction-in-force affecting such class of positions until all non-Navajos employed in that class of positions are laid-off, provided that any Navajo who is laid-off in compliance with this provision shall have the right to displace a non-Navajo in any other employment position for which the Navajo demonstrates necessary qualifications.

Among a pool of applicants or candidates who are solely Navajo and meet the necessary qualifications, the Navajo with the best qualifications shall be selected or retained, as the case may be.

D. All employers shall establish written necessary qualifications for each employment position in their work force, a copy of which shall be provided to applicants or candidates at the time they express an interest in such position.

Section 5. REPORTS

All employers doing business or engaged in any project or enterprise within the territorial jurisdiction of the Navajo Nation or pursuant to a contract with the Nation shall submit employment information and reports as required to ONLR. Such reports, in a form acceptable to ONLR, shall include all information necessary and appropriate to determine compliance with the provisions of this Act. All reports shall be filed with ONLR not later than 10 business days after the end of each calendar quarter, provided that
ONLR shall have the right to require filing of reports on a weekly or monthly schedule with respect to part-time or full-time temporary employment.

Section 6. UNION AND EMPLOYMENT AGENCY ACTIVITIES/RIGHTS OF NAVAJO WORKERS

A. Subject to lawful provisions of applicable collective bargaining agreements, the basic rights of Navajo workers to organize, bargain collectively, strike, and peaceable picket to secure their legal rights, shall not be abridged in any way by any person. The right to strike and picket does not apply to employees of the Navajo Nation, its agencies, or enterprises.

B. It shall be unlawful for any labor organization, employer or employment agency to take any action, including action by contract, which directly or indirectly causes or attempts to cause the adoption or use of any employment practice, policy or decision which violates the Act.

Section 7. NAVAJO PREVAILING WAGE

A. Definitions. For purposes of this Section, the following terms shall have the meanings indicated:

1. The term "prevailing wage" shall mean the wage paid to a majority (more than 50 percent) of the employees in the classification on similar construction projects in the area during a period not to exceed 24 months prior to the effective date of the prevailing wage rate set hereunder; provided that in the event the same wage is not paid to a majority of the employees in the classification, "prevailing wage" shall mean the average of the wages paid, weighted by the total number of employees in the classification.

2. The term "prevailing wage rate" shall mean the rate established by ONLR pursuant to this Section.

3. The term "wage" shall mean the total of:
   (a) the basic hourly rate; and
   (b) the amount of (i) contributions irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a bona fide fringe benefit fund, plan or program for the benefit of employees and (ii) costs to the contractor or subcontractor which may be reasonably anticipated in providing bona fide fringe benefits to employees pursuant to an enforceable commitment to carry out a financially responsible plan or program which was communicated in writing to the employees affected. The types of fringe benefits contemplated hereunder include medical or hospital health care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing; unemployment benefits; life insurance, disability insurance, sickness insurance, or accident insurance; vacation or holiday pay; defraying costs of apprenticeship or other similar programs; or other bona fide fringe benefits.

4. The term "area" in determining the prevailing wage means the geographic area within the territorial jurisdiction of the Navajo Nation; provided that in the event of insufficient similar construction projects in the area during the period in question, "area" shall include the geographic boundaries of such contiguous municipal, county or state governments as ONLR may determine necessary to secure sufficient wage information on similar construction projects.
5. The term "classifications" means all job positions in which persons are employed, exclusive of classifications with assigned duties which are primarily administrative, executive or clerical, and subject to satisfaction of the conditions prescribed in Sections (E)(7) and (8), exclusive of "apprentice" and "trainee" classifications as those terms are defined herein.

6. "Apprentice" means (a) a person employed and individually registered in a bona fide apprenticeship program registered with the US. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with an Apprenticeship Agency administered by a State or Indian Tribe and recognized by the Bureau or (b) a person in the first 90 days of probationary employment as an apprentice in such an apprenticeship program who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State or Tribal Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

7. "Trainee" means a person registered and receiving on-the-job training in a construction occupation under a program which has been approved in advance by the US. Department of Labor, Employment and Training Administration as meeting its standards for on-the-job training programs and which has been so certified by that Administration, or (b) employed and/or receiving on-the-job training under a public employment or work experience program which is approved and funded by the Navajo Nation.

8. The term "construction" shall mean all activity performed under a contract which relates to (a) the building, development, rehabilitation, repair, alteration or installation of structures and improvements of all types, including without limitation buildings, bridges, dams, plants, highways, sewers, water mains, power lines and other structures; (b) drilling, blasting, excavating, clearing and landscaping, painting and decorating; (c) transporting materials and supplies to or from the site of any of the activities referred to in (a) or (b) by employees of the contractor or subcontractor; and (d) manufacturing or finishing materials, articles, supplies or equipment at the construction site of any of the foregoing activities by employees of the contractor or subcontractor.

9. The term "contract" shall mean the prime construction contract and all subcontracts of any tier thereunder entered into by parties engaged in commercial, business or governmental activities (whether or not such activities are conducted for profit).

B. Establishment

1. For all construction reasonably anticipated to occur in the area on a regular basis, ONLR shall establish a general prevailing wage rate for each classification within specified types of construction. ONLR shall define classifications and types of construction in accordance with guidelines generally recognized in the construction industry. In all cases where construction is contemplated for which prevailing wage rates have not been set, the contract letting entity shall submit to ONLR a written request for a project prevailing wage scale. Such request shall be submitted not less than 60 days prior to the scheduled date for bid solicitation and shall include detailed information on the anticipated construction classifications, nature of the project and completion plans. ONLR shall use its best efforts to provide a project prevailing wage scale, for each classification involved in the project construction, within 60 days after receipt of a request therefor.
2. In setting prevailing wage rates, ONLR shall conduct such surveys and collect such data as it deems necessary and sufficient to arrive at a wage determination. Wage data may be collected from contractors, contractors' associations, labor organizations, public officials and other sources which reflect wage rates paid in classifications on types of construction in the area, including the names and addresses of contractors and subcontractors; the locations, approximate costs, dates and types of construction; the number of workers employed in each classification on the project; and the wage rates paid such workers. Wage rate data for the area may be provided, and considered in making wage determinations, in various forms including signed statements, collective bargaining agreements and prevailing wage rates established by federal authorities for federally-assisted construction projects.

3. Any classification of workers not listed in a prevailing wage rate and which is to be used under a construction contract shall be classified in conformance with the prevailing wage determination issued and applicable to the project; provided that an additional classification and prevailing wage rate therefor will be established in the event each of the following criteria are satisfied:

   (a) The work performed by the proposed classification is not performed by a classification within the existing prevailing wage scale;

   (b) The proposed classification is utilized in the area by the construction industry; and

   (c) The wages set for the proposed classification bear a reasonable relationship to the wage rates contained in the existing scale for other classifications.

4. 

   (a) Subject to the prior written approval thereof by the Director of ONLR, a general prevailing wage rate shall be effective on the date notice of such rate is published in a newspaper in general circulation in the Navajo Nation. The notice shall contain the following information:

      (i) The fact a prevailing wage rate has been set and approved in writing by the Director of ONLR;

      (ii) The type of construction for which the rate was established;

      (iii) The effective date, described as the date of publication of the notice or other specified date;

      (iv) The address and telephone number of ONLR; and

      (v) A statement that ONLR will provide a copy of the full wage determination on request, and respond to any reasonable questions regarding such determination or its application. General prevailing wage rates shall continue in effect until such time as any modifications are adopted.

   (b) A prevailing wage rate for a particular project shall be effective on the date of issuance to the requesting party of a written wage determination approved by the Director of ONLR. The wage determination shall continue in effect for the duration of the project; provided that any such determination may be modified by ONLR in the event the period of time from the effective date of the determination to the date bids are solicited exceeds 180 days and the estimated date of completion of the project is more than one year after the effective date of the determination.
(c) Project and general wage determinations may be modified from time to time, in whole or in part, to adjust rates in conformity with current conditions, subject to the special conditions applicable to project determinations. Such modifications become effective upon the same terms and conditions which are applicable to original determinations.

(d) Fringe Benefits. The fringe benefit amount of wages reflected in a prevailing wage rate shall be paid in cash to the employee, and shall not be deducted from such employee’s wages, unless each of the following conditions is satisfied;

(i) The deduction is not contrary to applicable law;

(ii) A voluntary and informed written consentauthorizing the deduction is obtained from the employee in advance of the period in which the work is to be done and such consent is not a condition either for the obtaining or continuing employment;

(iii) No profit or other benefit is obtained as a result of a deduction, directly or indirectly, by the contractor, subcontractor or any person affiliated with them in the form of a commission, dividend or other consideration; and

(iv) The deduction serves the convenience and interests of the employee.

C.

1. No contract-letting entity, contractor or subcontractor shall proceed with a construction contract subject to this Section in the absence of a contractual requirement for payment of prevailing wages pursuant to a specified wage determination issued by ONLR. Violation of this obligation shall render the contract-letting entity, and the employer contractor or subcontractor, jointly and severally liable for the difference between wages actually paid and the prevailing wage rate, together with interest thereon (or if no prevailing wage rates have been set, such wage rate as may be issued by ONLR during the course, or after the completion, of the construction project).

2. Failure by any employer, contractor or subcontractor to pay prevailing wages shall render such employer liable for the difference between the amount of wages actually paid and the prevailing rate, together with interest thereon.

3. Any deduction of fringe benefits by an employer contractor or subcontractor in violation of Section 7(C) shall render such employer liable for the amount of such deduction, together with interest thereon.

4. Upon written request of ONLR, a contract-letting entity or contractor, as the case may be, shall withhold from any monies payable on account of work performed by an employer contractor or subcontractor under a construction contract such sums as may be determined by ONLR as necessary to satisfy any liabilities of such contractor or subcontractor for unpaid prevailing wages or wrongful deduction of fringe benefits.

5. If following a hearing under Section 11 a contract-letting entity (other than the Navajo Nation), contractor or subcontractor is found to have willfully violated this Section the Commission may enter a debarment order disqualifying such party from receiving any contract, or subcontract thereunder with the Navajo Nation for a period not to exceed three years.
6. The liabilities described in this Section 7(0) shall not foreclose the Commission from awarding such other relief or imposing such other civil penalties as may be appropriate following a hearing conducted under Section 11.

D. Exemptions. This Section shall not apply to:

1. A contract associated with a construction activity which relates to the provision of architect, engineer, legal or consultant services, or, except as provided under Section 7(A)(8)(d), the manufacturing or furnishing of materials or performance of services and maintenance work by persons not employed by a prime contractor or any of its subcontractors.

2. A construction contract relating to a project having a total cost of $2,000 or less.

3. A construction contract which is let by a natural person who is an owner or person legally authorized to let such contract, for such person's personal, family or household purposes.

4. A construction contract to the extent the work thereunder is performed by employees of the owner, or employees of the person or entity legally authorized to let the prime contract.

5. A construction contract for a project receiving federal financial assistance to the extent the prevailing wage is set by federal authorities pursuant to the Davis-Bacon Act, 40 U.S.C. §§ 276a et seq. (as amended), or other federal law applicable to such project.

6. A construction contract to the extent such contract requires payment of wages pursuant to a wage scale established under a collective bargaining agreement between any contractor or subcontractor and a labor organization.

7. With the exception of the provisions of Section 7(C), an apprentice provided that the apprentice is paid not less than (a) the basic hourly rate prescribed in the registered program for the apprentice’s level of progress, expressed as a percentage of the applicable journeyman rate specified in the prevailing wage rate, and (b) the fringe benefit amount prescribed in the registered program or, if not specified, the fringe benefit amount set in the prevailing wage rate for the applicable journeyman classification. An apprentice who is not enrolled in a registered program (within the meaning of Section 7(A)(6)), shall be paid wages in an amount not less than the level prescribed for the applicable journeyman classification specified in the prevailing wage rate.

8. With the exception of the provisions of Section 7(c), a trainee provided that the trainee is paid not less than (a) the basic hourly rate prescribed in the approved program for the trainee’s level of progress, expressed as a percentage of the applicable journeyman rate specified in the prevailing wage rate and (b) the fringe benefit amount prescribed in the approved program or, if not specified and as to federally approved programs only, the fringe benefit amount set in the prevailing wage rate for the applicable journeyman classification. A trainee who is not enrolled in an approved program (within the meaning of Section 7(A)(8)), shall be paid wages in an amount not less than the level prescribed for the applicable journeyman classification specified in the prevailing wage rate.
Section 8. HEALTH AND SAFETY OF NAVAJO WORKERS

Employers shall, with respect to business conducted within the territorial jurisdiction of the Navajo Nation, adopt and implement work practices which conform to occupational safety and health standards imposed by law.

Section 9. CONTRACT COMPLIANCE

A. All transaction documents, including without limitation, leases, subleases, contracts, subcontracts, permits, and collective bargaining agreements between employers and labor organization (herein collectively "transaction documents") which are entered into by or issued to any employer and which are to be performed within the territorial jurisdiction of the Navajo Nation shall contain a provision pursuant to which the employer and any other contracting party affirmatively agree to strictly abide by all requirements of this Act. With respect to any transaction document which does not contain the foregoing provision, the terms and provisions of this Act are incorporated therein as a matter of law and the requirements of the Act shall constitute affirmative contractual obligations of the contracting parties. In addition to the sanctions prescribed by the Act, violation of the Act shall also provide grounds for the Navajo Nation to invoke such remedies for breach as may be available under the transaction document or applicable law. To the extent of any inconsistency or conflict between a transaction document and the Act, the provision of the transaction document in question shall be legally invalid and unenforceable and the Act shall prevail and govern the subject of the inconsistency or conflict.

B. Every bid solicitation, request for proposals and associated notices and advertisements which relate to prospective contracts to be performed within the territorial jurisdiction of the Navajo Nation shall expressly provide that the contract shall be performed in strict compliance with this Act. With respect to any such solicitation, request, notice or advertisement which does not contain the foregoing provision, the terms and provisions of this Act are incorporated therein as a matter of law.

Section 10. MONITORING AND ENFORCEMENT

A. Responsible Agency. Compliance with the Act shall be monitored and enforced by ONLR.

B. Charges:

1. Charging Party. Any Navajo may file a charge ("Individual Charge") claiming a violation of his/her rights under the Act. ONLR, on its own initiative, may file a charge ("ONLR Charge") claiming a violation of rights under the Act held by identified Navajos or a class of Navajos, including a claim that respondent is engaging in a pattern of conduct or practice in violation of rights guaranteed by the Act. An Individual Charge and ONLR Charge are collectively referred to herein as a "Charge."

2. Form and Content. A Charge shall be in writing, signed by the charging party (which shall be the Director of ONLR in the case of an ONLR Charge), and contain the following information:

   (a) The name, address and any telephone number of the charging party;

   (b) The name and address or business location of the respondent against whom the Charge is made;
(c) A clear and concise statement of the facts constituting the alleged violation of the Act, including the dates of each violation and other pertinent events and the names of individuals who committed, participated in or witnessed the acts complained of;

(d) With respect to a Charge alleging a pattern or practice in violation of the Act, the period of time during which such pattern or practice has existed and whether it continues on the date of the Charge;

(e) The specific harm sustained by the charging party in the case of an Individual Charge or the specific harm sustained by specified Navajos or a class of Navajos with respect to an ONLR Charge; and

(f) A statement disclosing whether proceedings involving the alleged violation have been initiated before any court or administrative agency or within any grievance process maintained by the respondent including the date of commencement, the court, agency or process and the status of the proceeding.

ONLR shall provide assistance to persons who wish to file Individual Charges. Notwithstanding the foregoing provisions, a Charge shall be deemed sufficient if it contains a reasonably precise identification of the charging party and respondent, and the action, pattern or practice which are alleged to violate the Act.

3. Place of Filing. Individual Charges may be filed in any office of ONLR. An ONLR Charge shall be filed in ONLR's administrative office in Window Rock.

4. Date of Filing. Receipt of each Individual Charge shall be acknowledged by the dated signature of an ONLR employee which shall be deemed the date on which the Individual Charge is filed. The date on which an ONLR Charge is signed by the ONLR Director shall be deemed the date of filing for such Charge.

5. Amendment. A Charge may be amended by filing, in the office where the Charge was first submitted, a written instrument which sets forth the amendment and any portions of the original Charge revised thereby. To the extent the information reflected in the amendment arose out of the subject matter of the original Charge, the amendment shall relate back and be deemed filed as of the filing date of such Charge. Any portion of the amendment which does not qualify for relation back treatment shall constitute a new Charge.

6. Time Limitation. A Charge shall be filed within one year after accrual of the claim which constitutes the alleged violation of the Act. The date of accrual of a claim shall be the earlier of:

(a) the date on which the charging party had actual knowledge of the claim, or

(b) taking into account the circumstances of the charging party, the date on which the charging party should reasonably have been expected to know of the existence of the claim; provided, however, that a Charge relating to a continuing, or pattern or practice, violation of the Act shall be filed within one year after the later of:

(i) the date of termination of such violation, pattern or practice; or
(ii) the date of accrual of the claim to which the Charge relates. Failure to file a Charge within the time limitations prescribed herein shall bar proceedings on the related claim before the Commission or in any Court of the Navajo Nation; provided, however, that nothing herein Shall be interpreted as foreclosing proceedings before any Navajo Court or administrative body (other than the Commission) on any claim which also arises under applicable common, statutory or other law independent of this Act.

7. Notice to Respondent. Within 20 days after a Charge is filed, ONLR shall serve a copy thereof on respondent; provided, however, that if in ONLR's judgment service of a copy of the Charge would impede its enforcement functions under the Act, ONLR may in lieu of a copy serve on respondent a notice of the Charge which contains the date, place and summary of relevant facts relating to the alleged violation, together with the identity of the charging party unless withheld for the reason stated above. Service of any amendment to the Charge shall be accomplished within 20 days after the amendment is filed. Failure of ONLR to serve a copy of a Charge or notice thereof within the prescribed time period shall not be a ground for dismissal of the Charge or any subsequent proceedings thereon.

8. Withdrawal of Charge.

(a) ONLR may, in its discretion, withdraw any ONLR Charge upon written notice thereof to respondent and each person identified in the Charge whose rights under the Act were alleged to have been violated. Any person receiving notice of withdrawal or any other person who asserts a violation of his/her rights as a result of the violation alleged in the withdrawn ONLR Charge may file an Individual Charge which if filed within 90 days after the issuance date of ONLR's withdrawal notice, shall relate back to the filing date of the ONLR Charge.

(b) Any charging party may, in his/her discretion withdraw an Individual Charge by filing a written notice of withdrawal with the ONLR office where the Charge was submitted, with a copy thereof filed with the ONLR administrative office in Window Rock. ONLR shall, within 20 days after receiving the notice, transmit a copy to the respondent. Within 90 days after receipt of the withdrawal notice, ONLR may file an ONLR Charge relating in whole or part to the violations alleged in the withdrawn Individual Charge. Any filing of an ONLR Charge within the prescribed time period shall relate back to the filing date of the withdrawn Charge.

9. Overlapping Charges. Nothing herein shall be construed as prohibiting the filing of any combination of Individual Charges and an ONLR Charge which, in whole or part, contain common allegations of violations of the Act.

10. Informants. Irrespective of whether a person is otherwise eligible to file an Individual Charge, any such person or an organization may in lieu of filing a Charge submit to ONLR written or verbal information concerning alleged violations of the Act and may further request ONLR to file an ONLR Charge thereon. In addition to other limitations on disclosure provided in Section 10(M) and in the absence of the written consent of the informant, neither the identity of the informant nor any information provided by such informant shall be disclosed to the respondent, agents or legal counsel for the respondent, or the public, either voluntarily by ONLR or pursuant to any discovery or other request for, or order relating to, such information during the course of any judicial or non-judicial proceeding, including a proceeding before the Commission or any subsequent appeal or challenge to a Commission or appellate decision; provided, however, that in the event the informant is called as a witness by ONLR at a Commission proceeding involving the information provided by the informant,
(a) the informant's name may be disclosed, but his/her status as an informant shall remain privileged and confidential and shall not be disclosable through witness examination or otherwise, and

(b) with the exception of the witness status as an informer, information provided by the informant is disclosable in accordance with the procedures outlined under Section 10(M).

C. Investigation of Charges.

1. General. ONLR shall conduct such investigation of a Charge as it deems necessary to determine whether there is probable cause to believe the Act has been violated.

2. Subpoenas.

(a) The Director of ONLR shall have the authority to sign and issue a subpoena compelling the disclosure by any person evidence relevant to a Charge, including a subpoena ordering, under oath as may be appropriate:

(i) The attendance and testimony of witnesses;

(ii) Responses to written interrogatories;

(iii) The production of evidence, including without limitation books, records, correspondence or other documents (or lists or summaries thereof) in the subpoenaed person’s possession, custody or control or which are lawfully obtainable by such person; and

(iv) Access to evidence for the purposes of examination and copying. Neither an individual charging party nor a respondent shall have a right to demand issuance of a subpoena prior to the initiation of any proceedings on the Charge before the Commission, in which event subpoenas are issuable only pursuant to the procedures governing such proceedings.

(b) Service of the subpoena shall be effected by one of the methods prescribed in Section 10(0). A subpoena directed to a natural person shall be served either on the person at his/her residence or office address or, in the case of personal delivery, at such residence or office either on the person subpoenaed or on anyone at least eighteen years of age (and in the case of office service, a person who is also an employee of such office). Service of a subpoena directed to any other person shall be addressed or delivered to either the statutory agent (if any) of such person or any employee occupying a managerial or supervisory position at any office of the person maintained within or outside the territorial jurisdiction of the Navajo Nation. Personal service may be performed by a natural person at least eighteen years of age, including an employee of ONLR.

(c) The subpoena shall set a date, time and place for the attendance of a witness or production of or access to evidence, as the case may be, provided that the date for compliance shall be not less than 30 days after the date on which service of the subpoena was effected.

(d) Any person served with a subpoena intending not to fully comply therewith shall within five business days after service, serve on the Director of ONLR a petition requesting the
modification or revocation of the subpoena and identifying with particularity each portion of the subpoena which is challenged and the reasons therefor. To the extent any portion of the subpoena is not challenged, the unchallenged parts shall be complied with in accordance with the terms of the subpoena as issued. The ONLR Director shall issue and serve on petitioner a decision and reasons therefor within eight business days following receipt of the petition, and any failure to serve a decision within such period shall be deemed a denial of the petition. In the event the Director's decision reaffirms any part of the subpoena challenged in the petition, the Director may extend the date for compliance with such portion for a period not to exceed 10 business days. Any petitioner dissatisfied with the decision of the ONLR Director shall either

(i) comply with the subpoena (with any modifications thereto reflected in the Director's decision) or

(ii) within five business days following receipt of the Director's decision or the date such decision was due, file a petition with the Commission (with a copy concurrently served on the ONLR Director) seeking modification or revocation of the subpoena and stating with particularity therein each portion of the subpoena challenged and the reasons therefor. A copy of the ONLR Director's decision, if any, shall be attached to the petition.

(e) In the event a person fails to comply with a served subpoena, ONLR may petition the Commission for enforcement of the subpoena. For purposes of awarding any relief to petitioner, the Commission may issue any order appropriate and authorized in a case where it is established that a Commission order has been violated. A copy of the petition shall be concurrently served on the non-complying person.

(f) Beginning on the first day of non-compliance with a subpoena served on a respondent, or any employee or agent of respondent, until the date of full compliance therewith, there shall be a tolling of all periods of limitation set forth in this Section 10.

D. Dismissal of Charges.

1. Individual Charges. ONLR shall dismiss an Individual Charge upon reaching any one or more of the following determinations:

(a) The Individual Charge, on its face or following an ONLR investigation, fails to demonstrate that probable cause exists to believe a violation of the Act has occurred;

(b) The Individual Charge was not filed within the time limit prescribed by Section 10(B)(6);

(c) The charging party has failed to reasonably cooperate in the investigation of, or attempts to settle, the Individual Charge;

(d) The charging party has refused, within 30 days of receipt, to accept a settlement offer agreed to by respondent and approved by ONLR, which accords substantially full relief for the harm sustained by such party; or

(e) The Charge has been settled pursuant to Section 10(G).

2. ONLR Charges. ONLR shall dismiss an ONLR Charge upon determining that:
(a) no probable cause exists to believe a violation of the Act has occurred,

(b) the Charge was not filed within the time limits prescribed by Section 10(B)(6), or

(c) the Charge has been settled pursuant to Section 10(G).

3. Partial Dismissal. In the event a portion of a Charge is dismissible on one or more of the foregoing grounds, only such portion of the Charge shall be dismissed and the remainder retained by ONLR for final disposition.

4. Notice. Written notice of dismissal, stating the grounds therefor, shall be served on respondent and the individual charging party in the case of an Individual Charge or, in the case of an ONLR Charge, on the respondent and any person known to ONLR who claims to be aggrieved by the violations alleged in such Charge. Such notice shall be accompanied by a right to sue authorization pursuant to Section 10(H).

E. Probable Cause Determination. Following its investigation of a Charge and in the absence of a settlement or dismissal required under Section 10(D), ONLR shall issue written notice of its determination that probable cause exists to believe a violation of the Act has occurred or is occurring. Such notice shall identify each violation of the Act for which probable cause has been found, and copies thereof shall be promptly sent to the respondent, the charging party in the case of an Individual Charge, and, in the case of an ONLR Charge, each person identified by ONLR whose rights are believed to have been violated. Any probable cause determination shall be based on, and limited to, the evidence obtained by ONLR and shall not be deemed a judgment by ONLR on the merits of allegations not addressed in the determination.

F. Conciliation. If, following its investigation of a Charge, ONLR determines there is probable cause to believe the Act has been or is being violated, ONLR shall make a good faith effort to secure compliance and appropriate relief by informal means through conference, conciliation and persuasion. In the event there is a failure to resolve the matter informally as to any allegations in an Individual Charge for which probable cause has been determined, ONLR shall either issue the notice prescribed in Section 10(H) or initiate a Commission proceeding under Section 10(I) concerning unresolved allegations. A successful resolution of any such allegation shall be committed to writing in the form required under Section 10(G). Nothing herein shall be construed as prohibiting ONLR from initiating or participating in efforts to informally resolve a Charge prior to issuance of a probable cause determination.

G. Settlement.

1. Settlement agreements shall be committed to writing and executed by respondent, the individual charging party if any and, in the case of any Charge, by the Director of ONLR. Refusal of an individual charging party to execute a settlement agreement subjects the Individual Charge to dismissal under the conditions set forth in Section 10(D)(l)(d). Settlement agreements may also be signed by those aggrieved persons identified as having a claim with respect to an ONLR Charge.

2. Settlement agreements hereunder shall be enforceable among the parties thereto in accordance with the terms of the agreement. Any member of a class of persons affected by the settlement who is not a signatory to the agreement shall have the right to initiate proceedings before the Commission pursuant to the procedure in Section 10(H)(2)(a)(iii).
3. Each settlement agreement shall provide for the dismissal of the Charge to the extent the violations alleged therein are resolved under the agreement.

4. Any breach of a settlement agreement by respondent shall present grounds for filing a Charge under this Section 10. A charging party asserting a claim for breach may either seek:

   (a) enforcement of that portion of the settlement agreement alleged to have been breached, or

   (b) in the case of a material breach as to any or all terms, partial or total rescission of the agreement, as the case may be, and such other and further relief as may have been available in the absence of settlement. A Charge asserting a breach of a settlement agreement with respect to any original allegation in the Charge covered by such agreement shall, for purposes of all time limitations in this Section 10, be deemed to arise on the accrual date of the breach.

H. Individual Right to Sue.

1. Individual Charges.

   (a) Prior to the expiration of 180 days following the date an Individual Charge was filed, ONLR, by notice to the individual charging party, shall authorize such individual to initiate a proceeding before the Commission in accordance with the procedures prescribed in Section 10(J), if:

      (i) The Individual Charge has been dismissed by ONLR pursuant to Section 10(D)(1);

      (ii) ONLR has issued a probable cause determination under Section 10(E), there has been a failure of conciliation contemplated by Section 10(F), and ONLR has determined not to initiate a Commission proceeding on behalf of the individual charging party; or

      (iii) Notwithstanding the absence of a probable cause determination or conclusion of conciliation efforts, ONLR certifies it will be unable to complete one or both of these steps within 180 days after the date on which the Individual Charge was filed.

   (b) After the expiration of 180 days following the date an Individual Charge was filed, the individual charging party shall have the right to initiate a proceeding before the Commission irrespective of whether ONLR has issued a notice of right to sue, made a probable cause determination, or commenced or concluded conciliation efforts.

2. ONLR Charges.

   (a) Prior to the expiration of 180 days following the date an ONLR Charge was filed, ONLR, by notice to any person known to it who claims to be aggrieved by the allegations presented in such Charge, shall authorize such person to initiate a proceeding before the Commission in accordance with the procedures prescribed in Section 10(J), if:

      (i) The ONLR Charge has been dismissed by ONLR pursuant to Section 10(D)(2);

      (ii) ONLR has issued a probable cause determination under Section 10(E), there has been a failure of conciliation contemplated by Section 10(F), and ONLR has determined not to initiate a Commission proceeding on the Charge;
(iii) ONLR has entered into a settlement agreement under Section 10(G) to which such aggrieved person is not a party; or

(iv) Notwithstanding the absence of a probable cause determination or conclusion of conciliation efforts, ONLR certifies it will be unable to complete one or both of these steps within 180 days after the date on which the ONLR Charge was filed.

(b) After the expiration of 180 days following the date an ONLR Charge was filed and prior to the date on which ONLR commences a Commission proceeding, any person claiming to be aggrieved by the allegations presented in such Charge shall have the right to initiate a proceeding before the Commission irrespective of whether ONLR has issued a notice of right to sue, made a probable cause determination or commenced or concluded conciliation efforts.

3. Content of Notice. A notice of right to sue shall include the following information;

(a) Authorization to the individual charging party or aggrieved person to initiate a proceeding before the Commission pursuant to and within the time limits prescribed by Section 10(J);

(b) A summary of the procedures applicable to the institution of such proceeding, or a copy of the Act containing such procedures;

(c) A copy of the Charge; and

(d) A copy of any written determination of ONLR with respect to such Charge.

4. ONLR Assistance. Authorization to commence Commission proceedings hereunder shall not prevent ONLR from assisting any individual charging party or aggrieved person in connection with Commission proceedings or other efforts to remedy the alleged violations of the Act.

I. ONLR Right to Sue.

1. Individual Charges. ONLR shall have the right to initiate proceedings before the Commission based on the allegations of an Individual Charge with respect to which ONLR has issued a probable cause determination under Section 10(E) and there has been a failure of conciliation contemplated by Section 10(F). ONLR shall have such right notwithstanding that the individual charging party has a concurrent right to sue hereunder which has not been exercised. ONLR's right to sue shall continue until such time as the individual charging party commences a Commission proceeding and, in that case, shall be revived in the event the proceeding is dismissed or concluded for reasons unrelated to the merits. Initiation of Commission proceedings by ONLR shall terminate the right to sue of an individual charging party, subject to revival of such right in the event the proceeding is dismissed or concluded for reasons unrelated to the merits. Nothing herein shall be construed as foreclosing ONLR from exercising its right to intervene in a Commission proceeding under section 10(L).

2. ONLR Charges. ONLR shall have the right to initiate proceedings before the Commission based on the allegations of an ONLR Charge with respect to which ONLR has issued a probable determination under Section 10(E) and there has been a failure of conciliation contemplated by Section 10(F). ONLR shall have such right notwithstanding that a person claiming to be aggrieved as a result of the allegations in the ONLR Charge has a concurrent right to sue hereunder which has not been exercised. In the event an aggrieved person first initiates a Commission proceeding
in an authorized manner, ONLR’s right to sue shall only expire as to such person and shall revive in the event the aggrieved person’s proceeding is dismissed or concluded for reasons unrelated to the merits. Nothing herein shall be construed as foreclosing ONLR from exercising its right to intervene in a Commission proceeding under Section 10(L).

J. Initiation of Commission Proceedings. Proceedings before the Commission shall be initiated upon the filing of a written complaint by a petitioner with the Commission. Complaints shall satisfy each of the following conditions:

1. The petitioner is authorized to file the Complaint under the terms and conditions prescribed by this Section 10;

2. The underlying Charge was filed within the time limits prescribed in Section 10(B)(6); and

3. The complaint was filed within 360 days following the date on which the underlying Charge was filed.

Upon motion of respondent and a showing that anyone or more of the foregoing conditions has not been satisfied, the Commission shall dismiss the complaint; provided, however, that no complaint shall be dismissed under (2) above as to any allegation of a pattern of conduct or practice in violation of the Act to the extent such pattern or practice continued to persist during the time limit prescribed in Section 10(B)(6); and provided further that, in the absence of dismissal or conclusion of Commission proceedings on the merits, nothing herein shall be construed as prohibiting the re-filing of a Charge alleging the same or comparable pattern or practice violations of the Act which continued to persist during the time limits prescribed in Section 10(B)(6) for re-filing such Charge.

K. Preliminary Relief. Prior to the initiation of Commission proceedings on a Charge and notwithstanding the failure to satisfy any precondition to such proceedings, either ONLR, an individual charging party or aggrieved person may, upon notice to respondent, petition the Commission for appropriate temporary or preliminary relief in the form of an injunction or other equitable remedy on the ground that prompt action is necessary to carry out the purposes of the Act, including the preservation and protection of rights thereunder. Nothing herein shall be construed as foreclosing a petition which seeks comparable relief subsequent to the commencement of Commission proceedings.

L. Intervention in Commission Proceedings. Within three business days after the date on which any complaint, or petition pursuant to Section 10(K), is filed with the Commission, other than a complaint or petition filed by ONLR, the Commission shall cause copies thereof to be sent to the ONLR Director and the Attorney General of the Navajo Nation. ONLR shall have an unconditional right to intervene in the Commission proceeding initiated by such complaint or petition upon the timely application by motion accompanied by a pleading setting forth the claims for which intervention is sought.

M. Confidentiality.

1. Conciliation. In the absence of written consent of the persons concerned, statements or offers of settlement made, documents provided or conduct by participants in conciliation efforts under Section 10(F) shall not be admissible in any Commission or other proceeding relating to the Charge which is the subject of conciliation, to prove liability for or invalidity of the Charge or the amount or nature of relief therefor; provided, however, that nothing herein shall be construed as requiring the exclusion of such evidence merely because it was presented in the course of conciliation if:
2. Charge, Records and Information. Prior to the institution of Commission proceedings thereon, and in the absence of the written consent of the persons concerned, ONLR shall not disclose as a matter of public information any Charge, response thereto, any statements or other information obtained in the course of its investigation of the Charge, except that nothing herein shall prevent earlier disclosure of such information by ONLR in its discretion:

(a) To charging parties or their attorneys, respondents or their attorneys, witnesses or other interested persons where the disclosure is deemed by ONLR to be necessary for securing a resolution of the Charge, including appropriate relief therefor;

(b) To employees or representatives of the Navajo Nation or employees or representatives of federal, state or local authorities having a government interest in the subject matter of the Charge; or

(c) To persons for the purpose of publishing data derived from such information in a form which does not reveal the identity of charging parties, aggrieved persons, respondents or persons supplying the information.

Except as otherwise provided herein, any person to whom a permissible disclosure is made hereunder shall be bound to maintain the confidentiality of such information from further disclosure and shall use the information solely for the purpose for which it was disclosed.

3. Privileged Information. Neither ONLR, charging parties, aggrieved persons, respondents, witnesses or persons supplying information in connection with a Charge shall be compelled, either before or after commencement of Commission proceedings, to disclose any information which represents the opinions or conclusions formed by ONLR during the course of its investigation of a Charge, or any information which is protected by the attorney-client privilege, the informer's privilege referred to in Section 10(B)(10), or any other absolute or limited privilege recognized under the laws of the Navajo Nation. To the extent justice requires, the Commission may, balancing the rights of parties and affected persons, prohibit or limit the disclosure of any other information for good cause shown, including a showing that disclosure would impede enforcement of the Act, jeopardize rights guaranteed thereunder, or cause annoyance, embarrassment, oppression or undue burden or expense to parties or affected persons.

N. Non-retaliation. It shall be unlawful for any employer, labor organization, joint labor-management committee involved in apprenticeship or other matters relating to employment, employment agency or other person to, directly or indirectly, take or attempt to induce another person to take, any action adversely affecting:

1. the terms and conditions of any person's employment opportunities associated with such employment,

2. an applicant's opportunity for employment,
3. the membership of an employee or applicant for employment in a labor organization, or

4. any other right, benefit, privilege or opportunity unrelated to employment, because such person has opposed an employment practice subject to this Act or has made a charge, testified, or assisted or participated in any manner in an investigation, proceeding or hearing under the Act.

O. Service of Documents. Service of any notice, determination or other document required to be transmitted under this Section 10 shall be accomplished by personal delivery or certified mail, return receipt requested.

Section 11. HEARING

A. The Commission shall schedule a hearing within sixty (60) days of the filing of a written complaint by a petitioner with the Commission. The hearing shall be held at a location designated by the Commission.

1. Notice: The Commission shall issue a notice of hearing. The time and place of the hearing shall be clearly described in the notice. The notice shall also set forth in clear and simple terms the nature of the alleged violations and shall state (1) the violations may be contested at a hearing before the Commission, and (2) any party may appear by counsel and cross examine adverse witnesses.

2. Upon application by a party to the Commission, or on the Commissions' own motion, the Commission may issue subpoenas compelling the disclosure by any person evidence relevant to the complaint, including a subpoena ordering, under oath as may be appropriate:

(a) The attendance and testimony of witnesses;

(b) Responses to written interrogatories;

(c) The production of evidence; and

(d) Access to evidence for the purpose of examination and copying.

3. The Commission is hereby authorized to administer oaths and compel attendance of any person at a hearing and to compel production of any documents.

4. In the event a party does not make an appearance on the day set for hearing or fails to comply with the rules of procedure set forth by the Commission for the conduct of hearings, the Commission is hereby authorized to enter a default determination against the non-appearing and or non-complying party.

B. Burden of Proof: In any compliance review, complaint proceeding, investigation, or hearing, the burden of proof shall be upon the respondent to show compliance with the provisions of this Act by clear and convincing evidence.

C. Hearing: The Commission shall conduct the hearing in a fair and orderly manner and extend to all parties the right to be heard.

1. The Commission shall not be bound by any formal rules of evidence.
2. The respondent shall have the opportunity to answer the complaint and the parties shall have the right to legal counsel, present witnesses, and cross-examine adverse witnesses.

3. The Commission shall issue its decision by a majority vote of a quorum present and shall be signed by the Chairman of the Commission.

4. Copies of the decision shall be sent to all parties of record in the proceeding by certified mail, return receipt.

5. The proceeding shall be recorded. Any party may request a transcript of the proceeding at their own expense.

6. The decision of the Commission shall be final with a right of appeal only on questions of law to the Navajo Nation Supreme Court.

Section 12. REMEDIES AND SANCTIONS

A. If, following notice and hearing, the Commission finds that respondent has violated the Act, the Commission shall:

1. Issue one or more remedial orders, including without limitation, directed hiring, reinstatement, displacement of non-Navajo employees, back pay, front pay, injunctive relief, mandated corrective action to cure the violation within a reasonable period of time, and/or, upon a finding of intentional violation, imposition of civil fines; provided that liability for back pay or other forms of compensatory damages shall not accrue from a date more than two years prior to the date of filing of the Charge which is the basis for the complaint.

2. In the case of an individual suit initiated pursuant to Section 10(H) award costs and attorney fees if the respondent's position was not substantially justified.

3. Refer matters involving respondent contracts, agreements, leases and permits to the Navajo Nation Attorney General for appropriate action.

B. In the absence of a showing of good cause thereof, if any party to a proceeding under this Act fails to comply with a subpoena or order issued by the Commission, the Commission may impose such sanctions as are just, including without limitation anyone or more of the following:

1. In the case of noncompliance with a subpoena of documents or witnesses:

   (a) An order that the matters regarding which the subpoena was issued or any other designated facts shall be deemed established for the purposes of the proceeding and in accordance with the claim of the party obtaining the order;

   (b) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence;

   (c) An order striking pleadings or parts thereof, or staying further proceedings until the subpoena is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party.
2. In the case of noncompliance by a party or nonparty with a Commission subpoena of documents or witnesses or with any other order of the Commission:

   (a) An order holding the disobedient person in contempt of the Commission and imposing appropriate sanctions therefor, including a civil fine;

   (b) An order directing the disobedient person to pay the reasonable costs and/or attorneys fees caused by the noncompliance.

C. The person or party in whose favor a Commission's decision providing for remedial action is entered shall have the right to seek legal and/or equitable relief in the District Courts of the Navajo Nation to enforce the remedial action; provided that the Commission itself shall have the right to seek legal and/or equitable relief in the District Courts of the Navajo Nation to enforce civil fines or sanctions imposed by the Commission against a person or party. In both instances the Attorney General of the Navajo Nation shall have an unconditional right to intervene on behalf of the Navajo Nation. Any attempted enforcement of a Commission order or decision directing payment of money by the Navajo Nation or any of its governmental entities shall, with respect to the extent of any liability be governed by the Navajo Sovereign Immunity Act, 1 N.T.C. §§351 et seq., as amended.

Section 13. APPEAL AND STAY OF EXECUTION

A. Any party may appeal a decision of the Commission to the Navajo Nation Supreme Court by lodging a written notice of appeal, in the form prescribed by the Navajo Rules of Civil Appellate Procedure and within ten (10) days after receipt of the Commission's decision.

B. In the absence of a stipulation by the parties approved by the Commission, a stay of execution of the decision from which the appeal is taken shall only be granted upon written application of the appellant to the Commission and an opportunity for response by appellee. The application for a stay shall be filed within the period prescribed for appeal in Subsection (A) hereof. No stay shall be issued unless the appellant presents a clear and convincing showing that each of the following requirements has been satisfied:

1. Appellant is likely to prevail on the merits of the appeal;

2. Appellant will be irreparably harmed in the absence of a stay;

3. Appellee and interested persons will not be substantially harmed by a stay;

4. The public interest will be served by a stay; and

5. An appeal bond or other security, in the amount and upon the terms prescribed by Subsection (C) below, has been filed with and approved by the Commission; provided that no appeal bond shall be required of ONLR, the Navajo Nation or any governmental agency or enterprise of the Navajo Nation.

C. The appeal bond shall be issued by a duly authorized and responsible surety which shall obligate itself to pay to appellee, or any other person in whose favor an award is made by the Commission decision, the amounts specified or described in the bond upon conclusion of the appeal and failure of appellant,
following written demand by appellee, to satisfy the foregoing obligations. The amount or nature of liability assumed by the surety shall be specified in the bond and shall include:

1. The total amount of all monetary awards made in the Commission decision, together with such interest thereon as may be prescribed in the Commission's decision;

2. Costs of appeal and attorneys' fees incurred by appellee in defending the appeal and which may be awarded to appellee by the Navajo Nation Supreme Court;

3. Damages sustained by appellee or other recipients of a Commission award for delay in satisfaction of the Commission decision caused by the appeal; and

4. Such other amount or liability reasonably required to be secured to protect the interests of the appellee or other award recipients.

The bond shall provide that the surety submits to the jurisdiction of the Commission and the Courts of the Navajo Nation, and irrevocably appoints the Commission as the surety's agent upon whom any papers affecting the surety's liability on the bond may be served. The surety's liability may be enforced on motion of the appellee filed with the Commission with copies thereof served on the surety and appellant.

In lieu of posting an appeal bond, appellant may, with the approval of the Commission, post a cash bond and undertaking in the amount and upon the terms which are required above with respect to an appeal bond.

No appeal bond or cash bond and undertaking, nor the liabilities of the surety or appellant thereunder, shall be exonerated or released until all amounts and liabilities prescribed therein have been fully paid and satisfied.

D. Within three business days following the filing with the Navajo Nation Supreme Court of any appeal from a Commission proceeding, the Clerk of such Court shall, in all cases other than those in which ONLR is not either the appellant or appellee, cause copies of the notice of appeal and all other documents filed in connection therewith to be sent to the ONLR Director and the Attorney General of the Navajo Nation. ONLR shall have an unconditional right to intervene and participate as amicus in the appeal proceedings upon timely application therefor by motion lodged with the Navajo Nation Supreme Court. ONLR's right of participation shall be coextensive with that of the parties to the appeal, including the rights to file opening, answering and reply briefs, and the right to present oral argument to the Court.

Section 14. NON-NAVAJO SPOUSES

A. When a non-Navajo is legally married to a Navajo, he or she shall be entitled to preference in employment under the Act. Proof of marriage by a valid marriage certificate shall be required. In addition such non-Navajo spouse shall be required to have resided within the territorial jurisdiction of the Navajo Nation for a continuous one-year period immediately preceding the application for Navajo preference consideration.

B. Upon meeting the above requirements, such consideration shall be limited to preference in employment where the spouse would normally be in a pool of non-Navajo workers. In this instance, Navajo preference would place the non-Navajo spouse in the applicant pool of Navajos for consideration.
However, preference priority shall still be given to all Navajo applicants who meet the necessary job qualifications within that pool.

C. Non-Navajo spouses having a right to secondary preference under this Section shall also have and enjoy all other employment rights granted to Navajos under the Act, it being understood that Navajos retain a priority right with respect to provisions of the Act concerning preferential treatment in employment opportunities.

Section 15. LIE-DETECTOR TEST

A. No person shall request or require any employee or prospective employee to submit to, or take a polygraph examination as a condition of obtaining employment or of continuing employment or discharge or discipline in any manner an employee for failing, refusing, or declining to submit to or take a polygraph examination.

B. For purposes of this section, "polygraph" means any mechanical or electrical instrument or device of any type used or allegedly used to examine, test, or question individuals for the purpose of determining truthfulness. This provision shall not apply to federal or state government employees.

Section 16. RULES AND REGULATIONS

Human Services Committee of the Navajo Nation Council is hereby delegated the authority to promulgate rules and regulations necessary for the enforcement and implementation of the provisions of this Act. The Commission is hereby delegated the authority to adopt and implement, on its own initiative and without any approval, rules of procedure and practice governing the conduct of proceedings under Section 11 of the Act; provided only that such rules are consistent with the provisions of the Act.

Section 17. ALL PRIOR INCONSISTENT LAW IS REPEALED

All prior Tribal laws, rules, regulations, and provisions of the Navajo Tribal Code previously adopted which are inconsistent with this Act are hereby repealed

Section 18. EFFECTIVE DATE AND AMENDMENT OF THE ACT

A. The effective date of this Act shall be 60 days after the passage of the Act by the Navajo Nation Council and shall remain in effect until amended or repealed by the Navajo Nation Council

B. Any amendment or repeal of the Act shall only be effective upon approval of the Navajo Nation Council, and shall not be valid if it has the effect of amending, modifying, limiting, expanding or waiving the Act for the benefit or to the detriment of a particular person.

C. Any amendment to the Act, unless the amendment expressly states otherwise, shall be effective 60 days after the passage thereof by the Navajo Nation Council.
D. The time limits prescribed in Section 10 relating to filing a Charge and subsequent proceedings thereon were added by amendment adopted by the Navajo Nation Council subsequent to the effective date of the original Act. Notwithstanding an actual accrual date for any alleged violation of the Act which is prior to the effective date of the amendment which added the time limits in Section 10 hereof, such alleged violation shall be deemed to accrue on the effective date of the foregoing amendment for purposes of all time limits set forth in Section 10.

Section 19. SEVERABILITY OF THE ACT

If any provision of this Act or the application thereof to any person, association, entity or circumstances is held invalid, such invalidity shall not affect the remaining provisions or applications thereof.
### TABLE OF CONTENTS

**TITLE 7 COURTS AND PROCEDURE** .................................................................................................. 1  
**CHAPTER 7 NAVAJO NATION ARBITRATION ACT** ...................................................................... 1  

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§1101</td>
<td>Short title</td>
<td>1</td>
</tr>
<tr>
<td>§1102</td>
<td>Jurisdiction</td>
<td>2</td>
</tr>
<tr>
<td>§1103</td>
<td>Written agreement to submit controversy to arbitration is valid</td>
<td>2</td>
</tr>
<tr>
<td>§1104</td>
<td>Duty of court on application of party to arbitrate</td>
<td>2</td>
</tr>
<tr>
<td>§1105</td>
<td>When court may appoint arbitrators</td>
<td>2</td>
</tr>
<tr>
<td>§1106</td>
<td>Qualification of arbitrators</td>
<td>2</td>
</tr>
<tr>
<td>§1107</td>
<td>Powers of arbitrators</td>
<td>2</td>
</tr>
<tr>
<td>§1108</td>
<td>Notice and hearing</td>
<td>3</td>
</tr>
<tr>
<td>§1109</td>
<td>Right to be represented by attorney or Navajo tribal court advocate; effect of waiver</td>
<td>3</td>
</tr>
<tr>
<td>§1110</td>
<td>Authority of arbitrators to issue subpoenas and administer oaths; service of subpoenas;</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>deposition; compelling person to testify</td>
<td></td>
</tr>
<tr>
<td>§1111</td>
<td>Award of arbitrators</td>
<td>3</td>
</tr>
<tr>
<td>§1112</td>
<td>Modification of award</td>
<td>4</td>
</tr>
<tr>
<td>§1113</td>
<td>Expenses and fees for arbitrators</td>
<td>4</td>
</tr>
<tr>
<td>§1114</td>
<td>Confirmation of an arbitration award by court</td>
<td>4</td>
</tr>
<tr>
<td>§1115</td>
<td>When court may vacate award</td>
<td>4</td>
</tr>
<tr>
<td>§1116</td>
<td>When court may modify or correct award</td>
<td>5</td>
</tr>
<tr>
<td>§1117</td>
<td>Judgment upon granting order confirming, modifying or correcting award; costs and disbursements</td>
<td>5</td>
</tr>
<tr>
<td>§1118</td>
<td>Application to court to be by motion; notice and hearing to be in manner provided by law</td>
<td>6</td>
</tr>
<tr>
<td>§1119</td>
<td>Appeals</td>
<td>6</td>
</tr>
</tbody>
</table>

### NAVAJO NATION CODE ANNOTATED

**TITLE 7 COURTS AND PROCEDURE**  
**CHAPTER 7 NAVAJO NATION ARBITRATION ACT**

**§1101  Short title**

This Act may be cited as the Navajo Nation Arbitration Act.
§1102 Jurisdiction

An agreement providing for arbitration in the Navajo Nation may be enforced by the Navajo Nation district court in the judicial district where the parties to the controversy reside or may be personally served.

§1103 Written agreement to submit controversy to arbitration is valid

A written agreement to submit any existing or future controversy to arbitration is valid, enforceable and irrevocable, save upon such grounds as exist at law or in equity for the revocation of the contract.

§1104 Duty of court on application of party to arbitrate

A. On application of a party showing an arbitration agreement and the opposing party's refusal to arbitrate, the court shall order the parties to proceed with arbitration. If the opposing party denies the existence of the agreement to arbitrate, the court shall proceed summarily to determine the issue raised and shall order or deny arbitration accordingly.

B. If an issue referable to arbitration under the alleged agreement is involved in an action or proceeding pending in a court having jurisdiction to hear applications to compel arbitration, the application shall be made therein. Otherwise, the application shall be made in the court of proper venue.

C. Any action or proceeding involving an issue subject to arbitration shall be stayed if an order for arbitration or an application therefor has been made or, if the issue is severable, the stay may be with respect thereto only. When the application is made in such action or proceeding, the order for arbitration shall include such stay.

D. An order for arbitration shall not be refused on the ground that the claim in issue lacks merit or because any fault or grounds for the claim sought to be arbitrated has not been shown.

§1105 When court may appoint arbitrators

If the arbitration agreement provides a method of appointment of arbitrators this method shall be followed. In the absence thereof, or if the agreed method fails or cannot be followed, or when an arbitrator fails or is unable to act and his successor has not been appointed, the court on application of a party shall appoint one or more arbitrators. An arbitrator so appointed has all the powers of one specifically named in the agreement.

§1106 Qualification of arbitrators

The qualifications of a person allowed to serve as an arbitrator, under this Act shall be set by the Navajo Nation Judicial Branch.

§1107 Powers of arbitrators

The powers of the arbitrators may be exercised by a majority unless otherwise provided by the agreement or by law.
§1108 Notice and hearing

A. Whenever the Navajo Nation is a party to an arbitration agreement, notice of intent to invoke arbitration shall be filed in compliance with 1 N.N.C. §555.

B. The arbitrators shall appoint a time and place for the hearing and serve the parties with notice either personally or by registered mail not less than 10 days before the hearing. Appearance at the hearing waives the notice. The arbitrators may adjourn the hearing from time to time as necessary, and on request of a party or upon their own motion may postpone the hearing to a time not later than the date fixed by the agreement for making the award, unless the parties consent to a later date. The arbitrators may hear and determine the controversy upon the evidence produced notwithstanding the failure of a party duly notified to appear. The court on application may direct the arbitrators to proceed promptly with the hearing and determination of the controversy.

C. The parties are entitled to be heard, to present evidence material to the controversy and to cross-examine witnesses appearing at the hearing.

D. The hearing shall be conducted by all the arbitrators but a majority may determine any question and render a final award. If during the course of the hearing an arbitrator for any reason ceases to act, the remaining arbitrator or arbitrators may continue with the hearing and determination of the controversy.

§1109 Right to be represented by attorney or Navajo tribal court advocate; effect of waiver

A party may be represented by a member in good standing of the Navajo Nation Bar Association at any arbitration proceeding or hearing. A waiver of representation at an arbitration proceeding made prior to the proceeding is ineffective.

§1110 Authority of arbitrators to issue subpoenas and administer oaths; service of subpoenas; depositions; compelling person to testify

A. The arbitrators may issue subpoenas for the attendance of witnesses, for the production of books, records, documents and other evidence and may administer oaths. Subpoenas shall be served, and upon application to the court by a party or the arbitrators, enforced in the manner provided by law for the service and enforcement of subpoenas in a civil action.

B. On application of a party and for use as evidence, the arbitrators may permit a deposition to be taken of a witness who cannot be subpoenaed or is unable to attend the hearing, in the manner designated by the arbitrators.

C. All provisions of law compelling a person under subpoena to testify are applicable.

§1111 Award of arbitrators

A. The award shall be in writing and signed by the arbitrators joining in the decision. A copy shall be delivered to each party personally, or by registered mail or as provided in the agreement.

B. An award shall be made within the time fixed by the agreement, or if not so fixed, within such time as the court orders on application of a party. The parties may extend the time in writing either before or after the expiration thereof. A party waives the objection that an award was not made
within the time required unless he notifies the arbitrators of his objection prior to the delivery of the award to him.

C. An award against the Navajo Nation shall be in conformance with the provisions of 1 N.N.C. §554(K).

§1112 Modification of award

A. On application of a party or an order of the court, the arbitrators may modify the award:

1. When there was an evident miscalculation of figures or description of a person or property referred to in the award;

2. When the award is imperfect as to form not affecting the merits of the controversy; or

3. For the purpose of clarifying the award.

B. The application shall be made within 20 days after delivery of the award to the applicant. Written notice shall be given promptly to the opposing party, stating he must serve his objections within 10 days from receipt of the notice.

§1113 Expenses and fees for arbitrators

A. The arbitrators' fees shall be set by regulation adopted by the Navajo Nation Supreme Court in accord with 7 N.N.C. § 601.

B. The arbitrators' expenses, fees and other costs, not including counsel fees, incurred in the arbitration shall be paid as provided in the award, unless otherwise provided in the arbitration agreement.

§1114 Confirmation of an arbitration award by court

Upon application of a party the court shall confirm the award unless within the time limits allowed grounds are urged for vacating or modifying the award.

§1115 When court may vacate award

A. Upon application of a party the court shall vacate an award where:

1. The award was procured by corruption, fraud or other undue means;

2. There was evident partiality by an arbitrator appointed as a neutral, or corruption of any of the arbitrators or misconduct prejudicing the rights of any party;

3. The arbitrators exceeded their powers;

4. The arbitrators refused to postpone the hearing upon sufficient cause being shown, or refused to hear evidence material to the controversy or otherwise conducted the hearing as to substantially prejudice the rights of a party; or
5. There was no arbitration agreement, the issue was not adversely determined by a court as provided by law and the applicant did not participate in the arbitration hearing without raising the objection. The fact that the relief was such that it could not or would not be granted by a court of law or equity is not a ground for vacating or refusing to confirm the award.

B. An application for vacating an award shall be made within 90 days after delivery of a copy of the award to the applicant, or if predicated upon corruption, fraud or other undue means it shall be made within 90 days after the grounds are known or should have been known.

C. In vacating the award on grounds other than stated in Subsection (A)(5) the court may order a rehearing before new arbitrators chosen as provided in the agreement or by the court. If the award is vacated on grounds set forth in Paragraph (A)(3) or (4) of this Section the court may order a rehearing before the arbitrators who made the award or their successors appointed. The time within which the agreement requires the award to be made is applicable to the rehearing and commences from the date of the order.

D. If the application to vacate is denied and no motion to modify or correct the award is pending, the court shall confirm the award.

§1116 When court may modify or correct award

A. Upon application made within 90 days after delivery of a copy of the award to the applicant, the court shall modify or correct the award where:

1. There was an evident miscalculation of figures or an evident mistake in the description of any person or property referred to in the award;

2. The arbitrators awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or

3. The award is imperfect in a matter of form, not affecting the merits of the controversy.

B. If the application is granted, the court shall modify and correct the award as to intent and shall confirm the award as so modified and corrected. Otherwise the court shall confirm the award as made.

C. An application to modify or correct an award may be joined in the alternative with an application to vacate the award.

§1117 Judgment upon granting order confirming, modifying or correcting award; costs and disbursements

Upon the granting of an order confirming, modifying or correcting an award, the judgment shall conform and be enforced as any other judgment. Costs of the application, proceedings and disbursements may be awarded by the court.
§1118 Application to court to be by motion; notice and hearing to be in manner provided by law

An application to the court for relief shall be by motion and shall be heard in the manner provided by law or rule of court. Notice of an initial application for an order shall be served in the manner provided by law for the service of a summons in a civil action unless otherwise specified by the parties.

§1119 Appeals

An appeal to the Navajo Nation Supreme Court may be taken from:

A. An order denying the application to compel arbitration;

B. An order granting an application to stay arbitration;

C. An order confirming or denying confirmation of an award;

D. An order modifying or correcting an award;

E. An order vacating an award without directing a rehearing; or

F. A final judgment or decree entered by the court.
§551 Establishment

There is established the Navajo Sovereign Immunity Act.

§552 Definitions

For the purposes of this Subchapter, "Navajo Nation" means:

A. The Navajo Nation Council;

B. The President, Navajo Nation;

C. The Vice-President, Navajo Nation;

D. The Delegates to the Navajo Nation Council;

E. The Certified Chapters of the Navajo Nation;

F. The Grazing Committees of the Navajo Nation;

G. The Land Boards of the Navajo Nation;

H. The Executive Branch of the Navajo Nation government;

I. The Judicial Branch of the Navajo Nation government;

J. The Commissions of the Navajo Nation government;
K. The Committees of the Navajo Nation Council;
L. The Legislative Branch of the Navajo Nation government;
M. The Enterprises of the Navajo Nation;
N. Navajo Community College;
O. The Kayenta Township and the Kayenta Township Commission;
P. Navajo Housing Authority.

§553 General principles of sovereign immunity

A. The Navajo Nation is a sovereign nation which is immune from suit.

B. Sovereign immunity is an inherent attribute of the Navajo Nation as a sovereign nation and is neither judicially created by any court, including the Courts of the Navajo Nation, nor derived from nor bestowed upon the Navajo Nation by any other nation or government.

C. The Courts of the Navajo Nation are created by the Navajo Nation Council within the government of the Navajo Nation and the jurisdiction and powers of the courts of the Navajo Nation, particularly with regard to suits against the Navajo Nation, are derived from and limited by the Navajo Nation Council as the governing body of the Navajo Nation.

D. The special authority of the Congress of the United States relating to Indian affairs derives from and is consistent with the recognition and fulfillment of its unique trust obligations to protect and preserve the inherent attributes of Indian tribal self-government.

E. The Navajo Nation Council has enacted the Navajo Nation Bill of Rights in recognition of the interests and rights of the People of the Navajo Nation, from whom the sovereignty of the Navajo Nation derives, as express self-limitations upon the exercise of its sovereign powers and has provided herein for specific remedies and redress for individuals from the government of the Navajo Nation as only the governing body of the Navajo Nation is empowered and responsible to determine on behalf of the People of the Navajo Nation.

F. Neither the President, Navajo Nation, the Vice-President, Navajo Nation, nor the delegates to the Navajo Nation Council may be subpoenaed or otherwise compelled to appear or testify in the courts of the Navajo Nation or any proceeding which is under the jurisdiction of the courts of the Navajo Nation concerning any matter involving such official's actions pursuant to his/her official duties.

§554 Exceptions to the general principles of sovereign immunity; purpose and intent

A. The purpose and intent of the Navajo Sovereign Immunity Act is to balance the interest of the individual parties in obtaining the benefits and just redress to which they are entitled under the law in accordance with orderly process of the Navajo government, while at the same time protecting the legitimate public interest in securing the purpose and benefits of their public funds and assets, and the ability of their government to function without undue interference in furtherance of the general welfare and the greatest good of all people. All of the provisions of this Act shall be applied
as hereinafter set forth in order to carry out this stated purpose and intent of the Navajo Nation Council, as the governing body of the Navajo Nation.

B. The Navajo Nation may be sued in the courts of the Navajo Nation when explicitly authorized by applicable federal law.

C. The Navajo Nation may be sued only in the courts of the Navajo Nation when explicitly authorized by Resolution of the Navajo Nation Council.

D. Any exception to the immunity of the Navajo Nation and assumption of liability pursuant to this Act does not apply in circumstances in which such liability has been or is hereafter assumed by third parties, including any other governmental body or agency, nor for which the Navajo Nation has been or is hereafter indemnified or held harmless by such parties, to the extent of such assumption or indemnification of liability. Nor does any liability assumed by the Navajo Nation pursuant to this Act extend to any party or parties as third party beneficiary or otherwise, other than the party or parties to whom such liability is expressly assumed, and then only to the extent, circumstances and conditions specified thereby.

E. Any liability of a public entity or public officer, employee or agent assumed pursuant to this Act is subject to any other immunity of that public entity or person and is subject to any defense which would be available to the public entity or person if they were private entities and/or persons.

1. A public entity is not liable for any injury or damage resulting from an act or omission of any public officer, employee or agent if that party is not liable; nor for the actions or omissions of public officers, employees or agents which are determined to be contrary to or without authorization or otherwise outside or beyond the course and scope of such officer's, employee's or agent's authority.

2. This Section does not immunize a public officer, employee or agent from individual liability, not within Navajo Nation insurance coverage, for the full measure of the recovery applicable to a person in the private sector, if it is established that such conduct was outside the scope of his or her employment and/or authority.

3. Volunteers duly authorized by the Navajo Nation or any political subdivision thereof, in performing any of their authorized functions or duties or training for such functions or duties, shall have the same degree of responsibility for their actions and enjoy the same immunities as officers and employees of the Navajo Nation and its governmental entities performing similar work.

F. The Navajo Nation may be sued only in the courts of the Navajo Nation with respect to any claim which is within the express coverage and not excluded by either commercial liability insurance carried by the Navajo Nation or an established Navajo Nation self-insured and/or other claims program of the Navajo Nation government, approved and adopted pursuant to the laws of the Navajo Nation and further, subject to the following provisions and limitation:

1. No judgment, order or award pertaining to any claims permitted hereunder shall be for more than the limits of valid and collectable liability insurance policies carried by the Navajo Nation covering each such claim and in force at the time of such judgment, including deductible amounts to the extent appropriated by the Navajo Nation Council; nor for more than the amount of coverage provided for each such claim under established claim reserves as
appropriated by the Navajo Nation Council, or otherwise established pursuant to any self-insured liability and/or other Navajo Nation government claims program, approved and adopted pursuant to the laws of the Navajo Nation;

2. Any such judgment, order or award may only be satisfied pursuant to the express provisions of the policy(ies) of liability insurance and/or established self-insured or government claims program of the Navajo Nation which are in effect at the time of each such judgment, order or award. Regardless of the existence of applicable and collectible commercial insurance coverage at the time any cause of action arises or suit is filed against the Navajo Nation, in no event shall any funds or other property of the Navajo Nation be liable for satisfaction of any judgment against the Navajo Nation and/or other insureds thereunder, beyond the limits of any amounts specifically appropriated and/or reserved therefor at the time of judgment, which shall be modified by law in accordance with such limitation of funds. This limitation shall apply to any deductible or retained liability or otherwise resulting from any inability or insolvency occurring any time prior to entry of such judgment;

3. No cause of action shall lie and no judgment may be entered or awarded on any claim for punitive or exemplary damages against the Navajo Nation; nor against any officer, employee or agent of the Navajo Nation acting within the course and scope of the authority of such office, employment or agency;

4. Notwithstanding any provisions of this Subsection (F), there shall be no exception to the sovereign immunity of public entities, officials, employees or agents of the Navajo Nation from claims for injury or damage alleged to have been sustained by:

   a. Policy decisions or the exercise of discretion made by a public official, employee or agent in the exercise or judgment or discretion vested in the entity or individual;

   b. A decision made in good faith and without gross negligence in carrying out the law, except that this provision does not immunize a public entity, officer, employee or agent from liability for false arrest, false imprisonment or malicious prosecution;

   c. Legislative or judicial action or inaction or administrative action or inaction of a legislative or judicial nature, such as adopting or failure to adopt a law or by failing to enforce a law;

   d. Issuance, denial, suspension or revocation of, or the failure or refusal to issue, deny, suspend or revoke, any permit, license, certificate, approval, order or similar authorization, nor by the termination or reduction of benefits under a public assistance program; if the public entity, officer, employee or agent of the Navajo Nation is authorized by law to determine whether or not such authorization or benefits should be issued, denied, suspended or revoked;

   e. Probation, parole, furlough or release from confinement of a prisoner or other detainee or from the terms and conditions or the revocation thereof, except upon a showing of gross negligence;

   f. Any injury or damage caused by an escaping or escaped person or prisoner, a person resisting arrest or by a prisoner to himself or herself, or to any other prisoner, except upon showing of gross negligence;
g. The enumeration of the above immunities shall not be construed to waive any other immunities, nor to assume any liability except as explicitly provided in this Act.

5. Subject to all other provisions of this Act, the express coverage of any commercial liability policy insuring the Navajo Nation or of any self-insurance program established by the Navajo Nation, for sums which the Navajo Nation as insured shall become legally obligated to pay as damage because of personal injury and/or property damages shall include liability for such actual monetary loss and damage which is established by clear and convincing evidence, to be the direct and proximate result of the wrongful deprivation or impairment of civil rights as set forth in Chapter 1 of Title 1 of the Navajo Nation Code, the Bill of Rights of the Navajo Nation. In the sound exercise of judicial discretion, the courts of the Navajo Nation may, to the extent deemed proper and appropriate in any action for damages for wrongful deprivation or impairment of civil rights as provided herein, award necessary costs of suit and/or reasonable fees; based upon time and value, incurred for legal representation; or require each or any party thereto, to bear their own respective costs and/or legal fees incurred therein.

G. Any officer, employee or agent of the Navajo Nation may be sued in the courts of the Navajo Nation to compel him/her to perform his/her responsibility under the expressly applicable laws of the United States and of the Navajo Nation, which shall include the Bill of Rights of the Navajo Nation, as set forth in Chapter 1, Title 1, Navajo Nation Code.

1. Relief awarded by the courts of the Navajo Nation under this Subsection (G) shall be limited to declaratory or prospective mandamus or injunctive relief and in accordance with the express provisions of the laws of the United States and the Navajo Nation establishing the responsibility for such performance. The courts may further, in the exercise of judicial discretion, award necessary costs of suit and/or reasonable fees for legal representation, in the same manner and to the same extent provided in Paragraph (5) Subsection (F) hereof.

2. No relief as provided under this Subsection (G) may be awarded by the courts of the Navajo Nation without actual notice to the defendant(s), nor before the time provided in this Act for answering complaints, motions or orders to show cause, nor without opportunity for full hearing of all defenses and objection thereto, in accordance with all provisions of this Act all other applicable law(s).

3. This Subsection (G) shall not apply to the President of the Navajo Nation, the Vice-President of the Navajo Nation, or the delegates to the Navajo Nation Council.

H. Contracted or otherwise retained counsel and other attorneys employed by the Navajo Nation may be sued for malpractice when authorized by the Government Services Committee of the Navajo Nation Council.

I. The Navajo Nation may be sued by Navajo contractors and/or their sureties on construction development or reclamation contracts, provided:

1. The contractor's contract is properly approved by the appropriate Committee of the Navajo Nation Council.

2. The contract is to be performed by a Navajo contractor as defined herein and is performed within the territorial jurisdiction of the Navajo Nation.
3. Damages against the Navajo Nation under the consent to suit granted by the Navajo Nation to Navajo contractors and/or their sureties shall be limited to damages claimed under applicable principles of contract damage law, including damages necessary to compensate for fulfilling the obligations under the bond, which shall include properly authorized change orders and properly authorized performance under owner directives to proceed done under protest, but shall not include:

   a. Punitive damages;

   b. Damages from claims arising in tort;

   c. Damages caused by delays in performance due to governmental review and approval procedures of the Navajo Nation or other governmental entity having the right to review and/or approve the contract or project; or

   d. Damages caused by delay, contract modification, or contract termination, due to delay in or failure to receive matching funds for the contract or project.

4. Damages against the Navajo Nation claimed above shall be limited to the dollar amount of the contract including properly approved change orders.

5. The Navajo Nation shall be subject to suit under this Subsection (I) only in the courts of the Navajo Nation. In determining the Navajo Nation's obligations under this Subsection (I), the courts of the Navajo Nation shall not give any preclusive effect against the Navajo Nation of any determination by any judicial or quasi-judicial body except the Courts of the Navajo Nation.

6. Navajo Contractor shall mean any contractor entitled to a priority number one, number two or number three pursuant to the Navajo Nation Business Opportunity Act.

J. The Navajo Nation may be ordered to proceed with arbitration, provided:

   1. The agreement is properly approved and executed on behalf of the Navajo Nation according to all applicable laws of the Navajo Nation;

   2. All agreements entered into under the Navajo Nation Arbitration Act shall be approved by the Navajo Nation Department of Justice; and

   3. The arbitration process shall be conducted in accordance with the Navajo Nation Arbitration Act, 7 N.N.C. §§1101 et. seq..

K. The Courts of the Navajo Nation shall have original and exclusive jurisdiction to enforce an arbitral award against the Navajo Nation when such suit is specifically provided for in an agreement containing an arbitration clause that is entered in accordance with the Navajo Nation Arbitration Act. The Navajo Nation shall be subject to suit under this Subsection (K) provided that:

   1. The agreement is properly approved and executed on behalf of the Navajo Nation according to all applicable laws of the Navajo Nation;
2. All agreements entered into under the Navajo Nation Arbitration Act shall be approved by the Navajo Nation Department of Justice;

3. The award of damages shall be compensatory damages only, and shall not exceed the dollar amount of the contract including properly approved amendments, but shall not include:
   a. Punitive or exemplary damages;
   b. Damages from claims arising in tort;
   c. Damages caused by delays in performance due to governmental review and approval procedures of the Navajo Nation or other governmental entity having the right to review and/or approve the contract; or
   d. Damages incurred by those not a party to the contract, including third party beneficiaries or others who receive direct or indirect benefits from the agreement.

4. The courts may, in the exercise of judicial discretion, award necessary costs of suit and/or reasonable fees for legal representation, in the same manner and to the same extent provided in Paragraph (5) Subsection (F) hereof;

5. In determining the Navajo Nation's obligations under this Subsection (K), the courts of the Navajo Nation shall not give any preclusive effect against the Navajo Nation of any determination by any judicial or quasi-judicial body except the Courts of the Navajo Nation;

6. The arbitration process shall be conducted in accordance with the Navajo Nation Arbitration Act, 7 N.N.C. §§1101 et. seq.

§555 Procedure with respect to actions authorized by this subchapter

A. Any person or party desiring to institute suit against the Navajo Nation or any officer, employee or agent of the Navajo Nation as authorized by this Subchapter shall, as a jurisdictional condition precedent provide notice to the President of the Navajo Nation and the Attorney General of the Navajo Nation, as provided herein.

1. Such notices shall be sent by registered mail, addressed to the main administrative offices of the President of the Navajo Nation and of the Attorney General of the Navajo Nation, return receipts requested. The time of such notice shall commence to run only from the date following actual delivery of both notices as evidenced upon such receipts, and filed together with such notices with the court in which such action is subsequently to be commenced. The President of the Navajo Nation and the Attorney General of the Navajo Nation shall, ensure the availability, during all regular office hours, of office staff personnel duly authorized to accept and receipt for delivery of such notices provided herein and their receipt thereof shall not waive the assertion of any appropriate defense pertaining to the validity of such notice or service.

2. Such notices shall state the name of each prospective plaintiff, the identity of each prospective defendant; the nature of all claims and relief which will be sought, and the correct address,
name and telephone number of each prospective plaintiff’s attorney or counselor (if any).

3. No action shall be accepted for filing against the Navajo Nation or any officer, employee or agent of the Navajo Nation unless the plaintiff has filed proof of compliance with this Subsection by service of the notices as required by this Subsection at least 30 days prior to the date on which the complaint or any other action is proposed to be filed with such Court.

B. In any action against the Navajo Nation or any officer, employee or agent of the Navajo Nation, the time for responding to valid service of any summons and complaint shall be 60 days; to valid service of any order to show cause not less than 30 days; and to valid service of any motion, not less than 20 days. Any claim against the Navajo Nation or any public entity, officer, employee or agent thereof, which is filed pursuant to this Act, is deemed generally denied 60 days after valid service of the complaint, unless the claimant or claimant's attorney or counsel filing the complaint is advised of acceptance or of a specific or otherwise limited denial in writing or by responsive pleading filed before the expiration of 60 days; and any such claim shall otherwise proceed in the same manner as upon the filing of such general denial thereof. These time periods may not be shortened by rule of court or judicial order, but shall be extended by any longer period provided by other applicable law, rule or order of court.

C. Any person or party filing a complaint against the Navajo Nation or any officer, employee or agent of the Navajo Nation shall serve by registered mail, return receipt requested, a copy of this complaint together with summons duly issued, upon the President of the Navajo Nation and the Attorney General of the Navajo Nation. Service of summons and complaint against any officer, employee or agent of the Navajo Nation shall be made by any means authorized under the rules of the courts of the Navajo Nation, provided that the time for response thereto shall be as provided herein and service upon such parties shall not be affected by such required service upon the president of the Navajo Nation and the Attorney General of the Navajo Nation.

D. In any action in which any claim is asserted against the Navajo Nation or any public entity thereof, upon written demand of the Navajo Nation Department of Justice, made at or before the time of answering, served upon the opposing party and filed with the court where the action is pending, the place of trial of such action shall be changed to Window Rock, Navajo Nation (Arizona).
DIVISION OF ECONOMIC DEVELOPMENT

Navajo Management Plan

(Revised August 5, 2009)
RESOLUTION OF THE
ECONOMIC DEVELOPMENT COMMITTEE
OF THE NAVAJO NATION COUNCIL

21ST NAVAJO NATION COUNCIL – THIRD YEAR, 2009

AN ACTION

RELATING TO ECONOMIC DEVELOPMENT; APPROVING THE NAVAJO NATION BUSINESS SITE LEASE MANAGEMENT PLAN AND THE DELEGATION OF THE AUTHORITY TO APPROVE BUSINESS SITE LEASES TO THE DIVISION OF ECONOMIC

BE IT ENACTED:

1. The Navajo Nation hereby approves the Navajo Nation Business Site Lease Management Plan as found at "Exhibit A" attached and made a part hereto.

2. The Navajo Nation, pursuant to 2 N.N.C. § 724 (B)(2), hereby approves the delegation of the Economic Development Committee's authority to approve business site leases to the Division of Economic Development as further described at Section 1.9 of the Navajo Nation Business Site Lease Management Plan as found at Exhibit "A".

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Economic Development Committee of the Navajo Nation Council at a duly called meeting held at St. Michaels, Navajo Nation (Arizona), at which a quorum was present and that the same was passed by a vote of 5 in favor, 0 opposed, this 5th day of August, 2009.

[Signature]
Lawrence R. Platero, Chairman
Economic Development Committee

Motion: Tom LaPahe
Second: Tommy Tsosie
# Table of Contents

1.0 Post - Lease Management ................................................................. 4
   1.1 Real Estate Department ("RED") Responsibilities .................................. 4
   1.2 Lessee Responsibilities ....................................................................... 6
   1.3 Appropriate DED department Responsibilities ..................................... 6

2.0 Lease Compliance ............................................................................. 6
   2.1 Rental Compliance – RED shall maintain and ensure that the rental payments are timely and Lessee is not in default .................................................. 6
   2.2 Annual Lease Compliance ................................................................. 7
   2.3 Property Inventory ............................................................................ 8
   2.4 Holdover .......................................................................................... 8

3.0 Environmental Review ................................................................. 8
   3.1 An Environmental Review ("ER") Record must be maintained for all Leasing Decisions. Any environmental related documents must be transferred to the Environmental Reviewer. These documents must be available for public review at all times, during normal business hours .......................................................... 8
   3.2 Modification and Amendments ......................................................... 8
   3.3 Assignment or Transfer ................................................................... 9
   3.4 Renewal or exercising an option to renew a Lease ............................. 10
   3.5 An ER is required for all Leases on new business sites (land that has been withdrawn for business purposes, but have been untouched) ........................................... 11
   3.6 ER Process: a valid ER may be obtained by one of the following process: .................................................. 11
       1. Project Specific Environmental Assessment: .................................. 11
       2. Recycled Environmental Assessment: .......................................... 12
       3. Environmental Summary Sheet: (non-NEPA Type Document) ...... 13
   3.7 Environmental Summary Sheet ......................................................... 17
   3.8 Public Notice .................................................................................. 17
   3.9 ER Record ..................................................................................... 17
   3.10 The only document needed in the Review Package and before the DED Approving Committee before final approval is the Environmental Summary. However, the Committee reserves the right to review the Environmental Review Record, before such approval ........... 17

4.0 Fair Annual Lease Value ................................................................. 18
4.1 DED shall determine the annual rental based on the MDR or by an Appraisal ....... 18
4.2 Implementation ........................................................................................................... 18
4.3 Market Data Research (MDR) .................................................................................. 18
4.4 Nominal Rent: ........................................................................................................... 19
4.5 Criteria for Appraisers: ............................................................................................ 19
5.0 File Management ........................................................................................................ 20
5.1 Lease Files shall be maintained by appropriate DED Departments in accordance with
the Nation Privacy Act. Files will be kept for five (5) years after expiration of the business
site Lease. Thereafter, all files shall be digitized, archived by the DED. ....................... 20
5.2 Files shall be maintained in the following sequence in a two-divider folder: .......... 20
5.3 Lease Folder Management ....................................................................................... 21
6.0 Financial Management: .......................................................................................... 22
6.1 Accounting Procedures: .......................................................................................... 22
6.2 Financial Training: .................................................................................................. 23
6.3 Financial Reports: .................................................................................................... 23
6.4 Audit: ....................................................................................................................... 23
7.0 Termination ................................................................................................................ 23
7.1 Mutual Termination .................................................................................................. 23
7.2 Unilateral Termination .............................................................................................. 24
7.3 Expiration ................................................................................................................ 25
7.4 Relinquishment ......................................................................................................... 26
7.5 Property Management .............................................................................................. 26
8.0 Enforcement, Relief and Remedies ........................................................................... 26
8.1 Defaults .................................................................................................................... 26
8.2 Once a Default has occurred, RED must proceed with the following process: ....... 27
8.3 Response process ..................................................................................................... 27
8.4 Compromise ............................................................................................................. 28
8.5 Remedies ................................................................................................................ 28
8.6 Emergency cancellation of the Lease ...................................................................... 29
8.7 Eviction/Court Action: ............................................................................................ 29
8.8 Trespass: ................................................................................................................ 29
9.0 Appeals ...................................................................................................................... 29
9.1 Appeal Procedure: ............................................................................................................. 29
9.2 Compromise with RED ........................................................................................................ 29
9.3 Navajo Nation Office of Hearings and Appeal (“OHA”) ................................................. 30
9.4 Navajo Nation Supreme Court (“NSC”) ........................................................................ 30
9.5 Secretary of Interior ......................................................................................................... 30

10.0 Lease Collection Procedures: ............................................................................................... 30
10.1 Collections: ..................................................................................................................... 30
10.2 Compromise with delinquent Lessee(s): .......................................................................... 31

11.0 Appendix – Forms: ................................................................................................................ 32
1. Annual Lease Compliance .................................................................................................... 33
2. Property Inventory ............................................................................................................... 34
3. Site Status Report ................................................................................................................ 35
4. Environmental Summary .................................................................................................... 36
5. FMIS Steps on Entering Standard Invoice ....................................................................... 38
6. Standard Invoice ............................................................................................................... 39
1.0 Post - Lease Management

1.1 Real Estate Department (“RED”) Responsibilities

Upon Business Site Lease (“Lease”) execution by the Navajo Nation President (“President”), RED shall:

1. Collect the appropriate administrative fee, proceed to 2.3 of the Navajo Administrative Plan (“Admin Plan”);

2. Assign a Lease number:
   a. All Leases shall be categorized under its five (5) agencies for accounting and recording purposes. The categories shall be:
      1) Fort Defiance Agency: NNFD
      2) Eastern Agency: NNEN
      3) Chinle Agency: NNCH
      4) Western Agency: NNTC
      5) Shiprock Agency: NNSR
   NOTE: Business Site Leases novated shall maintain its original Lease number.

3. Lease Recording and Distribution
   a. RED shall record Leases, 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, New Mexico 87125-6567
   b. RED is responsible for distributing Lease, in accordance with the Plan, as follows:
      1) Originals shall be distributed to the following:
         a) Lessee;
         b) Albuquerque BIA Land Title and Records Office;
         c) DED Real Estate Department;
         d) Appropriate DED Department;
         e) Navajo Nation Land Department; and
         f) Navajo Nation Office of the Controller;
      2) Copies shall be distributed to the following:
         a) Local Government Unit, upon written request; and
         b) Appropriate BIA Agency Real Estate Services Office

4. Obtain the Security: The Security must be for a minimum of 50% of one (1) year rental on businesses that gross $1 million annually and 25% of one (1) year rental on small business development;

5. Pursuant to Lease terms and conditions, the Security may be waived or postponed:
   a. If the Security is waived no further action is necessary;
   b. If the Security is postponed, RED shall:
1) Provide written notice, ninety (90) calendar days before the Security is due, which shall include the following:
   a) Actual due date;
   b) Lessee may notify RED within thirty (30) calendar days receipt of this letter that the Lessee is unable to obtain a Security;
   c) If Lessee fails to post a Security within ninety (90) calendar days from receipt of this letter, the Lease shall be subject to termination, proceed to 7.0 of the Management Plan.

2) If the Lessee is unable to post Security within ninety (90) calendar days, the Lessee may request for an additional postponement if exigent circumstances are present and provide supporting documents to support its claim. The Lessee shall provide a written request to RED. The postponement shall not exceed one year from the end of the development period.

6. If a Security is not waived or postponed:
   a. Within thirty (30) days from signature of the President, RED shall send a written notice as follows:
      1) Actual due date
      2) Lessee may notify RED within thirty (30) calendar days receipt of this letter that the Lessee is unable to obtain a Security;
      3) If Lessee fails to post a Security within forty-five (45) calendar days from receipt of this letter, the Lease shall be subject to termination, proceed to 7.0 of the Management Plan.

7. If unable to post the Security:
   a. The Lease is subject to termination, proceed to 7.0 of the Management Plan;
   b. If the Lessee is unable to obtain a Security, Lessee should notify RED with an explanation, within thirty (30) days of receipt of this letter;
   c. If the Lessee notifies RED that a Security cannot be obtained, then RED may allow any other guarantee deemed acceptable by RED. The Security, which ever applicable, shall be deposited with RED.

8. Insurance:
   a. Notify Lessee, within thirty (30) calendar days, from signature of the President of the following requirements:
      1) Evidence of Public Liability, Personal Injury, and Property Damage and other Insurance coverage in the amounts stated in the Lease. The Navajo Nation (“Nation”) and the United States shall be included in the policy as additional insured. If Public Liability, Personal Injury and Property Damage and other Insurance coverage is not submitted within ninety (90) calendar days, RED shall terminate the Lease, unless otherwise stipulated in the Lease;
      2) Fire and Casualty Insurance with extended coverage endorsements covering not less than full insurable value of all improvements on the leased premises, written jointly to protect Lessee, Nation and the United States. If Fire and
Casualty Insurance coverage is not submitted within ninety (90) calendar days, RED shall terminate the Lease, unless otherwise stipulated in the Lease.

3) Any other Evidence of Insurance as required in the Lease, if the insurance certificate is not submitted within ninety (90) calendar days, RED shall terminate the Lease.

b. If any above-mentioned insurance is postponed, RED shall notify the Lessee, ninety (90) days before the insurance is required to be submitted;

c. If Lessee does not submit the insurance on the date due, the Lease is subject to termination, proceed to 7.0 of the Management Plan.

1.2 Lessee Responsibilities

1. Sanitation Clearance;
2. Utility Clearance;
3. Road Clearance;
4. Storage Tank Clearance, if applicable.

1.3 Appropriate DED department Responsibilities

1. Development Period
   a. Shall notify the Lessee every year on the anniversary of the date of the Lease, of the expiration date of the development period;
   b. Final notification shall be sent ninety (90) days before expiration of the development period:
      1) If the Lessee requests an extension, the appropriate DED department may grant the extension based on written justification from the Lessee;
         a) An extension shall be granted only once and the extension cannot exceed one (1) year.
      2) If an extension is granted, proceed to 9.0 of the Admin Plan.
   c. Termination of the Lease: On the date of expiration 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 Management Plan.

2.0 Lease Compliance

2.1 Rental Compliance – RED shall maintain and ensure that the rental payments are timely and Lessee is not in default.

1. Late Charges
   a. Rental is due on the date specified in the Lease
   b. If the rental payment is not received within ten (10) days following the due date:
      1) 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.
      2) The late fee shall be 10% of the rental due for the month.
   c. If rental payment is not received within sixty (60) days following the due date:
      1) A late fee shall be charged at 10% of the rental due for the month.
d. If rental payment is not received within ninety (90) days following the due date:
   1) A late fee shall be charged at 10% of the rental due for the month.
   2) Lease is subject to termination, proceed to 7.0 of the Management Plan.

2. All Lease payments are due on the date specified in the Lease and shall be submitted to RED. It is the Lessee’s responsibility to ensure that the rental payment is received by RED on or before the date specified:
   a. Payments mailed or delivered to RED will be forwarded within one (1) working day from receipt of payment to the Accounts Receivable Section within the Office of the Controller (“OOC”), unless otherwise specified in the Lease;
   b. Payments received by RED after 2:00pm shall be forwarded the next working day from the receipt of payment to the Accounts Receivable Section within DOF, unless otherwise specified in the Lease;
   c. Payments received from RED to the Accounts Receivable Section or other designated location after 2:00 p.m. will be receipted and posted on the following business day.

3. RED shall be responsible for the periodic review:
   a. All lease rates adjustments shall be pre-determined and RED shall notify the Lessee ninety (90) days before the expiration of the periodic review period;
   b. Any CPI adjustments shall be determined by RED and RED shall notify the Lessee of the adjusted amount, ninety (90) days before the expiration of the periodic review period. The appropriate DED department shall process the modification thereafter;
   c. Market Data Research (MDR) shall be evaluated by RED and RED shall provide the appropriate DED department the report one-hundred twenty (120) days before the expiration of the periodic review. The appropriate DED department shall negotiate the lease adjustment with the Lessee and process the modification thereafter; or
   d. Appraisals shall be obtained through a contractor or RED. The appropriate DED department shall negotiate the lease adjustment with the Lessee and process the modification thereafter.

2.2 Annual Lease Compliance
RED will conduct an on-site inspection of all Leases, under the jurisdiction of the Division of Economic Development (“DED”) on an annual basis to ensure compliance with Lease terms and conditions. The Annual Lease Compliance Report (“Report”) shall be completed by July 1 of each year.

1. Upon completion of the on-site inspection, prepare and complete Report and property inventory form;
2. Submit Report, Property Inventory Form, and site status report (“Status Report”) to Project Development Department, Small Business Development Department, Tourism (“appropriate DED department”) as identified in the DED Master Plan of Operation, for review, action and filing;
3. If the Lessee is not in compliance with the terms and conditions of the Lease, initiate and implement the provisions for enforcement outlined in Section 8.0 of the Management Plan.

2.3 Property Inventory
RED will complete the Property Inventory Form during onsite inspections concurrently with the Report.

2.4 Holdover
RED will 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 appropriate DED department shall notify RED, in writing, of the appropriate action to take against the Lessee.
   a. Negotiations: If the Lessee is in negotiations with the Navajo Nation during the holdover period, the Lessee shall continue to pay the Navajo Nation the Adjusted Minimum Annual Rental on the entire premise until the lease is negotiated. The Adjusted Minimum Annual Rental would be paid proportionately to the number of holdover days.

2. Rental: In the event of a holding over by Lessee beyond the expiration or termination date, as applicable, Lessee shall pay the Navajo Nation double the Adjusted Minimum Annual Rental on the entire premise from and including the first (1st) day of holdover until the holdover period ends.

3. Enforcement: If the Lessee does not respond to RED’s letter notifying the Lessee that it is a delinquent Holdover Tenant, RED shall refer the matter to the Department of Justice (“DOJ”). DOJ will enforce all remedies as outlined in Section 7.8.

3.0 Environmental Review
3.1 An Environmental Review (“ER”) Record must be maintained for all Leasing Decisions. Any environmental related documents must be transferred to the Environmental Reviewer. These documents must be available for public review at all times, during normal business hours.

1. If a modification or amendment, proceed to 3.2 of the Management Plan;
2. If an assignment, transfer, proceed to 3.3 of the Management Plan;
3. If renewal or exercise of an option to renew of a Lease, proceed to 3.4 of the Management Plan;
4. If an existing business site, with an existing environmental review;
5. If a new business site, proceed to 3.6 of the Management Plan.

3.2 Modification and Amendments
1. 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.

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.

If any of the above, proceed to 3.8 of the Management Plan.

2. ER may be required:

a. Change in the land description that would include land surfaces or sub-surfaces not in the original land description;

b. Change in the purposes that would include a dramatic change in the business operation, (i.e. from an office building to gas station);

c. Change in purposes that would have land clearing, additional building construction (unless there is no land increase from the original land withdraw), or discharge of emission or effluent;

d. Change in the Improvements, for operations not allowable under the lease.

e. Before demolition or removal of the building, if the building contains environmental contamination (i.e. hazardous substances, asbestos, underground storage tanks etc.)

f. 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.

If any of the above, proceed to 7.7 of the Management Plan.

3.3 Assignment or Transfer

1. ER not required:

a. If there are no changes to the terms and conditions of the Lease, and an Environmental Review has been conducted on the Lease.

b. Extending a term or condition of the Lease (under an assignment or transfer), including the Term, Completion of Development, removal of improvements etc.
c. Exercising an option to renew or renewal of the Lease (under an assignment or transfer) without any changes in the Term and Conditions of the Lease (under an assignment or transfer).
d. Change in the Land Description, unless to increase the acreage of the land.
e. 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.
f. Change in the Rental or any rent adjustments, as allowed under Lease (under an assignment or transfer)
g. Increase in the value of Improvements.
h. Waiver, postponement or any changes in the Security, and the Construction Bond
i. Novation
j. Demolition and removal of a building, unless the building contains environmental contamination (i.e. hazardous substances, asbestos, underground storage tanks, etc.)
k. Any changes in the Lease (under an assignment or transfer) 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.

If any of the above, proceed to 3.9 of the Management Plan.

2. ER may be required:
   a. Change in the land description that would include land surfaces or sub-surfaces not in the original land description;
   b. Change in the purposes that would include a dramatic change in the business operation, (i.e. from an office building to gas station);
   c. Change in purposes that would have land clearing, additional building construction (unless there is no land increase from the original land withdraw), or discharge of emission or effluent;
   d. Change in the Improvements, for operations not allowable under the Lease.
   e. Before demolition or removal of the building, if the building contains environmental contamination (i.e. hazardous substances, asbestos, underground storage tanks etc.);
   f. 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.

If any of the above, proceed to 3.7 of the Management Plan

3.4 Renewal or exercising an option to renew a Lease
1. ER not required for exercising an option to renew
   a. If only exercising an option to renew and not changing any terms and conditions of the Lease;
   b. If changing any terms or conditions of the Lease, proceed 3.2 of the Management Plan
2. ER is not required for renewal of a Lease, if the terms and conditions are not changed. If there is a change, proceed to 3.2 of the Management Plan.

3.5 An ER is required for all Leases on new business sites (land that has been withdrawn for business purposes, but have been untouched).

3.6 ER Process: a valid ER may be obtained by one of the following process:

1. Project Specific Environmental Assessment:
   a. Application: this process is used when the Applicant/Lessee plans to withdraw land for his/her proposed business. The Applicant/Lessee with the assistance from the DED Department hires an environmental professional to conduct the fieldwork and prepares an environmental assessment (EA).
   
   b. Process:
      1) Once the environmental professional is hired, the environmental professional has the responsibility to obtain a compliance determination from the following three (3) departments:
         a) Historic Preservation Department (HPD), Division of Natural Resources (DNR);
         b) Department of Fish and Wildlife (FWD), DNR; and
         c) Environmental Protection Agency (EPA).
      2) Once the environmental professional obtains the compliance determination from the above-mentioned three (3) departments and prepares the EA report, the environmental professional provides a completed projected specific EA to the DED department or in some instances the Applicant/Lessee.
      3) The DED department or Applicant sends the completed EA to the Environmental Reviewer RED for review. The complete EA should include the following information:
         a) Compliance determination from all three (3) departments.
            * Note: If the compliance determination was not provided within 20 days of the time all required documents were submitted to execute a compliance determination, please provide in writing that the environmental professional made reasonable efforts to obtain the compliance determination from the Navajo Nation department and that the delay is not the fault of the Applicant. Please include any supporting documents supporting your statement.
         b) Environmental Summary Sheet (ES sheet)
         c) Development Summary (i.e. Laundromat, fast food; etc.)
         d) Project data: proposed development layout.
         e) Site map: aerial or topographical
      4) Upon submittal of the documents listed in Clause 3.6 (1)(b)(3), Environmental Reviewer shall conduct its review within five (5) working days. If all the above-mentioned documents are not submitted to the Environmental Reviewer, the Environmental Reviewer, within five (5)
working days shall provide in writing and identify the missing document to the DED department.

5) Upon completion of the review, the Environmental Reviewer shall sign the ES sheet and return back to the DED department.

2. **Recycled Environmental Assessment:**

   a. **Application:** this process is used when an Applicant/Lessee plans to withdraw land for his/her proposed business or land that has been previously withdrawn for development purposes. The DED department has a previous prepared EA (recycled EA) and allows the applicant to use the recycled EA to fulfill the environmental review requirement.

   b. **Process:**

      1) The DED department or Applicant/Lessee shall provide the following information to the Environmental Reviewer:

         a) The recycled EA;
         b) ES sheet;
         c) Development Summary (i.e. Laundromat, fast food; etc.);
         d) Archeological survey;
         e) Project data: proposed development layout;
         f) Site map: aerial or topographical; and
         g) If applicable, any previous correspondence and/or copies of inspection, violation and corrections reports from any Navajo Nation departments/divisions (i.e. HPD, FWD or EPA) regarding the particular business site location.

      2) Upon review of the documents listed in Clause 3.6(2)(b)(1), RED shall make the determination if there is a new impact present. In other words, a new impact will be found if the recycled EA is not project specific for this new project. For example, if the previous EA was intended for a convenience store and the new project is for a convenience store and a gas station, it will be determined that there is a new impact present because of the new gas station.

         a) If the DED Department or Applicant/Lessee determines that there is a new impact present, please provide a description of the new business operation, new infrastructure(s), new addition(s), and/or improvement(s).
         b) If the DED Department or Applicant/Lessee does not know if there is a new impact present, the Environmental Reviewer shall make that determination upon reviewing the documents listed in Clause 3.6(2)(b)(1),

      3) If applicable, if it is not determined that there is a NO new impact present, the Environmental Reviewer shall sign the ES sheet and return back to the DED department.
4) If applicable, if it is determined that there is a new impact present, Environmental Reviewer shall seek compliance by sending the recycled EA to one or all of the above-mentioned three (3) departments to obtain an update (compliance determination).
   a) EPA, HPD and/or FWD reviews the recycled EA. At times, the departments may issue a conditional approval to proceed with mitigation measures as their compliance document. If there are conditional measures, the conditions should be listed in the business site lease.
      i. If the Environmental Reviewer determines that the EA shall go to EPA, the Environmental Reviewer shall provide EPA’s Office of Environmental Review (OER) the recycled EA.
      ii. Upon receipt of the recycled EA, OER shall initiate consultation with each of its programs within two (2) days. The consultation shall take no more than 15 days.
   b) Upon completion of the review, EPA, HPD and/or FWD shall send the compliance determination to the Environmental Reviewer.
   c) Upon receipt of the compliance determination from EPA, HPD and/or FWD, the Environmental Reviewer shall sign the ES sheet and return back to the DED department.
      • Note: if the compliance determination is not provided within 20 days of the time all required documents were submitted to obtain an update (compliance determination), the compliance determination on the recycled EA may be concluded without that department’s determination so long as RED made a reasonable efforts to obtain the compliance determination from the Navajo Nation department and that the delay is not the fault of the Applicant.

3. Environmental Summary Sheet: (non-NEPA Type Document)
   a. Application: The Applicant/Lessee plans to withdraw land for his/her proposed business.
   b. Required documents:
      1) The applicant with the assistance from the DED department shall submit the following documents to the Environmental Reviewer to obtain a compliance determination from EPA and FWD:
         a) ES sheet;
         b) Required document as outlined in 12.0, Exhibit, FWD’s policies;
         c) Development Summary (i.e. Laundromat, fast food, etc.);
         d) Project data: proposed development layout;
         e) Site map: aerial or topographical;
         f) Letter including the following information:
i. Provide the air resources (i.e. If there is a power plant, oil and gas well sites or compressor station in the area, make a note of it) for the proposed business sites; and

ii. Outline how the proposed business site may impact livestock, vegetation, local cultural values/everyday lifestyle activities such as farming, grazing, hunting, fishing, medicinal plant collecting, plants used for dying rugs, weaving, jewelry, wood hauling, recreation, shepherding, shopping, local flea markets and recreation.

iii. Funding source of the project: Please include information as to how the applicant and DED departments are paying for the project. If federal funding or technical assistance from a federal agency is being used, please outline what is being paid for and what federal agency.
   a. If the RED determines that there is a major federal action, the National Environmental Policy Act process shall be used.
      • Note: it is important that the applicant and DED department outline all federal involvement (funding or technical assistance) to ensure compliance with its federal funding source.

2) The applicant with the assistance from the DED department shall submit the following documents to the Archeologist, RED, to obtain a compliance determination from HPD:
   a) A letter outlining the following:
      i. Provide information as to the type of business will be located on the business site;
      ii. Provide a description of where the business site shall be located;
         • Note: The land status must include in what Chapter, Agency, County and State, the business will be located. For State, please write “Tribal trust”. If the land is adjacent to State, allotted or fee land, please also include that information.
      iii. If applicable, provide information as to whether the business site and/or building is of historical archeological value and/or Navajo traditional value;
         • Note: HPD or the BIA may provide information if the business site and/or building is a historical value. Navajo traditional value includes, but not limited to ceremonial and traditional offering areas, and event areas associated with traditional cultural beliefs (oral traditions).
      iv. If applicable, Provide information as to whether there has been a previous disturbance such as utilities and right of way;
      v. If applicable, Provide information as to whether the business site has previously been surveyed;
b) Photographs of the proposed business site;

c) Legal land description: it should include the Township and Range or Universe Transverse Mercator; and

d) Pre-field record checks: any previous records that pertains to the land; and

e) If applicable, ethnography;

c. **Process to obtain a compliance determination from FWD and EPA:**

1) The Environmental Reviewer reviews the documents as outlined in Clause 3.6(3)(b)(1) to ensure all the required documents have been submitted.

   a) If there are missing documents, the Environmental Reviewer within five (5) working days shall provide in writing to the applicant and DED department that there are missing documents.

   b) If all the required documents are submitted to the Environmental Reviewer, the Environmental Reviewer within five (5) working days of receipt of the required documents shall provide all the required documents to FWD and EPA for review.

   • Note: The Environmental Reviewer shall maintain a date base as to when the required documents were submitted to FWD, EPA and HPD to ensure a timely review.

2) Upon receipt of the compliance determination (and it is within the 20 days), the Environmental Reviewer shall sign the ES sheet and return back to the DED department.

3) If the compliance determination is not provided within 20 days of the time all required documents were submitted to obtain compliance determination, the compliance determination may be concluded without that department’s determination. The Environmental Reviewer shall then write on the ES sheet that the department did not provide a compliance determination within the required 20 day time frame. Thereafter, the Environmental Reviewer shall sign the ES sheet and return back to the DED department.

d. **Process to obtain a compliance determination from HPD:**

1) The Archeologist reviews the documents as outlined in Clause 3.6(3)(b)(2) to ensure all the required documents have been submitted.

   a) If there are missing documents, the Archeologist within three (3) working days shall provide in writing to the DED department that there are missing documents.

   b) If and when all the required documents are submitted to the Archeologist, the Archeologist within three (3) working days of receipt of the required documents shall go to HPD to conduct a record check on traditional cultural property and previous archeological survey.
2) Following the visit to HPD, if the Archeologist determines that there is no ethnography on record at HPD or no record at all, the Archeologist shall conduct the following:
   a) Initial phase one (1) survey; and
   b) Ethnography.

3) If the Archeologist determines that there is an ethnography and records at HPD or after the completion of the steps outlined in Section 3.6(3)(d)(2), the Archeologist shall conduct the following steps in three (3) working days:
   a) If applicable, draft a narrative report (may include photography of the area) or an Archeological Inventory Report Documentation Page (AIRS form); and
      i. A narrative report shall be submitted for projects over 30 acres and/or containing more than four (4) sites; or
      ii. An AIRS form is required for use on small projects-projects less than 30 acres in size and containing no more than four (4) sites.
   b) If applicable, consult with Navajo Tribal Utility Authority, Navajo Department of Transportation and Navajo Nation Land Department to determine records and surveys.

4) Upon completion of steps outlined Section 3.6(3)(d)(3), the Archeologist shall send the narrative report or AIRS form and may have to submit other information as outlined in Section 3.6(3)(b)(2) to HPD to seek a compliance determination.
   a) If is determined that there is federal ”undertaking” triggering the need for consideration under Section 106 of the National Historic Preservation Act, HPD shall seek to obtain the Bureau of Indian Affairs” approval of HPD”s compliance determination prior to returning the compliance determination to RED.
   b) If is determined that there is no federal ”undertaking” triggering the need for consideration under Section 106 of the National Historic Preservation Act, the signature of HPD”s Department Manager signifying compliance with the Navajo Nation Cultural Resources Protection Act is required. Once signed, HPD shall return its compliance determination to RED.

5) Upon receipt of the compliance determination (and it is within the 20 days), the Archeologist shall provide the copy of the narrative report and HPD”s compliance determination to the Environmental Reviewer to include in the ES sheet.

6) If the compliance determination is not provided within 20 days of the time all required documents were submitted to obtain compliance determination, the compliance determination may be concluded without that department’s determination. Archeologist shall notify the Environmental Reviewer that HPD did not seek the compliance determination within 20 days. If
compliance determination is not provided within 20 days, the Environmental Reviewer shall then write on the ES sheet that the department did not provide a compliance determination within the required 20 day time frame. Thereafter, the Environmental Reviewer shall sign the ES sheet and return back to the DED department.

3.7 Environmental Summary Sheet
1. Fill out the attached form.
2. If the Leasing Activity is under an exception, as provided herein, briefly describe the exception RED shall execute the ES.
3. Under the Compliance determination include:
   a. Date of the Compliance Determination;
   b. Source – Navajo Division and EPA or outside contractor;
   c. If an update, explained above, need fill out appropriate;
   d. Briefly explain findings.
4. Under the different laws, briefly summarize whether there is an impact or no impact.
5. Environmental Reviewer shall sign the ES.

3.8 Public Notice
1. If the Environmental Reviewer finds the impact to the Nation’ s resources to be critical, then the Environmental Review may be published in a general circulation newspaper a notice of the project.
2. The notice must:
   a. Provide at least one opportunity for public comment, for no more than a 30 calendar day period;
   b. Indicate the record is open to the public and how the record can be reviewed, properly.
3. Public Comments must be taken into consideration by the Environmental Reviewer before 3.8.

3.9 ER Record
1. The Environmental Reviewer must maintain a record for the Environmental Review conducted for Leases.
2. It must be available at all times, under normal business hours, for public review.
3. The Environment Review Record must contain the following information:
   a. Compliance determinations;
   b. Correspondences;
   c. Any supporting documents;
   d. Environmental Summary;
   e. If applicable, Public Notice; and
   f. If applicable, Public Comments.

3.10 The only document needed in the Review Package and before the DED Approving Committee before final approval is the Environmental Summary. However, the
Committee reserves the right to review the Environmental Review Record, before such approval.

4.0 Fair Annual Lease Value

4.1 DED shall determine the annual rental based on the MDR or by an Appraisal.

4.2 Implementation

The Nation shall determine rental based on the MDR for all Leases except to an Applicant/Lessee that generates over $1,000,000 annually in gross receipts or rental properties with more than four (4) units. For Appraisals, the Nation will assume full responsibility.

1. Appraisals shall be applied only to an Applicant/Lessee that generates over $1,000,000 annually in gross receipts or rental properties with more than four (4) rental units.
2. All other Leases shall be based on the MDR, such rate shall be updated periodically, to comply with the periodic review of the Tribal Regulations.

4.3 Market Data Research (MDR)

DEFINITIONS

Lease Data is defined as relevant data on existing leases such as business purpose, location, annual rents and terms, etc.

Market Lease Data Analysis: the DED Department and upon request with the assistance of the RED shall conduct an analysis based on the Lease Data and information available.

Navajo Nation Lease Database is a current database of Lease Data.

1. Application: the MDR may be used by DED Department to determine an annual rent, if the actual or expected gross receipts are below $1,000,000 and the property has less than four (4) rental units.
2. Process

   a. The Applicant/Lessee and/or DED Department shall submit in writing the following information to RED:

      1) Actual or expected gross receipt total;
      2) Number of rental units on property;
      3) Real property improvements;
      4) Location (Town and State);
      5) Acreage;
      6) Business purpose; and
      7) One photo of the business site and road (if applicable).

   b. Upon receipt of the information listed in Clause 4.3(2)(a), RED shall provide the Lease Data to the DED Department within three (3) working days. The Lease Data will not be provided until all information in Clause 4.3(2)(a) is provided to RED.

   c. The DED Department shall use the Lease Data to determine annual rent. Once the annual rent is determined, the DED Department shall obtain the Program
Manager’s approval. Thereafter, the DED Department shall obtain RED’s signature to ensure the MDR is valid.

3. RED’s responsibilities
   a. Shall provide the Lease Data on an Excel Spreadsheet with subject property and a disclaimer regarding confidentiality.
   b. Shall provide training regarding the analysis of the Lease Data for the DED Departments.
   c. Shall update the Lease Database when the leases are signed by the President or upon periodic review as outlined in the lease.
   d. Shall ensure all Lease Data is supported with information from DED’s confidential files or other legitimate sources common to statistical research.
   e. May use Market Date Analysis for exigent circumstances, such as a new proposed market for the Navajo Nation (i.e. liquor store). The Market Lease Data Analysis may be compared to a similar outside business to an existing business within the Navajo Nation or an outside certified appraiser may be used as outlined in Clause 4.5.

4.4 Nominal Rent:
   1. Based on services as consideration, subject to applicable federal or Navajo law; or
   2. $150.00 per year.

4.5 Criteria for Appraisers:
   1. All Appraisers who perform appraisal assignments shall meet the following criteria:
      a. The Appraiser must 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 SR 2-2(a) 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. Appraiser shall provide proof of good standing in the state of the registration or provide proof of reciprocity from the state the Appraiser is conducting the appraisal.
      c. In exigent circumstances, DED Departments may contract with an Appraiser who lacks knowledge and/or experience in commercial rental property within the Navajo Nation. The Appraiser must provide written justification of how he/she is going to competently complete the assignment, which includes research or the retention of another Appraiser who possess the required knowledge and/or experience in those exigent circumstances.
      d. The Appraiser must be categorized as a Certified General by the National Registry.
   2. It is highly recommended that the Appraiser have current Errors and Omission Insurance and provide proof of coverage.
3. Once the appraisal is complete, the Applicant/Lessee and DED department shall provide a courtesy copy of the Appraisal Report to RED for its file.

4. The Appraiser 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.

5.0 File Management

5.1 Lease Files shall be maintained by appropriate DED Departments in accordance with the Nation Privacy Act. Files will be kept for five (5) years after expiration of the business site Lease. Thereafter, all files shall be digitized, archived by the DED.

5.2 Files shall be maintained in the following sequence in a two-divider folder:

1. Approved Lease documents and supporting documents including:
   a. Signature Authority Sheet;
   b. DOJ-Request for Services;
   c. Transmittal Memo or Letter;
   d. Summary Sheet of Supporting Documents;
   e. Chapter Resolution, if applicable;
   f. Clearance Documents;
   g. Other (Land Withdrawals, etc.);
   h. Approved DED Approving Committee Resolution;
   i. Approved Lease Transaction;
   j. Survey Plat;
   k. Exhibit A;
   l. Exhibit B;
   m. Corporation/Partnership Paper, if applicable;
   n. Security, Insurance, Receipt for Fees;
   o. Appraisal Report/MDR form;
   p. Environmental Review;
   q. Financial and Accounting Information;
   r. Enforcement/Compliance Information;
   s. Miscellaneous Correspondence.
5.3 Lease Folder Management

1. Outline:

* Document and exhibits, which depend upon the nature of the transaction, or circumstances.

Examples:
1. Exhibit or Attachment may be a copy of Existing Lease.
2. Exhibit “A” may be a Proposed Lease or Copy of Existing Lease.
3. Exhibit “B” may be a Proposed Sublease.
6.0 Financial Management:
Accounting Procedures shall apply to Leases governed by the Tribal Regulations.

DEFINITIONS:
Invoice means rental and other outstanding amounts.
Billing means Invoice process.

6.1 Accounting Procedures:
1. RED shall send invoices to the Lessees on the 20th 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 no later than the 10th of each month. If a payment is not received by the 11th day, RED shall send a notice of violation to the Lessee including assessing the appropriate penalty for the Lessee.
4. All Lease rental payment shall be submitted to the Navajo Nation, RED to account for revenue. Send payment by cashier’s check or money order to:
   The Navajo Nation
   c/o Division of Economic Development
   Real Estate Department
   P.O Box 664, Window Rock, AZ 86515
5. RED shall forward any received payment to the appropriate account, including the Cashier’s Section and Business and Industrial Development Fund by the next working day.
6. 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 Nation, the Nation may offset any claim against amounts owed to or has a claim with accounts payable to the individual, business, corporation or partnership;
7. RED shall complete a Status Report at the same time as the inspection for the Report. On July 1st provide a written Status Report, on all sites, to OOC.
   a. Status indicating active, inactive, holdover, permit, settlement, decease or abandonment. Upon a report of a decease, abandonment, or closure, the OOC will cease billing;
8. The appropriate DED department shall have the option to review or generate their own Agency business site leasing report through Financial Management Information System (“FMIS”) accounts receivable module or any accounting software utilized by the OOC;
9. Department of Justice (“DOJ”) shall disseminate “Settlement Agreement” to RED and OOC, Accounts Receivable Section within (10) ten days of final copy;
10. Lease information shall be kept confidential and shall not be made available to any other individual or organization by the OOC; OOC shall not disclose confidential information.
information other than to the parties’ written request, DED, DOJ and only the named Lessee on the Lease.

11. DED shall comply with Navajo Business and Procurement Act, Title 12, Chapter 15, Section 15 as codified in the Navajo Nation Code. Requests for Procurement Clearance from DED through the OOC shall be in compliance with the Act to protect the resources and financial integrity of the Nation.

6.2 Financial Training:
1. DED shall have designated staff recertified annually to FMIS Master Directory inquiry with a passing score determined by the OOC. The FMIS access is restricted to DED designated staff;
2. FMIS Training is required for DED designated staff each year through OOC for annual recertification in Common Foundation, Inquiry or other module training;
3. To protect sensitive business information, the control over end-users must be at inquiry level. Valid security matrix is required prior to accessing FMIS Master Directory. Sharing of password is prohibited.

6.3 Financial Reports:
To ensure Leases are properly monitored for compliance, OOC shall annually generate the account receivable reports by June 30th of each year and disseminate or transmit electronically to the Navajo Nation Office of the Controller, DED, and the Secretary of Interior.

6.4 Audit:
1. OOC shall permit an authorized representative of the Navajo Nation Auditor General’s Office to conduct annual random audits of Leases.
2. Written audit reports shall be provided to Navajo Nation Office of the Controller and Accounts Receivable Section once final audit is completed by Navajo Nation Auditor General.

7.0 Termination
If at any time the Lessee files an appeal with the Office of Hearing and Appeals, any steps taken to terminate the Lease shall immediately cease, proceed to 9.0 of the Management Plan.

7.1 Mutual Termination
Lessee agrees to terminate the Lease and the Nation agrees to approve the termination of the Lease. The termination will not preclude any financial or environmental obligations of the Lessee(s).

1. Mutual Termination may be granted:
   a. During the Development Period as negotiated and defined under 4.2(3)(c) of the Admin Plan, without penalty;
   b. Mutual Termination may be granted at the request of the Lessee.
2. Mutual Termination shall be processed by the appropriate DED department unless the Lease is in default then the RED shall process the Mutual Termination.
3. Responsibilities
a. Lessee
   1) Shall submit a written request to mutually terminate the Lease to the appropriate DED department or RED, whichever applicable.

b. Division of Economic Development
   1) Shall obtain a written document from the appropriate tribal departments to verify Lessee’s compliance with Navajo Business Procurement Act and Navajo Nation laws and regulations.
      a) If not in compliance with the Navajo Business Procurement Act, proceed to 9.0 of the Management Plan.
   2) Request a clearance with the Navajo Nation Environmental Protection Agency – Storage Tank
   3) Begin Review, Approval and Execution Process, proceed to 4.3 of the Admin Plan.

c. Lease Recording and Distribution
   1) Proceed to 4.7 of the Admin Plan

7.2 Unilateral Termination
Lessee is in default of the terms and conditions of the Lease, including but not limited to: Rental, Purpose, Unlawful Uses, Accounting, Improvements, Non-development, Bond, Construction Bond, Unauthorized Sublease, Assignment, transfer, management agreement, Encumbrance, Liens, taxes, Assessments, Utility Charges, Lessor’s paying claims, Sanitation, Insurance requirements, Trespass, Abandonment

1. RED responsibilities:
   a. Immediately send a notice, which must include the following:
      1) Date the Default occurred;
      2) Provide an explanation of the Default and the determination;
      3) Inform the Lessee of remedies that will be pursued;
      4) Inform the Lessee of Possible termination and Security/insurance collections;
      5) The three options the Lessee has including:
         a) Cure;
         b) Request additional time; or
         c) Dispute the determination, which must include an explanation; and
      6) The Actual Date when the Lessee must respond.
   b. Must be by certified mail, return requested.
   c. Lessee will have ten (10) days from date the notice is mailed to respond.
   d. If the Lessee cures the Default, the process can stop immediately.
   e. If the Lessee requests additional time proceed with the following:
      1) Immediately send a response to allow for additional time, which will be determined at the sole discretion of the RED;
      2) The additional time should be no less than ten (10) days, however, it is seems the cure can not be done in ten (10) days, then state how long, however, no extension should extend beyond ninety (90) days.
3) This additional time may be granted if the Lessee is diligently pursuing to cure and any additional extensions may be granted if Lessee is diligently pursuing to cure.
4) If the time from the Default extends beyond ninety (90) days and there is no reasonable excuse or reason, as to not being able to cure proceed to 8.4 of the Management Plan;
   f. If the Lessee disputes the determination of the Default and provides an explanation then first, the RED Manager will give its recommendation as to whether a Default has indeed occurred. If necessary, may seek a legal analysis from the DOJ;
   g. If no Default is found, then the process shall stop immediately;
   h. If Default is found, a response letter will be sent to Lessor, which should contain the following:
      1) Restate the default;
      2) Provide an explanation, with supporting references, applicable laws and regulations;
      3) State an Actual Date for the Lessee to cure, which must be no less than ten (10) days.
   i. If Lessee continues to dispute the determination, RED shall request a meeting with the Lessee to resolve the dispute, proceed to 8.4 of the Management Plan.
   j. j. If no cooperation or response, proceed to 7.5 of the Management Plan.
   k. k. If the Lessee decides to appeal, proceed to 9.0 of the Management Plan.

7.3 Expiration
Lease expires and Lessee has not notified the Lessor in a reasonable time to obtain a new Lease.
1. Lessee has not notified the DED Division Director of intentions to exercise an option to renew or to obtain a new Lease thirty (30) calendar days from the date of expiration.
2. Upon the thirtieth day from the date of Expiration, the RED shall notify the Lessee of the following:
   a. Date of Expiration
   b. Ten (10) working days to respond otherwise,
      1) RED shall begin eviction proceedings; or
      2) RED shall immediately notify the [appropriate DED department] of the available business site
3. Response process
   a. If begins steps to obtain a new Lease or responds within ten (10) day limit, by filling out an Application, proceed to 4.0 of the Admin Plan
   b. If does not respond within the ten (10) day limit:
      1) RED may contact DOJ to begin a forcible detainer action; or
      2) RED shall immediately notify the [appropriate DED department] of the available business site
7.4 Relinquishment
Withdrawn commercial/business sites may revert to Chapter use, if it is supported by a
Chapter Resolution and approved by the EDC

7.5 Property Management
RED shall inspect and inventory all improvements located on leased premises within thirty
(30) calendar days following termination or abandonment and within sixty (60) calendar
days following Expiration.
1. Copy of Inventory shall be disbursed to the following:
   a. Navajo Nation Environmental Protection Agency
   b. Risk Management Program
   c. Property Management

8.0 Enforcement, Relief and Remedies
RED shall have the primary responsibility to enforce the terms of the Lease through
collections, obtaining insurance proceeds, enforcing the Security, recommending suit.
1. If at any time the Lessee files an appeal with the Office of Hearing and Appeals, any
   steps taken to terminate the Lease shall immediately cease, proceed to 9.0 of the
   Management Plan.
2. RED shall, if necessary, consult with the DOJ for any legal action that may be
   necessary.

8.1 Defaults
1. Not paying rent, late charges, or repayment plans (proceed to 10.0 of the Management
   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. Unlawful conduct or business on the business;
6. Holdover – unless authorized;
7. Assigning, Subleasing, or transfer of the lease without approval of the Nation;
8. No development or completion of development within the time granted;
9. Not maintaining the premises in a pleasant appearance;
10. Unlawful construction or violation of building codes;
11. Not maintaining Security throughout the Lease term;
12. Not maintaining construction bond throughout the Lease term;
13. Not maintaining appropriate insurance through the Lease term;
14. Violating health codes and standards
15. Malpractice for professional offices;
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 comply 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.

If a Default has occurred, proceed to 8.2 of the Management 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 Management Plan.

**8.2 Once a Default has occurred, RED must proceed with the following process:**

1. Immediately send a notice, which must include the following:
   a. Date the Default occurred;
   b. Provide an explanation of the Default and the determination;
   c. Inform the Lessee of remedies that will be pursued;
   d. Inform the Lessee of possible termination and Bond/insurance collections;
   e. That the Lessee has three options
      1) Cure;
      2) Request additional time or
      3) Dispute the determination, which must include an explanation;
   f. The Actual Date when the Lessee must respond;
   g. Must be by certified mail, return requested;
   h. Lessee will have ten (10) days from date the notice is mailed to respond.

**8.3 Response process**

1. If the Lessee cures the Default, the process can stop immediately
2. If Lessee requests additional time proceed with the following:
   a. Immediately send a response to allow for additional time, which will be determined at the sole discretion of the RED;
   b. The additional time should be no less than ten (10) days, however, it is seems the cure can not be done in ten (10) days, then state how long, however, no extension should extend beyond ninety (90) days.
   c. This additional time may be granted it the Lessee is diligently pursing to cure and any additional extensions may be granted if Lessee is diligently pursuing to cure.
   d. If the time from the Default extends beyond ninety (90) days and there is no reasonable excuse or reason, as to not being able to cure proceed to 8.4 of the Management Plan;
3. If the Lessee disputes the determination of the Default and provides an explanation then first, the RED Manager will give its recommendation as to whether a Default has indeed occurred. If necessary, may seek a legal analysis from the DOJ;
   a. If no Default is found, then the process shall stop immediately;
b. If Default is found, a response letter will be sent to Lessor, which should contain the following:
   1) Restate the default;
   2) Provide an explanation, with supporting references, applicable laws and regulations;
   3) State an Actual Date for the Lessee to cure, which must be no less than ten (10) days.

c. If Lessee continues to dispute the determination, RED shall request a meeting with the Lessee to resolve the dispute, proceed to 8.4 of the Management Plan.

4. If no cooperation or response, proceed to 8.5 of the Management Plan;
5. If the Lessee decides to appeal, proceed to 9.0 of the Management Plan.

8.4 Compromise
1. If the Lessee is not able to cure but is willing to cooperate with the RED, then RED should begin compromising with the Lessee to mutually terminate this Lease
   a. If necessary RED may request the assistance of the DOJ to enter into a settlement agreement with the Lessee so as to terminate this Lease, proceed to 10.2 of the Management Plan.

2. RED Manager may hear the dispute and negotiate for a fair and reasonable solution
3. If the Default is still not cured and a compromise is not likely, proceed to 8.5 of the Management Plan.

8.5 Remedies
1. If the Lessee, does not respond or cure within the time given, or does not cooperate with the RED, the following may be exercised:
   a. Cancel the Lease, proceed to 7.2 of the Management Plan;
   b. Pursue other remedies, including execution on Bonds or collection of insurance proceeds;
   c. Any combination of remedies listed above.

2. If RED decides to terminate the Lease, it shall:
   a. Obtain a written document from the appropriate tribal department to verify the Applicant’s compliance with Navajo Business Procurement and Navajo Nation law and regulations.

3. Once the RED has an approved termination of the Lease, a letter shall be sent immediately to the Lessee informing the Lessee of the termination

4. The termination letter shall be sent to the Lessee by certified mail, return receipt requested. The termination letter shall:
   a. Explain the grounds for termination;
   b. Notify the Lessee of unpaid amounts, interest charges, or late payment penalties due under the Lease;
   c. Demand full payment, if applicable
d. Notify the Lessee of its right to appeal the termination; and

e. Order the Lessee to vacate the premises within 30 days of the mailing of receipt of the termination letter, if an appeal is not filed by that time.

5. A termination shall become effective thirty-one (31) days after the mailing;

6. The filing of an Appeal shall tell the effective date of a termination. Pending the outcome of an Appeal, the Lessee shall make all requisite payments, as well as comply with the terms of the Lease.

7. Once a termination has taken place, the RED may:
   a. Enter the Premises;
   b. Change locks, place padlocks on the buildings;
   c. Discontinue utility services;
   d. Assist the Lessee to vacate the premises;
   e. Do anything to the extent permitted by law to retake the premises.

8.6 Emergency cancellation of the Lease

   If conduct causes or threatens to cause immediate and significant harm to the premises or persons, including the business owner, or undertakes criminal activity thereon, the RED may contact the Navajo Nation Police Department and immediately terminate the Lease without notice to the Lessee.

8.7 Eviction/Court Action:

   Eviction through Court Action would be imposed on the Lessee(s) if Lessee(s) were unwilling to vacate the business site after termination of the Lease. Upon issuance of warrant of removal by the Nation Courts, Lessor will secure the lease premises with the assistance of the law enforcement.

8.8 Trespass:

   If a person or Lessee(s) occupies the premises without the Economic Development Committee approval, the RED may pursue appropriate remedies, including the filing of a trespass action to regain possession. If a person or Lessee(s) remain in possession after the expiration or termination of a Lease, RED shall treat such occupation as a trespass. RED shall take action to recover possession and pursue additional remedies and may seek DOJ assistance for filing of such actions.

9.0 Appeals

   An interested party may appeal the decision of the Navajo Nation, after exhaustion of all tribal remedies, to the Secretary of the Interior (“Secretary“)

9.1 Appeal Procedure:

   1. Lessee shall notify RED, in writing, of any arising dispute.

9.2 Compromise with RED

   1. Upon receipt of the written appeal, RED shall contact the Lessee/interested party and attempt to compromise and come to a fair and reasonable solution to the dispute, as provided in 7.0.
2. If the dispute cannot be resolved within twenty (20) days from the date of the appeal, the Lessee/interested party may appeal to the OHA.
3. Upon the written decision or expiration of the time limit, whichever occurs first, the Lessee shall have ten (10) calendar days to appeal to OHA.

9.3 Navajo Nation Office of Hearings and Appeal (“OHA”)
   1. If the Lessee and RED are not able to compromise the Lessee may file an appeal with the OHA
   2. OHA shall review whether the determination of RED is:
      a. Arbitrary, capricious or an abuse of discretion
      b. Not supported by substantial evidence
      c. Not in accordance with the law

9.4 Navajo Nation Supreme Court (“NSC”)
   1. Lessee may appeal to the NSC once a decision has been made by OHA.
   2. The review will be limited to issues of law and the record
   3. De Novo review is not allowed

9.5 Secretary of Interior
   1. Lessee may appeal to the Secretary once a decision has been made by NSC
   2. Secretary shall determine if:
      a. Any adverse affects to Lessee
      b. Not in accordance with the Navajo Nation Business Site Leasing Regulations of 2005
      c. Discriminating to Lessee

10.0 Lease Collection Procedures:
10.1 Collections:
Leases that are in arrears or otherwise not in compliance with the Lease are forwarded to RED for collection efforts. The goal of the collection officers is to have the Lessee pay their rental debt on a timely basis through the process of negotiation and cooperation without having to resort to legal proceedings;
   1. RED shall keep detailed records of efforts and have periodic contacts with Lessees, in accordance with the internal policies and procedures of the RED.
      a. The Lease file is a legal document and any entries made must be considered as potential evidence in a court of law;
   2. It is the responsibility of the Lessee to keep the RED informed of their current address and telephone numbers. RED is not responsible for sending correspondence to other than the last known address and telephone number provided by the Lessee;
   3. If an account is collected, through judicial action, the Lessees shall not be considered for another Lease until a minimum of ten (10) years has lapsed;
      a. All bankruptcy cases shall be subject to the Federal Bankruptcy Laws and all other applicable laws to discharge a debt to the Nation.
b. However, the continued right to terminate the property is subject to all applicable Navajo Nation, Federal and state laws in which the property is located.

c. In the event of death of a Lessee, RED shall contact the surviving spouse or the administrator of the deceased’s estate to proceed with the probate in compliance with the Navajo Nation Rules of Probate Procedures;

d. Any uncured payment arrearages of employees of the Navajo Nation or entity of the Nation shall be pursued,

1) Pursuant to the Navajo Nation Executive Branch Personnel Policies Manual Article XVI(B)(2); or

2) At the option of RED through judicial means or through the Navajo Business and Procurement Act, 12 N.N.C.§1507.

10.2 Compromise with delinquent Lessee(s):

When the Lease rental is uncollectible and all collection efforts have been exhausted and the Lessee agrees to settle outstanding debt with the Nation, with a Settlement Agreement or Promissory Note.

DEFINITION

Affected Party means the Lessee, Sublessee, Assignee, Permittee, Encumbrancer or any other person or entity who owes debt to the Nation

1. RED shall consider factors such as death, bankruptcy, other circumstances and the amount of debt on a case-by-case basis before recommending to the DOJ a Settlement Agreement and/or Promissory Note be entered into.

2. RED may in its discretion negotiate with the Affected Party as to the terms of the Settlement Agreement or Promissory Note or forward negotiations to DOJ

3. Once negotiations are completed the DOJ shall draft and/or review the Settlement Agreement and/or Promissory Note before submitting for approval.

4. Once the Settlement Agreement and/or Promissory Note is signed by the Affected Party, DOJ will submit the Settlement Agreement and/or Promissory Note to the DED Division Director for concurrence and final execution by the Attorney General;

5. Upon final approval, the accrued rental and any fees may be taken off the books of the Nation. A separate record shall be maintained by RED and OOC Accounts Receivable Department showing the Leases that have been settled or a repayment plan is agreed to. OOC shall be responsible for collections of Settlement Agreements and/or Promissory Notes.
11.0 Appendix – Forms:

1. Annual Lease Compliance
2. Property Inventory
3. Site Status Report
4. Environmental Summary
5. FMIS Steps on Entering Standard Invoice
6. Standard Invoice
ANNUAL LEASE COMPLIANCE REPORT

INSPECTOR: _______________________________   INSPECTION DATE: ________________________
LEASE NO: ___________________ DATE APPROVED: _______________ TERM: _____________
LESSEE: _______________________________ ADDRESS: ________________________________
DBA: _______________________________ LOCATION: ________________________________
CONTACT PERSON: _______________________ TITLE: ________________________________
PHONE NO.: ______________________________ TOTAL EMPLOYEES: _____________________
NAVAJOS: ______________________________
NON-NAVAJOS: _______________________

I. Authorized Activities: ________________________________________________________________
_________________________________________________________________________________
II. Agreed upon Improvements (renovations, repairs, etc.): ___________________________________
_________________________________________________________________________________
III. Improvements Completion Date/Development Period: _____________________________________
IV. If no evidence of Improvements, explain: ________________________________________________
_________________________________________________________________________________
V. DOLLAR INVESTMENT ON IMPROVEMENTS:
   A. Total dollar cost financed by: (Loan, Mortgages, own resources, etc.,)
      1. __________________________ $  __________
      2. __________________________ $  __________
VI. Procurement (rent) Compliance: ______________________________________________________
VII. SKETCH OF ALL FACILITIES WITHIN LEASE PREMISES:
VIII. Sanitation: ________________________________________________________________________
IX. Underground Storage Tank: ____________________________________________________________
X. Bonding: ___________________________________________________________________________
XI. Insurance: _________________________________________________________________________
COMMENTS: __________________________________________________________________________
________________________________________________________________________________
________________________________________________________________________________
________________________________________________________________________________
PROPERTY INVENTORY FORM

<table>
<thead>
<tr>
<th>Date of Inspection:</th>
<th>Business Site Lease No.:</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Lessee’s Name &amp; Address</th>
<th>Business Name &amp; Address:</th>
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</thead>
</table>

<table>
<thead>
<tr>
<th>Physical Location:</th>
<th>Business Type:</th>
</tr>
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</table>

<table>
<thead>
<tr>
<th>Current Status of Business Site:</th>
<th>Active □</th>
<th>Expired □</th>
<th>Terminated □</th>
<th>Abandoned □</th>
</tr>
</thead>
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<thead>
<tr>
<th>Building:</th>
<th>______________________</th>
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</thead>
<tbody>
<tr>
<td>Construction Type (frame, brick, metal, etc):</td>
<td>______________________</td>
</tr>
<tr>
<td>Dimensions:</td>
<td>_____________________________</td>
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<th>Building:</th>
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<td>Dimensions:</td>
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<tr>
<td>Construction Type (frame, brick, metal, etc):</td>
<td>______________________</td>
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<tr>
<td>Dimensions:</td>
<td>_____________________________</td>
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</tbody>
</table>

| Foundation Type: | ______________________ | Condition: | ______________________ |

Utilities:
- Waterline/Wells: □
- Gas/Propane: □
- Electrical: □
- Wastewater/Septic: □
- Communication: □
- Others: ___________________________________________________________________________

<table>
<thead>
<tr>
<th>Underground Storage Tanks: Yes □ No □</th>
<th>Fuel Dispensers: Qty/Capacity: __________________</th>
</tr>
</thead>
<tbody>
<tr>
<td>Propane Sales: Yes □ No □</td>
<td>Tank Capacity: ____________________</td>
</tr>
</tbody>
</table>

Equipment (Condition Code: New “N” Excellent “E” Good “G” Poor “P” Salvage “S” Scrap “X”)

<table>
<thead>
<tr>
<th>Item No.</th>
<th>Description</th>
<th>Mfr.</th>
<th>Model No.:</th>
<th>Size</th>
<th>Color</th>
<th>Condition</th>
</tr>
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Report By:

<table>
<thead>
<tr>
<th>Print Name &amp; Title</th>
<th>Signature</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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</tbody>
</table>
Business Name: ____________________________________
Lease Number: ________________________________

Current Address: ________________________________ Telephone No.: ( ____ ) _________________

Lessee(s): ______________________________________

A. Lease Status:
1. □ Active – Operating
2. □ Active – Non-Operating
   a) □ Developed □ Undeveloped
   b) Bill @ Holdover Rate: □ No □ Yes
3. □ Expired Operating
   a) Expiration Date: ______________________
4. □ Expired Non-Operating
   a) Expiration Date: ______________________
5. □ Expired – Reverted to Local Chapter
6. □ Cancelled
   a) Cancellation Date: ______________________
7. □ Terminated
   a) Termination Date: ______________________
8. □ Settlement
   a) Promissory Note: □ No □ Yes
9. □ Abandoned
   a) Business Closed? □ No □ Yes
   b) Date Business Closed: ________________
10. □ Permit Only
11. □ Lessee Deceased
   a) Probate in Process? □ No □ Yes
   Relinquished to: ______________________

B. Action Requesting
1. □ Stop Billing
   a) As of Date: ____________________________
2. □ Continue Billing
   a) Until Date: ____________________________

COMMENTS:
(Please Print) ____________________________________________________________________________
_______________________________________________________________________________________
_______________________________________________________________________________________
Site Status Reviewed by: _______________________________ Date: ____________________________
Department: _____________________________________________________________________________

ACCOUNTS RECEIVABLE USE ONLY:
Updated Business Site Lease Account: □ Yes □ No (explain) _________________________________
Additional Comments: ____________________________________________________________________
_______________________________________________________________________________________
_______________________________________________________________________________________
Reviewed by: _______________________________ Date: ____________________________
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:

________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
ENVIRONMENTAL SUMMARY

6. Sole Source Aquifer:


7. Abandoned Mine Lands:


8. Navajo Nation’s Solid Waste Act:


I certify that the Environmental Review Process and the Compliance Determination Process in good faith has been complied with:

_________________________________________  DATE:  ________________________________

Environmental Reviewer
Division of Economic Development
Steps on 'Entering Standard Invoice' through FMIS Accounts Receivable Module.

**Entering Standard Invoices**

Enter standard invoices with basic information

<table>
<thead>
<tr>
<th>Detailed Steps</th>
<th>Step Description</th>
<th>Field Name</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>· Choose Financials</td>
<td>(G1)</td>
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<td></td>
</tr>
<tr>
<td>· Choose Accounts Receivable</td>
<td>(G03B)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>· Choose Daily Processing</td>
<td>(G03B10)</td>
<td></td>
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</tr>
<tr>
<td>· Choose Customer Invoice Entry</td>
<td>(G03B11)</td>
<td></td>
<td></td>
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<tr>
<td>· Choose Standard Invoice Entry</td>
<td>(P03B2002)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(Double Click)</td>
<td>Ensure customer is set-up and has A/R flag.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>· Click ‘Add’</td>
<td>The system will automatically display a new Batch Number.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>· Enter Customer</td>
<td>Choose the visual assist (flashlight) with search type ‘C’ to customer Address Book to find customer.</td>
<td>Customer</td>
<td>Burger King</td>
</tr>
<tr>
<td>· Record Batch Number</td>
<td></td>
<td></td>
<td>259862</td>
</tr>
<tr>
<td>· Enter Company</td>
<td>You can use the visual assist (click on the Flashlight)</td>
<td>Company</td>
<td>10</td>
</tr>
<tr>
<td>· Enter Invoice Date</td>
<td></td>
<td>Invoice Date</td>
<td>07/20/06</td>
</tr>
<tr>
<td>· Enter G/L Date</td>
<td>Use today’s date</td>
<td>G/L Date</td>
<td>07/20/06</td>
</tr>
<tr>
<td>· Click into Gross Amount field in the grid</td>
<td>Enter gross amount of invoice</td>
<td>Gross Amount</td>
<td>6,000.00</td>
</tr>
<tr>
<td>· Tab to ‘Remark Field’</td>
<td>Enter remark for invoice</td>
<td>Remark</td>
<td>CY 2007 Business Site Rental Lease Billing</td>
</tr>
<tr>
<td>· Arrow down to new line within grid.</td>
<td>Information will automatically fill in for Open Account, Due Date, Discount Date, etc.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>· “Gross Amount” only enters an amount if there is no tax to be calculated/</td>
<td>Applicable taxes should default into grid from Customer Master.</td>
<td></td>
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</tr>
<tr>
<td>· Click ‘Ok’</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>· Enter account number for A/R Trade Offset</td>
<td>For G/L Distribution</td>
<td>Account Number</td>
<td>107004.1360</td>
</tr>
<tr>
<td>· Click into the Amount field in the grid</td>
<td>Billing amount</td>
<td>Amount</td>
<td>-6,000.00</td>
</tr>
<tr>
<td>· Click ‘Ok’ to save the standard Invoice</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>· For last invoice in batch – Click on Cancel – this will close batch</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>· Click ‘Close’</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>· Batch will be in Pending Status under AR menu, Invoice Journal Review, until such time it’s approved &amp; Posted by the Supervisor or individual with the appropriate level of security.</td>
<td>Application: P0011</td>
<td>Version: ZJDE0005</td>
<td></td>
</tr>
</tbody>
</table>

**Output**

**Expected Results**

Create an unposted Invoice for the Business Site Lease. You will be able to view and edit the batch while in Pending Status.

**Actual results**

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.
STANDARD INVOICE

PLEASE REFER TO CURRENT DOCUMENT
Uniform Standards of Professional Appraisal Practice (USPAP)

Standards Rule 2-2

Each written real property appraisal report must be prepared under one of the following three options and prominently state which option is used: Self-Contained Appraisal Report, Summary Appraisal Report, or Restricted Use Appraisal Report.

(a) The content of a Self-Contained Appraisal Report must be consistent with the intended use of the appraisal and, at a minimum:

(i) state the identity of the client and any intended users, by name or type;

(ii) state the intended use of the appraisal;

(iii) describe information sufficient to identify the real estate involved in the appraisal, including the physical and economic property characteristics relevant to the assignment;

(iv) state the real property interest appraised;

(v) state the type and definition of value and cite the source of the definition;

(vi) state the effective date of the appraisal and the date of the report;

(vii) describe the scope of work used to develop the appraisal;

(viii) describe the information analyzed, the appraisal methods and techniques employed, and the reasoning that supports the analyses, opinions, and conclusions; exclusion of the sales comparison approach, cost approach, or income approach must be explained;

(ix) state the use of the real estate existing as of the date of value and the use of the real estate reflected in the appraisal; and, when an opinion of highest and best use was developed by the appraiser, describe the support and rationale for that opinion;

(x) clearly and conspicuously:
   • state all extraordinary assumptions and hypothetical conditions; and
   • state that their use might have affected the assignment results; and

(xi) include a signed certification in accordance with Standards Rule 2-3.

(b) The content of a Summary Appraisal Report must be consistent with the intended use of the appraisal and, at a minimum:

(i) state the identity of the client and any intended users, by name or type;

(ii) state the intended use of the appraisal;

(iii) summarize information sufficient to identify the real estate involved in the appraisal, including the physical and economic property characteristics relevant to the assignment;
(iv) state the real property interest appraised;

(v) state the type and definition of value and cite the source of the definition;

(vi) state the effective date of the appraisal and the date of the report;

(vii) summarize the scope of work used to develop the appraisal;

(viii) summarize the information analyzed, the appraisal methods and techniques employed, and the reasoning that supports the analyses, opinions, and conclusions; exclusion of the sales comparison approach, cost approach, or income approach must be explained;

(ix) state the use of the real estate existing as of the date of value and the use of the real estate reflected in the appraisal; and, when an opinion of highest and best use was developed by the appraiser, summarize the support and rationale for that opinion;

(x) clearly and conspicuously:
- state all extraordinary assumptions and hypothetical conditions; and
- state that their use might have affected the assignment results; and

(xi) include a signed certification in accordance with Standards Rule 2-3.

(c) The content of a restricted Use Appraisal Report must be consistent with the intended use of the appraisal and, at a minimum:

(i) state the identity of the client, by name or type; and state a prominent use restriction that limits use of the report to the client and warns that the appraiser's opinions and conclusions set forth in the report may not be understood properly without additional information in the appraiser's workfile;

(ii) state the intended use of the appraisal;

(iii) state information sufficient to identify the real estate involved in the appraisal;

(iv) state the real property interest appraised;

(v) state the type of value, and cite the source of its definition;

(vi) state the effective date of the appraisal and the date of the report;

(vii) state the scope of work used to develop the appraisal;

(viii) state the appraisal methods and techniques employed, state the value opinion(s) and conclusion(s) reached, and reference the workfile; exclusion of the sales comparison approach, cost approach, or income approach must be explained;

(ix) state the use of the real estate existing as of the date of value and the use of the real estate reflected in the appraisal; and, when an opinion of highest and best use was developed by the appraiser, state that opinion;
(x) clearly and conspicuously:

- state all extraordinary assumptions and hypothetical conditions; and
- state that their use might have affected the assignment results; and

(xi) include a signed certification in accordance with Standards Rule 2-3.
Uniform Standards of Professional Appraisal Practice (USPAP)

Competency Rule

Prior to accepting an assignment or entering into an agreement to perform any assignment, an appraiser must properly identify the problem to be addressed and have the knowledge and experience to complete the assignment; or alternatively, must:

1. disclose the lack of knowledge and/or experience to the client before accepting the assignment;

2. take all steps necessary or appropriate to complete the assignment competently; and

3. describe the lack of knowledge and/or experience and the steps taken to complete the assignment in the report.
Uniform Standards of Professional Appraisal Practice (USPAP)

Confidentiality (Ethics Rule)

An appraiser must protect the confidential nature of the appraiser-client relationship.

An appraiser must act in good faith with regard to the legitimate interests of the client in the use of confidential information and in the communication of assignment results.

An appraiser must be aware of, and comply with, all confidentiality and privacy laws and regulations applicable in an assignment.

An appraiser must not disclose confidential information or assignment results prepared for a client to anyone other than the client and persons specifically authorized by the client; state enforcement agencies and such third parties as may be authorized by due process of law; and a duly authorized professional peer review committee except when such disclosure to a committee would violate applicable law or regulation. It is unethical for a member of a duly authorized professional peer review committee to disclose confidential information presented to the committee.