

**KAYENTA TOWNSHIP**  
**BUSINESS SITE LEASING MANAGEMENT PLAN**  
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## **1.0 EXECUTIVE SUMMARY.**

- 1.1. This Management Plan (“Plan”) provides the Kayenta Township (“Township”) leasing staff with policy, direction and guidance in the management of business site leases and related documents within the boundaries of the Township.
- 1.2. Legal Framework: 25 U.S.C. § 415(e), as amended; Navajo Nation Business Site Leasing Act of 2000, 5 N.N.C. §§ 2301-2306 (2005), as amended; Navajo Nation Business Leasing Regulations of 2005, as amended (“2005 Regulations”); and Economic Development Committee Uniform Business Leasing Regulations of 2008, as amended..
- 1.3. Administrative Framework: The Kayenta Township Commission (“KTC”) has the authority and responsibility to govern for the welfare of the Township and its residents, including the enactment of such ordinances, rules, regulations, policies and procedures as it deems in the best interest of the Township. See ACN-181-86 (Nov. 13, 1986) (established boundaries for the Township); CJY-42-03 (July 25, 2003) and CAU-47-03 (Aug. 29, 2003) (established Home Rule); Economic Development Committee Resolution No. EDCJN-28-09 (June 3, 2009) (delegating approval authority for Business Site Leases to the Township and approving the Township’s Business Site Leasing Administrative and Management Plans); Resources and Development Committee Resolution No. RDCJA-04-20 (Jan. 22, 2020) (approving amendments to the Township’s Business Site Leasing Administrative and Management Plans); and *Kayenta Township Comm’n v. Ward*, 9 Nav. R. 481 (Nav. Sup. Ct. 2011) (confirming the KTC’s home rule authority for all inherently governmental functions and holding that KTC has the actual right of possession to lands withdrawn for the Township).
- 1.4. Amendment of the Plan: The Business Site Leasing Committee may recommend amendments to this Plan subject to approval by the Resources and Development Committee of the Navajo Nation Council (“RDC”) or its successor in accordance with the laws and regulations of the Navajo Nation and Township.
- 1.5. The definitions of the Kayenta Township Business Site Leasing Administrative Plan (“Administrative Plan”) and the 2005 Regulations will apply to this Plan. In the event that there is a conflict between the 2005 Regulations and this Plan, the 2005 Regulations will govern.
- 1.6. Severability:  
If a court of competent jurisdiction determines a provision in the Kayenta Township Business Site Leasing Management Plan is invalid, void or unenforceable, it shall be stricken and the remainder shall remain in full force and effect.

## **2.0 LEASE COMPLIANCE.**

- 2.1. Department responsibilities:  
Upon execution of a business site lease (“lease”) by all parties:
  1. Collect the appropriate administrative fee. See Section 2.4. of the Administrative

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

See Section 4.3.6.g. of the Administrative Plan.

2.2. Rental compliance.

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

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

2.3. Annual lease compliance.

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

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

2.4. Property inventory form.

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

**3.0. ENVIRONMENTAL REVIEW.**

- 3.1. The Navajo Nation Business Site Leasing Regulations of 2005 provide that if a NEPA type review was completed and "A Finding of No Significant Impact" ("FONSI") has been issued, the lessee may use such document to meet its environmental compliance

determination obligations. See § 806. The Township has conducted an Environmental Assessment, dated April 1, 1999, for which the Bureau of Indian Affairs issued a FONSI on July 21, 1999. The Township has also conducted several Archaeological Clearances dated July 17, 1987, September 8, 1987 and October 20, 1987. These reports cover all lands located within the boundaries of the Township and are on file with the RED. Thus, those documents will be used to determine whether any further action is necessary during the Environmental Review (“ER”) process of all leases. Generally, the ER requirements of this Section 3.0. will not apply to a lease on lands for which: 1) an Environmental Assessment and Archaeological Clearance have been conducted; 2) will not involve hazardous substances, including but not limited to, underground or above ground storage tanks, asbestos, and discharge of emissions or effluents; or 3) will not impact, alter or disturb the biological or cultural resources.

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

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

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

2. Subject to Section 3.1. of this Plan, an ER shall be required for any of the

following:

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

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

3.3. ER process.

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

3.4. Public notice and review.

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

3.5. ER record.

1. RED shall maintain a record of the ER conducted for each Business Leasing Transaction pursuant to applicable laws and regulations.
2. The ER record must contain:
  - a. The compliance determination;
  - b. Any correspondences;

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

#### **4.0. APPRAISAL OR EQUIVALENT PROCEDURE.**

##### **4.1. Implementation.**

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

##### **4.2. Objectives.**

The objectives of the Township are to:

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

##### **4.3. Criteria for Appraisers.**

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

- 4.4. Appraisals or equivalent procedures reports.
  1. The appraisal or equivalent procedure shall determine the fair annual lease value of the existing improvements and lands designated for business purposes utilizing generally accepted appraisal methodologies and the data required by this Section 4.0. For leases generating more than \$1,000,000.00 of revenues, the appraisal or equivalent procedure may also address percentage rents.
  2. The Township or the Navajo Nation shall have the right to promulgate supplemental standards and to change such standards as deemed necessary. The Appraiser must familiarize himself with any applicable supplemental standards and comply with them.
  3. The Appraiser shall:
    - a. Certify that the appraisal or equivalent procedure report was prepared in compliance with the USPAP and any supplemental standards promulgated by the Township or Navajo Nation;
    - b. Include an acknowledgment in the appraisal or equivalent procedure report that states the report is subject to review by the Township and RED and the right of the Township and/or the Navajo Nation to either reject or require specific changes to the report;
    - c. Include a statement in the report agreeing to protect the confidentiality of all information obtained during the appraisal process relative to Navajo Nation trust lands and businesses;
    - d. Attach a log describing the appraisal or equivalent procedure;
    - e. Include a copy of his license in the appraisal report or equivalent procedure report; and
    - f. Comply with all applicable federal, state and Navajo Nation regulations.
  4. The Department shall provide a copy of the appraisal to RED to ensure compliance with USPAP.
  
- 4.5. Kayenta Township Real Estate Market Study (“Market Study”).
  1. The Township shall contract with an independent licensed Appraiser to conduct a Market Study (as an equivalent procedure) to:
    - a. Value all sites designated for business purposes; and
    - b. Recommend an optimal rental structure for such business sites.
  2. The Appraiser shall:
    - a. Review the following information for each business site:
      - 1) improvement costs;
      - 2) replacement costs;
      - 3) earning capacities;
      - 4) sales; and
      - 5) lease data of comparable sites.
    - b. Generate a data base after analysis of the above five (5) factors and consistent with the regulations and this Plan.
    - c. Recommend a rental structure for similar groups of businesses, which the Department shall utilize to negotiate rents to be charged for new businesses or existing businesses that novate or renew their leases.

3. An initial Market Study was done in October of 1999. The Market Study shall be updated every five (5) years. A copy of the study shall be provided to RED for review to ensure compliance with USPAP.

## **5.0. FILE MANAGEMENT.**

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

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

1. Legal opinions or reviews;
2. All correspondence;
3. Summary sheets of supporting documents;
4. Lease application;
5. Resolutions;
6. Clearance documents;
7. Other documents;
8. Approved lease;
9. Survey plat;
10. All exhibits;
11. Organizational documents (charter, bylaws, etc.);
12. Security Deposits and insurance certificates;
13. Receipts for fees;
14. Appraisal report or equivalent procedure determination;
15. Environmental review report;
16. Archaeology inventory and cultural resources compliance forms;
17. Financial and accounting information;
18. Enforcement and compliance information; and
19. Miscellaneous.

- 5.3. The Department shall scan all documents, to the extent practicable, and index all files, during the term of each lease.

## **6.0. FINANCIAL MANAGEMENT.**

- 6.1. Definitions for purposes of this Section.

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

- 6.2. Accounting system.

1. The Finance Department shall utilize an automated accounting system tailored to the needs of municipalities.

- a. The applications shall include an Accounts Payable, Accounts Receivable and Asset Management.
    - b. The accounting for leases shall be maintained under the Accounts Receivable component of the accounting system.
  2. The accounting system shall be capable of:
    - a. generating invoices in advance of the due date;
    - b. accounting for all payments; and
    - c. generating statements for the lessees upon request.
  3. The accounting information maintained for each lessee shall include the name, address and telephone numbers of the lessee, business site lease number, due dates for rental payments and applicable Township taxes, amounts due, payments made, late charges, collection efforts, cancellation efforts, balance due, cumulative payments, cumulative balance due, and the dates when rate adjustments are scheduled to be made.
- 6.3. Accounting procedures.
1. The Finance Department shall generate invoices for lease rentals due for each month and transmit such invoices to the appropriate lessees by the fifteenth (15th) day of the month preceding the month for which the rental is due.
  2. The lessee shall make payments on lease rentals by the first (1st) day, but no later than the tenth (10th) day, of the month for which the rental is due.
  3. A lease established after the first day of any month shall have their charges prorated for the first month the lease is in effect, respectively.
  4. All rental payments shall be made by business check, cashier's check or money order payable to the Kayenta Township and hand delivered to the Township Office or mailed to P. O. Box 1490, Kayenta, AZ 86033.
    - a. If a lessee's business check is returned at any time for insufficient funds or for any other reason, the lessee will no longer be permitted to pay its rental payments by business checks.
    - b. No cash or personal checks will be accepted.
  5. The Township shall comply with the Navajo Business and Procurement Act in the administration of all leases. Thus, if a lessee, whether an individual, business, corporation, partnership or other organization, has an outstanding debt or delinquent accounts receivable owing to the Township or the Navajo Nation, the Finance Department may offset any such outstanding debt or delinquent accounts receivable against the amounts owed to the lessee, and forward any amounts due to the Township or Navajo Nation Office of the Controller, as the case may be.
  6. All leases shall be assigned a lease number and recorded by RED.
  7. A Status Report on each lease shall be prepared by July 1 of each year. The report shall indicate whether the lease is active or inactive, or whether the lessee is a holdover or deceased or has abandoned the leased premises. When a lessee is deceased or has abandoned or closed the business, the Finance Department shall cease billing the lessee.
  8. Any "Settlement Agreement" reached between a lessee and the Township shall be filed in the lessee's file and the Finance Department shall cease billing the lessee after such agreement has been fully executed.

9. All lease information shall be kept confidential. The Township shall not disclose any such confidential information to third parties (except appropriate departments of the Navajo Nation) without the lessee's written permission.
- 6.4. **Financial reports.**  
The Finance Department shall prepare an annual accounts receivable report by June 1 of each year, verify such report with the Department, and forward a copy of such report to RED.
- 6.5. **Audits.**
  1. The Navajo Nation Office of the Auditor General and the Township shall be permitted to conduct random audits of the leases at any time.
  2. If conducted by the Township, a copy of the completed audit report shall be provided to the Navajo Nation Office of the Auditor General.
  3. If conducted by the Navajo Nation Office of the Auditor General, a copy of the completed audit report shall be provided to the Township.
- 7.0. TERMINATION.**
- 7.1. **If an Appeal is filed.**  
If at any time the lessee files an appeal with the Office of Hearings and Appeals or an Appeals Officer appointed by the BSL Committee, any steps to terminate the lease shall immediately cease. See Section 9.0. of this Plan.
- 7.2. **Mutual termination.**  
Mutual termination of a lease shall occur when the lessee and Department both agree to terminate the lease. Any outstanding financial or environmental obligations of the lessee shall survive the termination of the lease. See Section 8.5.1. of this Plan.
- 7.3. **Unilateral termination.**  
If lessee is in default of the terms and conditions of the lease, including but not limited to, the rental, purpose, unlawful use, accounting, improvements, non-development, security deposit, insurance, sublease, assignment, transfer, management agreement, encumbrance, lien, taxes, assessments, utility charges, sanitation, holdover, trespass and abandonment provisions, the Department may unilaterally terminate such lease. See Section 8.0. of this Plan.
- 7.4. **Expiration/Option to Renew.**  
If the lessee has not notified the Department within a reasonable time to renew a lease, the lease shall be considered to have expired.
  1. To avoid expiration of a lease, the lessee must notify the Department of its intent to renew or to exercise an option to renew the lease at least one (1) year prior to the expiration date of the lease.
  2. If the lessee does not notify the Department of its intention to renew or exercise an option to renew the lease in a timely manner, the Department shall notify the lessee of the:

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

7.5. Property management.

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

**8.0. ENFORCEMENT, RELIEF AND REMEDIES.**

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

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

8.2. Defaults.

1. Defaults shall include without limitation the following:
  - a. Failure to pay rent, late charges, payments under repayment plans, and other required charges;
  - b. Conducting business outside the leased premises;
  - c. Conducting business without a valid lease;
  - d. Conducting business not authorized by the lease;
  - e. Conducting unlawful business or conduct on the leased premises;
  - f. Unauthorized holding over;
  - g. Assigning, subleasing or transferring a lease without the approval of the BSL Committee pursuant to Sections 9.0., 10.0. and 11.0. of the Administrative Plan;
  - h. Failure to complete development within the permitted Development Period;
  - i. Failure to commence development on the leased premises within a reasonable period of time after commencement of the lease, in the discretion of the Department;
  - j. Unlawful construction or violation of any applicable building codes;

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

8.3. Default process.

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

8.4. Response process.

1. If the lessee cures the default within a reasonable period of time, no further action is necessary.
2. If the lessee requests additional time, the Department will proceed as follows:
  - a. Send notice to the lessee allowing the additional time for a response, in the

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

8.5. Compromise.

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

reasonable solution.

- a. If necessary, the Review Team, with the assistance of legal counsel, shall enter into a settlement agreement with the lessee. See Section 9.2. of this Plan.
3. If the default is still not cured and a compromise is not likely, the Department shall proceed to Section 8.6. of this Plan.

8.6. Remedies.

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

8.7. Emergency cancellation.

If the conduct of the lessee or lessee's invitees or agents causes or threatens to cause immediate and significant harm to the leased premises or persons, including the business owner, or undertakes unlawful activity thereon, the Department may contact the Navajo

Nation Police Department and immediately terminate the lease without notice to the lessee.

8.8. Eviction and court action.

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

8.9 Holding Over.

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

8.10. Trespass.

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

**9.0. APPEALS.**

9.1. Compliance with the process set forth in this Section 9 is required to exhaust tribal remedies under 25 U.S.C. § 415(e).

9.2. Administrative Review.

1. The Interested Party may contact the Department and attempt to reach a compromise for a fair and reasonable solution to the dispute, as provided for in

Section 8.0. of this Plan, prior to any suit or appeal.

2. If the Interested Party and Department cannot reach a compromise, the Interested Party may request an administrative hearing with the Review Team, which shall be scheduled within a reasonable time. The Review Team shall render a decision as soon as practicable, but no later than thirty (30) days after the date of the hearing.
3. The Interested Party may appeal the Review Team's decision to the BSL Committee for a hearing, which shall be scheduled within a reasonable time. The Committee shall render a decision as soon as practicable, but no later than thirty (30) days after the date of the hearing.

9.3. Office of Hearing and Appeals or Appeals Officer.

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

9.4. Navajo Nation Supreme Court.

1. The Interested Party may appeal an OHA decision to the Navajo Nation Supreme Court within thirty (30) days of the OHA's final decision. The failure to exhaust the administrative remedies before the OHA within the time permitted shall be a jurisdictional bar to the filing and consideration of any such appeal.
2. The review shall be limited to issues of law and the record.
3. The review shall not be *de novo*.
4. The Navajo Nation Supreme Court shall uphold the OHA's findings of facts if supported by substantial evidence.
5. The Navajo Nation Supreme Court's decision shall be final for the Navajo Nation.

9.5. Secretary of the Interior.

1. An Interested Party may, after exhaustion of Navajo Nation remedies, submit in a

timely manner a petition to the Secretary to review the compliance of the Navajo Nation with the 2005 Regulations.

## **10.0. COLLECTIONS PROCEDURES.**

### 10.1. Collections.

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

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

### 10.2. Compromise with delinquent lessee(s).

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

1. The Department shall consider such factors as death, bankruptcy or other extenuating circumstances and the amount of debt on a case-by-case basis before entering into a settlement agreement and/or promissory note.
2. The Department may in its discretion negotiate with the Sublessee, Assignee, Permittee, Encumbrancer or any other person or entity ("Affected Party") as to the terms and conditions of the Settlement Agreement and/or Promissory Note.
3. After negotiations have been completed, the Township's legal counsel shall draft the settlement agreement and/or promissory note.
4. The settlement agreement and/or promissory note shall be reviewed by NNDOJ.
5. The settlement agreement and/or promissory note shall be signed by the Affected Party and concurred with by the Town Manager.

6. The settlement agreement and/or promissory note shall be executed by the Navajo Nation Attorney General.
7. Upon execution of the settlement agreement and/or promissory note by all parties, the accrued rental and fees shall be taken off the books of the Township. The lease records shall indicate the accounts receivable have been settled or a repayment plan has been agreed to.
8. For any amounts not collected or not subject to a settlement agreement or promissory note, the Finance Department may forward such information to the credit bureaus for reporting or posting as bad credit.

**11.0. APPENDIX – FORMS.**

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