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Business Site Leasing Administration Plan KTC-03-08

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KAYENTA TOWNSHIP

BUSINESS SITE LEASING ADMINISTRATIVE PLAN

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1.0. EXECUTIVE SUMMARY

- 1.1. This Administrative Management Plan (“Plan”) provides policy, direction and guidance for the decision making of the leasing staff of the Kayenta Township (“Township”) regarding applications received for business site leases and related documents within the boundaries of the Township.
- 1.2. Legal Framework: 25 U.S.C. § 415(e), as amended, Navajo Nation Business Site Leasing Act of 2000, 5 N.N.C. §§ 2301-2306 (2005), as amended, Navajo Nation Business Leasing Regulations of 2005, as amended, Economic Development Committee Uniform Business Leasing Regulations of 2008, as amended, Kayenta Township Business Site Leasing Ordinance, as amended, and Kayenta Township Business Site Leasing Regulations, as amended.
- 1.3. Administrative Framework: The Kayenta Township Commission (“KTC”) has the authority and responsibility to govern for the welfare of the Township and its residents, including the enactment of such ordinances, rules, regulations, policies and procedures as it deems in the best interest of the Township. See ACN-181-86 (Nov. 13, 1986) (established the boundaries for the Township); CJY-42-03 (July 25, 2003) and CAU-47-03 (Aug. 29, 2003) (established Home Rule).
- 1.4. Amendment of the Plan: The Business Site Leasing Committee may recommend amendments to this Plan subject to approval by the Economic Development Committee of the Navajo Nation Council (“EDC”) in accordance with the laws and regulations of the Navajo Nation and Township.
- 1.5. The Township shall provide an initial report to EDC not less than six (6) months from the date of execution of the EDC resolution granting delegation of approval authority to the Township and annually thereafter.
- 1.6. Objectives:
 1. Carry out the authority for issuing business site leases and set forth the details for approving, processing, administering, managing and enforcing such leases;
 2. Promote self-determination, encourage economic self-sufficiency and increase business activity and employment;
 3. Promote the uniformity of business site leases;
 4. Recommend the enactment, amendment or rescission of laws and regulations to enhance economic development and create a positive business environment; and
 5. Promote the efficient leasing of business sites, independent of the political process.
- 1.7. Severability:

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

2.0. PRE-BUSINESS SITE LEASE

- 2.1. An applicant for a business site lease can be an individual (sole proprietorship) or a legally recognized business entity (“LRBE”), i.e., a partnership, limited partnership, limited liability partnership, limited liability company, professional association, professional corporation, or corporation, organized or chartered under federal, state or Navajo law. All LRBEs must register with the Navajo Nation Business Regulatory Department (“Business Regulatory Department”) and be in good standing under the laws of the Navajo Nation and Township.
- 2.2. Definitions.
1. *Applicant* means a person or LRBE who submits an Application.
 2. *Application* means a written request for: a new lease, renewal of lease; novation, assignment, sublease; revocable use permit; or emergency operating agreement. All Applicants must be eighteen years of age or older.
 3. *Appraisal (or an equivalent procedure)* means an assessment of the worth or value of real property.
 4. *Approving Entity* means the Business Site Leasing Committee (“BSL Committee” or “Committee”) that has been established pursuant to Resolution No. KTCM-09-08 and delegated the authority by the EDC to approve Business Site Leasing Transactions under this Plan.
 5. *Assignment* means an agreement between a lessee and an assignee whereby the assignee acquires all of the lessee’s rights and assumes all of the lessee’s obligations under a lease.
 6. *Business site lease* means any lease issued for lands within the boundaries of the Township for business purposes.
 7. *Business Site Leasing Transactions* means a new lease, renewal of lease; modification, novation, assignment, sublease; collateral assignment of lease; revocable use permit; or emergency operating agreement.
 8. *CD Department* means the Community Development Department of the Township.
 9. *Collateral Assignment of Lease* means an assignment of the leasehold interest of a lease as security for the payment of a specified debt.
 10. *Consumer Price Index (“CPI”)* means the Consumer Price Index - All Urban Consumers for all Items.
 11. *Development Period* means a definite period of time beginning from the date the lease is executed to when improvements are expected to be substantially completed.
 12. *Emergency Operating Agreement* means a written agreement between the Township and an operator of a business for emergency use on Navajo Nation trust lands for a specific purpose and specific period, which conveys no possessory interest rights and may be revoked at will.
 13. *Environmental Reviewer* means the employee within the Real Estate Department of the Division of Economic Development of the Navajo Nation designated to review the environmental summary and related reports for a business site lease.

14. *Ethics clearance* means written clearance from the appropriate authorities pursuant to the Navajo Nation Ethics in Government Law, 2 N.N.C. § 3741. *et seq.* (2005).
15. *Executing Official* means the President of the Navajo Nation, or his authorized designee, who will sign all appropriate business site lease documents on behalf of the Navajo Nation.
16. *Finance Department* means the Finance Department of the Township.
17. *KTC* means the Kayenta Township Commission, the governing body of the Kayenta Township.
18. *Lease Package* means the Application and all required supporting documents for a business site lease.
19. *Lease Rental* means the monetary consideration for right of possession and use of Navajo Nation trust land within the Kayenta Township
20. *Legally Recognized Business Entity ("LRBE")* means any partnership, limited partnership, limited liability partnership, limited liability company, professional association, professional corporation, or corporation, organized or chartered under federal, state or Navajo law.
21. *Managing Entity* means the Economic Development Department of the Township ("ED Department") that has been delegated management authority by the Navajo Nation Division of Economic Development.
22. *Modification* means any change in the terms or conditions of the lease.
23. *Novation* means a modification of the lease that permits the lessee to voluntarily consent to the leasing jurisdiction of the Township.
24. *NNDOJ* means the Navajo Nation Department of Justice.
25. *Permit* means a revocable use permit, which gives temporary rights to use lands within the Township for business purposes.
26. *Primary Term* means the initial term of a lease, permit or agreement.
27. *RED* means the Real Estate Department of the Division of Economic Development of the Navajo Nation.
28. *Review Team* means the team consisting of a representative of the ED Department, Finance Department, and CD Department to provide administrative review of a Lease Package prior to approval of a Business Site Lease Transaction by the BSL Committee.
29. *Security Deposit* means a cash deposit, letter of credit or certificate of deposit to guarantee the annual rental and the performance of the terms and conditions of the lease.
30. *Sublease* means a written agreement by which the lessee grants an individual or LRBE a right of possession no greater than that held by the lessee under the primary lease.
31. *Town Manager* means the chief executive officer of the Township.
32. *Township* means the Kayenta Township, a political subdivision of the Navajo Nation.

2.3. **Advertisement.**

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

2.4. Administrative fees.

1. The following administrative fees will be due upon the execution but prior to distribution of the following documents:
 - a. New lease \$150.00
 - b. Renewal \$100.00
 - c. Modification \$100.00
 - d. Novation \$50.00
 - e. Sublease \$100.00
 - f. Assignment \$100.00
 - g. Collateral assignment \$100.00
 - h. Permits \$50.00
 - i. Emergency operating agreement \$50.00
 - j. Collections \$100.00
 - k. Other administrative transactions \$100.00
2. The above fee schedule may be modified from time to time by resolution of the BSL Committee.
3. The BSL Committee in its discretion may reduce or waive the above fees for good cause shown by an Applicant or a lessee.
4. All payments are nonrefundable and shall be made by business check, money order or cashier's check, payable to the Township.

3.0. BUSINESS SITE LEASE APPROVAL PROCESS

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

4.0. NEW LEASE

- 4.1. The Applicant must submit an Application and complete all Application requirements to obtain a lease within six (6) months of the submission date of the Application. If the Application has not been completed at the end of such 6 months, it will be void, unless the ED Department in its discretion determines that the Applicant has made significant progress in completing the Application process. When the Application becomes void, the ED Department will return all original documents to the Applicant, but may choose to retain a copy of the Application in its files.
- 4.2. The Applicant shall submit to the ED Department:
 1. Application, with new lease box checked;
 2. Business Plan;
 3. Organizational documents, if applicable:
 - a. Articles of incorporation, articles of organization, etc.
 - b. Bylaws, operating agreement, partnership agreement, etc.
 4. Corporate resolution of authority, if applicable; and
 5. Certificate of good standing issued by the Business Regulatory Department within 12 months prior to administrative review of the lease.
 - a. Must register with the Business Regulatory Department if an LRBE.

4.3. The ED Department shall:

1. Review all documents for accuracy and compliance with applicable laws and regulations.
2. Obtain from the CD Department.
 - a. Site designation review and approval; and
 - b. Site survey and legal description.
 - 1) The site survey and legal description shall be based on metes and bounds, rectangular, or lot and block system.
 - 2) The site survey shall comply with a Cadastral survey (Navajo Nation and Federal requirements).
3. Obtain from appropriate agencies any necessary clearances, including but not limited to:
 - a. Ethics, if applicable;
 - 1) All federal, tribal and Township employees and officials must comply with this requirement at all times during the term of the lease;
 - 2) Township employees and officials shall refrain at all times from conflict of interest situations and financial gains involving leases;
 - b. Navajo Business and Procurement Act, 12 N.N.C. § 1501 *et seq.*, by conducting a background check and obtaining written clearances from:
 - 1) Accounts Receivable, Navajo Nation Office of the Controller;
 - 2) Credit Services, Navajo Nation Office of the Controller;
 - 3) Navajo Tax Commission;
 - 4) Navajo Nation Shopping Centers, Inc.; and
 - 5) Township Finance Department.
4. Obtain fair annual rental value from an appraisal or equivalent procedure.
 - a. Submit copy to RED.
5. Process the Environmental Review ("ER"):
 - a. Prepare an Environmental Summary.
 - b. Work with RED Environmental Reviewer to determine which compliance determinations are necessary.
 - c. RED shall obtain environmental compliance determinations from:
 - 1) Navajo Nation Historic Preservation Office;
 - 2) Navajo Environmental Protection Agency; and
 - 3) Navajo Nation Fish and Wildlife.
 - d. RED Environmental Reviewer signs off on Environmental Summary.
6. Negotiate all terms and conditions of the lease, including:
 - a. Term:
 - 1) The Primary Term shall not exceed 25 years.
 - 2) Depending on the type of business, the Township may provide one or two options to renew the lease; however, each option shall not exceed 25 years.
 - 3) The lease shall not preauthorize a sublease.
 - b. Rental may be a:
 - 1) Flat lease rate per year; or

- 2) Percentage of gross receipts; or
 - 3) Flat lease rate per year plus a percentage of gross receipts, if the business:
 - a) is located in a shopping center; or
 - b) generates over \$1 million per year of gross receipts.
- c. Initial Rent:
- 1) May be based on an appraisal or equivalent procedure.
 - a) An equivalent procedure may include a market study or market analysis, utilizing the following available data:
 - i) improvement cost;
 - ii) replacement cost;
 - iii) earning capacity;
 - iv) sales; and
 - v) lease data of comparable sites.
 - b) If a market study is utilized, it shall be:
 - i) one conducted for the entire Township that includes the proposed lease premises; and
 - ii) updated every five years.
 - c) If a market analysis is utilized, it shall be conducted for the proposed leased premises.
- d. Rent may be waived or abated for the following reasons:
- 1) Development Period (as defined in Section 2.2);
 - a) Shall not exceed 3 years, unless justified by extenuating circumstances shown by the Applicant.
 - b) Shall be granted for only new construction of improvements under a new lease.
 - 2) Substantial construction or reconstruction of the leasehold improvements is necessary.
 - a) If the lessee fails to undertake such reconstruction, he shall be required to pay the rent that was in existence before such waiver or abatement was granted for the period of the waiver or abatement of rent.
 - b) If lessee has difficulty securing financing, not to exceed one (1) year.
 - 3) An environmental cleanup is necessary;
 - 4) The Applicant is a governmental entity or a nonprofit organization validly organized under federal law; or
 - 5) For any other justifiable reason.
- e. Rent adjustments:
- 1) All leases shall be reviewed every five years, beginning 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) Rent may be adjusted on the applicable fifth anniversary using the CPI, which shall be stipulated in the lease.
 - 3) The lease shall specify:

- a) how the adjustment shall be made;
 - b) who will make the adjustment;
 - c) when the adjustment will be effective; and
 - d) how disputes shall be resolved regarding such adjustment.
- 4) The lessee may be notified in writing ninety (90) days before any adjustment is made.
- f. **Security Deposit:**
- 1) Shall guarantee one year's rental.
 - 2) May be reduced by 25% of the annual rental at the recommendation of the ED Department, if:
 - a) In the best interest of the Township;
 - b) Applicant or lessee has been in good standing with the Navajo Nation for a minimum of five (5) years;
 - c) Applicant has an acceptable creditworthiness rating as indicated by Dunn and Bradstreet, Fortune 500 Company or a credit agency; or
 - d) Applicant is a governmental entity or a nonprofit organization organized under federal law.
 - 3) May be postponed at the recommendation of the ED Department if the rental has been postponed.
- g. **Insurance:**
- 1) Lessee shall submit evidence of the following insurance within thirty (30) days of execution of the lease.
 - a) **Commercial General Liability Insurance:**
 - i) \$1,000,000 in the aggregate with each occurrence at \$500,000; or
 - ii) \$2,000,000 in the aggregate with each occurrence at \$1,000,000 for leases with storage tanks or involving regulated substances.
 - b) Fire and Casualty Insurance with extended coverage endorsements covering not less than the full replacement value of all improvements on the leased premises.
 - 2) The above required insurance may be postponed:
 - a) To coincide with the commencement of construction; or
 - b) Upon the first drawdown of financing.
 - 3) Any postponement shall not to exceed ninety (90) days after the execution of the lease.
 - 4) If evidence of the required insurance is not submitted on the due date, or if postponed, within ninety (90) calendar days of execution of the lease, the lease will be subject to termination. See Section 7.0. of this Plan.
 - 5) All required insurance shall:
 - a) Be obtained from a Nationally Accredited Insurance Company with a financial strength of at least an "A" and authorized to do business within in the state where the leased premise is located;

- b) Include the Township, Navajo Nation and United States as additional insureds;
 - c) Not be cancelled or amended without thirty (30) days' prior written notice to the ED Department and Finance Department.
 - 7. Draft the lease.
- 4.4. Administrative review of the lease.
The ED Department shall:
 - 1. Prepare an executive summary.
 - 2. Present the Lease Package for administrative review by the Review Team, which shall review the Lease Package to ensure that the Applicant and lease are in compliance with the regulations and this Plan.
 - 3. Ensure legal review of the lease by the Township's legal counsel.
- 4.5. Approval of the lease.
 - 1. The ED Department shall present the following to the BSL Committee for approval of the lease:
 - a. Lease (with any necessary attachments);
 - b. Executive summary;
 - c. Certificate of good standing;
 - d. Procurement clearance report; and
 - e. Environmental Summary.
 - 2. The BSL Committee shall:
 - a. Consist of the Town Manager, Finance Department Director and CD Department Director of the Township and two community members residing within the Township;
 - b. Consist of members who are not Public Officials, as defined by the 2 N.N.C. § 3742 (2005);
 - c. Consist of members who have experience or knowledge in real estate, business, finance, planning, management, community relations or related areas;
 - d. Operate by an adopted rules of order; and
 - e. Approve all Business Site Lease Transactions by resolution.
 - 3. Once the lease form is approved by the EDC, any deviation or modification to Part II of the 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.
- 4.6. Execution of the lease.
 - 1. The ED Department shall forward the lease with the approving resolution to NNDOJ for review.
 - 2. The ED Department shall finalize the lease and prepare six original leases for execution.
 - 3. The lease shall be signed by the lessee.
 - 4. The lease shall be concurred by the Town Manager.

5. The lease shall be signed by the President of the Navajo Nation or designee.

4.7. Post execution and lease administration.

1. The ED Department shall forward the executed lease to RED for recording.

2. RED shall:

a. Assign a number to the lease.

b. Send a certified copy of lease to the ED Department.

c. Send the lease for recording to:

Land Title and Records Office

Southwest Regional Office

Bureau of Indian Affairs

P. O. Box 26567

Albuquerque, NM 87125-6567

d. Retain one original of the recorded lease and forward the rest to the ED Department.

3. The ED Department shall retain one original of the recorded lease and distribute the rest to the:

a. Lessee (original);

b. Navajo Nation Land Department (original);

c. Navajo Nation Records Management Department (original); and

d. BIA Western Agency Real Estate Services Office (copy).

4. The Finance Department shall:

a. set up a computerized financial accounting file for the lease; and

b. collect all fees before lease is recorded.

5. The ED Department shall:

a. Obtain the necessary clearances for:

1) roads;

2) utilities (water, sewer, electricity and gas);

3) telecommunications (telephone, cable or satellite); and

4) sanitation.

b. Collect the applicable fees.

c. Set up a computerized administrative file for the lease; and

d. Monitor the general compliance of the lease.

5.0. EXPIRING LEASE

5.1. A lessee intending to renew a lease shall notify the ED Department at least one (1) year before the expiration of the lease. The lessee must submit the renewal Application and complete all Application requirements to renew the lease within six (6) months of the submission date of the Application. If the Application has not been completed at the end of such 6 months, it will be void, unless the ED Department in its discretion determines that the Applicant has made significant progress in completing the Application process. When the Application becomes void, the ED Department will return all original documents to the Applicant, but may choose to retain a copy of the Application in its files.

5.2. Lessee's responsibilities.

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

5.3. The ED Department's responsibilities.

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

6.0. EXERCISING AN OPTION TO RENEW

6.1. Lessee's responsibilities.

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

ACKNOWLEDGEMENT BY THE NAVAJO NATION:

Approved:

Disapproved:

Navajo Nation President or Designee

Navajo Nation President or Designee

DATE: _____

CONCURRENCE BY THE KAYENTA TOWNSHIP:

Authorized Representative

DATE: _____

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

6.2. ED Department responsibilities.

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

7.0. MODIFICATION

7.1. Lessee's responsibilities.

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

7.2. ED Department responsibilities.

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

12. Ensure that the lease modification is recorded and distributed. See Section 4.7. of this Plan.

8.0. NOVATION

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

8.2. Lessee's responsibilities.

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

8.3. ED Department Responsibilities.

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

9.0. SUBLEASE

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

9.2. General Requirements.

1. A sublease:
 - a. cannot exceed the balance of the term of the primary lease;
 - b. cannot be for the entire leased premises under the primary lease;
 - c. cannot be approved for an activity not authorized by the purpose of the primary lease;
 - d. will not be approved if the primary lease does not have an operating business; and
 - e. will not be approved for undeveloped land.
2. Subleases that do not require approval by the BSL Committee include:
 - a. Tenant leases in permanent office buildings;
 - b. Tenant leases in shopping centers; or
 - c. Tenant leases in mini malls.

9.3. Sublessor's responsibilities.

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

9.4. Applicant's responsibilities.

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

9.5. ED Department's responsibilities.

1. Review all documents for accuracy and compliance with applicable laws and regulations.
2. Ensure that lessee (sublessor) is not in default of any the lease provisions.
3. Ensure that the site survey, appraisal and/or ER are updated, if applicable. See Section 4.3. of this Plan.
4. Obtain written clearances to verify the Applicant's compliance with the Navajo Business and Procurement Act. See Section 4.3.3.b. of this Plan.
5. Negotiate the terms and conditions of the lease, if applicable.
6. Prepare an executive summary.
7. Process the Lease Package for administrative review by the Review Team and legal counsel. See Section 4.4. of this Plan.

8. Present the sublease with appropriate documents to the BSL Committee for approval. See Section 4.5. of this Plan.
9. Finalize the sublease and prepare six original documents for execution.
10. Forward the sublease with a transmittal letter to the NNDOJ for review.
11. Obtain the signatures of the lessee, Town Manager and Navajo Nation President.
12. Collect the applicable fees.
13. Ensure that the sublease is recorded and distributed. See Section 4.7. of this Plan.

10.0. ASSIGNMENT

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

10.2. General Requirements:

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

10.3. Assignor’s responsibilities.

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

10.4. Assignee’s responsibilities.

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

5. Maintain liaison with the ED Department upon assignment of the lease.

10.5. ED Department responsibilities.

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

11.0. COLLATERAL ASSIGNMENT OF LEASE

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

11.2. Lessee's responsibilities.

1. Provide letter of intent to collateralize the leasehold interest held under a lease to the ED Department.
2. Be in compliance with the terms and conditions of the lease and applicable laws and regulations.
3. Submit copies of the following documents:
 - a. Loan agreement and/or promissory note;
 - b. Collateral assignment of lease;
 - c. Security agreement; and/or
 - d. Any other document as required by the lender.
4. Comply with all terms and conditions of the collateral assignment upon its approval.

5. Not modify, sublease, transfer, assign or mortgage the leasehold interest or enter into a management agreement without the prior approval of the BSL Committee and surety of the lease, if any, unless otherwise stipulated in the lease or collateral assignment of lease.

11.3. ED Department responsibilities.

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

12.0. REVOCABLE USE PERMIT

12.1. A Permit may be issued:

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

12.2. Terms and conditions of the Permit:

1. Term:
 - a. All Permits shall be for the actual period of time needed, but in no event shall the term exceed one (1) year. Perpetual terms will not be permitted.
 - b. Permittees may be granted one (1) option to renew, but in no event shall the option period exceed the Primary Term of the Permit.
 - c. The permittee can exercise the option to renew by providing a letter of intent to the ED Department at least ten (10) working days prior to the expiration of the Primary Term of the Permit, provided the permittee is:
 - 1) Not in default of the terms and conditions of the Permit; and
 - 2) In compliance with all applicable laws and regulations.
2. Rental:
 - a. For profits:
 - 1) \$50.00 per day for a term less than 30 days.
 - 2) \$200.00 per day for term over 30 days.
 - b. Nonprofits or governments:

- 1) \$25.00 per day for a term less than 30 days.
 - 2) \$100.00 per day for term over 30 days.
 - c. Licensed dealerships including but not limited to motor vehicles, ATVs, motorcycles, boats, and motor homes;
 - 1) \$250.00 per day for a term less than 30 days.
 - 2) \$500.00 per day for term over 30 days.
 - d. Entertainment events, including but not limited to carnivals: \$500.00 per day.
 - e. Rental may be waived upon the written recommendation from the ED Department to the BSL Committee, for the term of the Permit if:
 - 1) It is in the best interest of the Township; or
 - 2) For good cause shown by the Applicant.
- 3. Termination:
 - a. All Permits shall automatically terminate at the end of the term or at the end of the renewed option term.
 - b. Permits shall be terminated or cancelled for noncompliance with the terms and conditions of the Permit or for violation of any applicable law and regulation.
 - c. The ED Department shall notify the permittee by certified letter, return receipt requested within five (5) days of any discovered non-compliance or violation, informing the permittee that the Permit is terminated.
 - d. The certified letter shall state the cause for termination, the date of the termination, and the time-frame for vacating the premises, which shall not exceed five (5) calendar days from the effective date of the termination.
- 4. No Permit shall be issued for a contaminated site unless the site has been cleaned up and approved by the Navajo EPA and/or United States EPA, except that no Permit is necessary for an environmental cleanup of a contaminated site.

12.3. Applicant's responsibilities.

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

12.4. ED Department responsibilities:

- 1. Review all documents for accuracy and compliance with applicable laws and regulations and check the land status.
- 2. Obtain written clearances to verify the Applicant's compliance with the Navajo

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

13.0. EMERGENCY OPERATING AGREEMENT

- 13.1. An Emergency Operating Agreement (“Agreement”) shall be issued only in the following situations:
 1. Where a lessee has abandoned a business site lease and an operator is deemed necessary to protect the facilities and/or business.
 2. Where an operator is operating abandoned facilities or business and has been diligently pursuing a new lease but has experienced delays in obtaining the new lease that are beyond his or her control.
- 13.2. Requirements:
 1. Term.
 - a. The Primary Term of an Agreement shall not exceed one (1) year. Perpetual terms are not permitted.
 - b. An operator pursuing a new lease shall have one (1) option to renew the Agreement. The operator can exercise the option to renew by submitting notice to the ED Department at least ten (10) working days prior to the expiration of the Primary Term of the Agreement, provided:
 - 1) The operator has begun the process for obtaining a lease.
 - 2) The operator is in compliance with the terms and conditions of the Agreement and applicable laws and regulations.
 - 3) The renewal term does not exceed the Primary Term.
 - c. An operator not pursuing a new lease shall have up to two options to renew the Agreement. The operator shall exercise an option to renew the Agreement by providing a letter of intent to the ED Department at least ten (10) working days prior to the expiration of the Primary Term or the option period, provided:
 - 1) The operator is in compliance with the terms and conditions of the Agreement and applicable laws and regulations.

- 2) The renewal term does not exceed the Primary Term.
2. Rental: shall be waived.
3. Termination.
 - a. The Agreement shall be terminated for non-compliance with the terms and conditions of the Agreement or violation of any applicable law or regulation.
 - b. The ED Department shall notify the operator by certified letter, return receipt requested within five (5) days of any discovered non-compliance or violation, informing the operator that the Agreement is terminated.
 - c. The certified letter shall state the cause for termination, the date of the termination and the time-frame for vacating the premises, which shall not exceed five (5) calendar days from the effective date of the termination.
4. No Agreement for a contaminated site shall be issued until the site has been cleaned up and approved by the Navajo EPA and United States EPA.

13.3. Applicant's responsibilities.

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

13.4. ED Department responsibilities:

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

14.0. APPENDIX

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

14.2. Appendix B: Forms.

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