

RESOLUTION OF THE  
ECONOMIC DEVELOPMENT COMMITTEE

21<sup>ST</sup> NAVAJO NATION COUNCIL - Second Year, 2007

AN ACTION

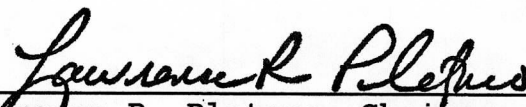
RELATING TO ECONOMIC DEVELOPMENT; APPROVING THE UNIFORM BUSINESS  
LEASING REGULATIONS OF 2008

BE IT ENACTED:

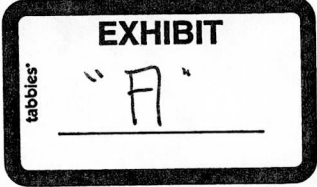
The Navajo Nation approves the Uniform Business Leasing  
Regulations of attached hereto as Exhibit "A

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 Saint Michaels,  
Navajo Nation (Arizona), at which a quorum was present and that  
the same was passed by a vote of 6 in favor, 0 opposed, this 20<sup>th</sup>  
day of February, 2008.

  
\_\_\_\_\_  
Lawrence R. Platero, Chairperson  
Economic Development Committee

Motion: Kenneth Maryboy  
Second: Tommy Tsosie



**Economic Development Committee  
Uniform Business Leasing Regulations of 2007**

**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 2007.

**TABLE OF CONTENTS:**

Chapter 100. General Provisions..... 2

    § 101.    Definitions..... 2

    § 102.    Purpose and Applicability..... 4

    § 103.    Scope..... 5

    § 104.    Effective Date..... 5

    § 105.    Approval..... 5

    § 106.    Choice of Law..... 5

    § 107.    Duration and Renewal..... 5

Chapter 200. Obtaining Business Site Leasing Authority..... 6

    § 201.    Approval Authority..... 6

    § 202.    Management Authority..... 7

    § 203.    Rescinding of Authority..... 7

Chapter 300. Obtaining a Business Site Lease..... 9

    § 301.    Information..... 9

    § 302.    Supporting Documents..... 9

    § 303.    Records..... 9

    § 304.    Ownership of Records..... 11

Chapter 400. Business Site Lease Requirements..... 11

§ 401.	Terms and Conditions.....	11
§ 402.	Land Description.....	12
§ 403.	Appraisal, Local Studies.....	12
§ 404.	Fair Annual Lease Value.....	13
§ 405.	Security.....	14
§ 406.	Insurance.....	14
§ 407.	Improvements.....	15
§ 408.	Subleases, Assignments, Amendments, and Encumbrances.....	15
Chapter 500. Transfer of Business Site Leases.....		16
§ 501.	Transfer of Records.....	16
§ 502.	Novation.....	17
Chapter 600. Business Site Lease Management.....		17
§ 601.	Administrative and Business Site Lease Management Plan.....	17
§ 602.	Administrative Management Plan.....	18
§ 603.	Business Site Leasing Management Plan.....	19
§ 604.	Accounting.....	19
§ 605.	Administrative Fees.....	19
§ 606.	Environmental Review.....	20
Chapter 700. Enforcement.....		20
§ 701.	Enforcement.....	20
§ 702.	Defaults.....	20
Chapter 800. Administrative and Business Office.....		20
§ 801.	Establishment.....	20
Chapter 900. Miscellaneous, Amendments, Severability.....		21
§ 901.	Reports.....	21
§ 902.	Amendments.....	21
§ 903.	Severability.....	21

**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 *Economic Development Committee of the Navajo Nation Council ("EDC")* means the Committee with the statutory authority to approve business site leases.
- 1.5 *Entity* means an entity of the Navajo Nation government.
- 1.6 *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.
- 1.7 *Improvements* any structure erected on a site to enhance the value of the property or benefit the land, such as a building, fence, sidewalk or driveway.
- 1.8 *Local Government Unit* means a Navajo Nation governance certified local Chapter, with a certified land use plan, acting in conformance with these regulations and the regulations promulgated by the applicable standing committee of the Navajo Nation Council. A Local Government Unit includes governance-certified chapters, municipal form of governments, and alternative forms of governments. Additionally, it refers to townships that have been delegated the authority to approve business site leases.

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

1.10 *Sublease* means a written agreement by which a lessee grants a person a right of possession no greater than that held by the lessee under a business site lease.

## § 102. Purpose and Applicability

2.1 The Purpose of these Regulations is to:

2.1.1 Implement uniform rules and regulations to delegate the authority of the EDC to the Division of Economic Development, an entity, Local Government Units, Shopping Centers or Townships.

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

2.1.3 Implement the *Local Governance Act, 26 N.N.C. §§ 101 et seq.*

2.1.4 Implement enabling legislation of other Local Government Acts, including but not limited to *Kayenta Township Homerule Municipality*.

2.1.5 Implement the *Division of Economic Development Master Plan of Operation ("DED")* to allow the Division to approve business site leases.

2.1.6 Implement the enabling legislation for the *Navajo Nation Shopping Centers, Inc. ("Shopping Centers")*.

2.1.7 Implement the enabling legislation for entities authorized to approve business site leases on the Navajo Nation.

2.2 These Regulations are applicable to those entities who can properly receive delegation of final approval

authority for business site leases and agree to comply and be governed by the Tribal Regulations.

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

**§ 103. Scope**

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

**§ 104. Effective Date**

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

**§ 105. Approval**

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

**§ 106. Choice of Law**

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

**§ 107. Duration and Renewal**

7.1 No lease shall be approved more than 12 months prior to the commencement of the term of the business site lease. The term of the business site lease shall not exceed 25 years except that any such business site lease may include an option to renew for up to two (2) additional

terms, each of which may not exceed 25 years. The Lessee shall notify the Managing Entity of the intent to renew, at least one (1) year before the business site lease is due to expire.

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

### **§ 201. Approval Authority**

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

**§ 202. Management Authority**

- 2.1 The Local Government Unit, DED, Shopping Centers or an Entity may have the authority to manage and negotiate business site leases or permits, provided, policies and procedures are established, which must address accounting, collections, monitoring, enforcement, relief and remedies and any other policies the EDC requires. The policies and procedures shall be known as the Administrative and Business Site Lease Management Plan, which must be approved before the Local Government Unit, DED, Shopping Centers or an Entity can negotiate or undertake management of its own approved business site lease or permit.
- 2.2 The Local Government Unit, DED, Shopping Centers or an Entity must seek approval from the EDC for the Administrative and Business Site Lease Management Plan before negotiating or managing its own business site lease or permit or a business site lease or permit novated to the Local Government Unit, DED, Shopping Centers or an Entity.
- 2.3 The EDC shall approve the Administrative and Business Site Leasing Management Plan concurrently with the delegation of approval authority for Local Government Units. The EDC shall approve the Administrative and Business Site Leasing Management Plan separately from the delegation of approval authority for DED, Shopping Centers, or an Entity.

**§ 203. Rescinding of Authority**

- 3.1 The EDC may, at any time, based upon reasonable findings of adverse actions to an interested party may rescind its delegation of approval authority to the Local Government Unit, DED, Shopping Centers or an Entity.
  - 3.1.1 The decision to rescind approval authority shall be based on violations of 25 U.S.C. §415(e), Tribal Regulations, these Regulations and/or the Administrative and Business Site Leasing Management Plan or if deemed in the best interest of the Navajo Nation.



- 3.1.2 The EDC shall base its decision on findings from the DED, Real Estate Department, Office of the Auditor General, and/or Department of Justice ("DOJ").
- 3.1.3 Before a decision to rescind is made, the EDC shall conduct a hearing with the appropriate parties, including the Local Government Unit, DED, Shopping Centers, or an Entity. The EDC shall establish policies for the administering of the hearing and shall act in accordance with those policies.
- 3.1.4 The decision of the EDC shall be effective immediately and the EDC shall act in accordance with the policies established, pursuant to this Subchapter, 3.1.3. for the implementation of that decision.
- 3.1.5. If at any time the Local Government Unit, DED, Shopping Centers, or an Entity has the approval authority rescinded it shall not be able to reapply for this authority for three (3) years, beginning on the date the rescission is in effect, which is the date the Resolution to rescind is signed by the Chairperson of the EDC.
- 3.2 If the EDC decides to rescind approval authority for Local Government Units, that Local Government Unit shall automatically have its approved Administrative and Business Site Leasing Management Plan rescinded, simultaneously. The EDC shall give all interested parties to this action notice upon the date the rescission is effective.
- 3.3 If the Local Government Unit is sanctioned, the Local Government Unit shall notify the Chairperson of the EDC, upon de-certification of the Local Government Unit the EDC shall rescind approval authority without the need of conducting hearings.

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

**§ 301. Information**

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

**§ 302. Supporting Documents**

- 2.1 All applicants for business site leases shall submit the following documents to the Local Government Unit, DED, Shopping Centers, or an Entity:
- 2.1.1 Business plan;
  - 2.1.2 Site survey and legal description;
  - 2.1.3 Environmental review;
  - 2.1.4 Corporate documents;
  - 2.1.5 And any other documents required by the Administrative and Business Site Lease Management Plan.

**§ 303. Records**

- 3.1 The DED, Real Estate Department or successor shall record all business site leases, subleases, assignments, amendments, encumbrances, renewals, modifications and cancellations on behalf of the Local Government Unit, Shopping Centers, or Entity.
- 3.2 The Local Government Unit, Shopping Centers, or Entity shall file all the fully executed above-mentioned transactions at the DED. The DED, Real Estate Department or successor shall record the above-mentioned transactions with the:

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

- 3.3 Real Estate Department, DED shall return the recorded documents to the Local Government Unit, Shopping Centers, or Entity, if applicable. At all times the Real Estate Department, DED shall maintain a copy of all such transactions.
- 3.4 The Local Government Unit, DED, Shopping Centers, or Entity shall disseminate the recorded documents as follows:
- 3.4.1 Local Government Unit:
- a. Navajo Nation Division of Economic Development, Real Estate Department
  - b. Navajo Nation Records Management Department
  - c. Navajo Land Department
  - d. The Lessee
  - e. Local Government Unit Business Office
- 3.4.2 Division of Economic Development:
- a. Navajo Nation Division of Economic Development, Real Estate Department
  - b. Navajo Nation Records Management Department
  - c. Navajo Nation Office of the Controller
  - d. Navajo Land Department
  - e. The Lessee
- 3.4.3 Navajo Nation Shopping Centers, Inc.
- a. Navajo Nation Division of Economic Development, Real Estate Department
  - b. Navajo Nation Records Management Department
  - c. The Lessee
  - d. Navajo Nation Shopping Centers, Inc.
- 3.4.4 Entity:
- a. Navajo Nation Division of Economic Development, Real Estate Department
  - b. Navajo Nation Records Management Department
  - c. Navajo Nation Office of the Controller
  - d. Navajo Land Department
  - e. The Lessee
  - f. The Entity

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

Chinle Agency Real Estate Services P.O. Box 7H Chinle, AZ 86503	Eastern Navajo Agency Superintendent Attention: Real Estate Services P.O. Box 328 Crownpoint, NM 87313
Fort Defiance Agency Real Estate Services P.O. Box 619 Ft. Defiance, AZ 86504	Shiprock Agency Real Estate Services P.O. Box 3538 Shiprock, NM 87420
Western Navajo Agency Real Estate Services P.O. Box 127 Tuba City, AZ 86045	

**§ 304. Ownership of Records**

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

**Chapter 400. Business Site Lease Requirements**

**§ 401. Terms and Conditions**

1.1 Business site leases shall be governed by the standard terms and conditions set forth in Part II of the Navajo Nation Business Site Lease, which must comply with the Administrative and Business Site Leasing Management Plan, Tribal Regulations, these Regulations and 25 U.S.C. § 415(e).

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

"Upon determination by the Economic Development Committee that \_\_\_\_\_ [Chapter/Township] has its Approval Authority rescinded, the Lease shall immediately revert to the authority of the Navajo Nation Division of Economic Development. The Lessees shall be immediately notified by the Economic Development Committee upon its decision."

**§ 402. Land Description**

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

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

- 3.1 The fair annual lease value shall be determined by an appraisal of fair market value or equivalent procedure. This determination shall be based on improvement cost, replacement cost, earning capacity, sales and lease data of comparable sites. An appraisal or similar type of log reporting the methods of appraisal or value of trust land shall be attached to every business site lease.

- 3.2 If an appraisal is conducted it must be performed by a certified Appraiser and the appraisal must be in accordance with the *Uniform Standard Procedures of Appraisal Practice*
- 3.3 Any equivalent procedure must be set forth in the Business Site Lease Management Plan.

**§ 404. Fair Annual Lease Value**

- 4.1 No business site lease shall be approved for less than the present fair annual lease value as set forth in the appraisal or equivalent procedure, except as follows:
  - 4.1.1 Lessee is in the development period
  - 4.1.2 The Local Government Unit, DED, Shopping Centers or an Entity is providing an incentive for businesses to locate on the Navajo Nation and will provide lease concessions, lease improvement credits, and lease abatements to attract such businesses; or
  - 4.1.3 The Local Government Unit, DED, Shopping Centers or an Entity determines such action is in the Best Interest of the Navajo Nation, which shall be set forth in the Business Site Lease Management Plan.
- 4.2 The business site lease may be a flat rate.
- 4.3 The business site lease may be structured at a flat lease rate plus a percentage of gross receipts, if the Lessee is a business located in a shopping center or mall, or the lease generates over \$1,000,000.00 in gross receipts.
- 4.4 The business site lease may be structured based on a percentage of gross receipts, or based on a market indicator.
- 4.5 The business site lease shall provide for a periodic review in five (5) year increments, subject to this Section 4.6. Such review shall give consideration to the local market and economic conditions, exclusive of improvements or development required by the contract or the contribution value of such improvements.

- 4.6 Business site leases for terms of less than five (5) years, may be structured to allow for shorter term lease rate adjustments. The business site lease shall specify how adjustments will be made, who will make such adjustments, when adjustments will go into effect, and how disputes shall be resolved.
- 4.7 Business site leases may be amended to allow for lease rate adjustments.
- 4.8 The Local Government Unit, DED, Shopping Centers or an Entity shall keep written records of the basis used in determining the fair annual lease value, as well as the basis for adjustments. These records shall be presented to the Lessee for its review and acceptance or non-acceptance and included in any lease file.

**§ 405. Security**

- 5.1 The Lessee shall obtain an appropriate security in an amount that reasonably assures performance of the lessee's obligation under its business site lease. The security includes, but not limited to, cash deposit, letter of credit or certificate of deposit. Such security shall be for the purpose of guaranteeing:
  - 5.1.1 The annual lease payment;
  - 5.1.2 The estimated development cost of improvements; and
  - 5.1.3 Any additional amount necessary to ensure compliance with the business site lease.
- 5.2 The Local Government Unit, DED, Shopping Centers or an Entity may waive the security requirement or reduce the amount, if doing so is in the Best Interest of the Navajo Nation. The Local Government Unit, DED, Shopping Centers or an Entity shall maintain written records of all waivers and reductions granted.

**§ 406. Insurance**

- 6.1 The Lessee shall secure insurance from a nationally accredited insurance company with a financial strength rating of "A" or equivalent, and authorized to do

business in the state where the premises are located. Such insurance shall:

6.1.1 Cover property business interruption, liability and casualty.

6.1.2 In an amount sufficient to cover improvements, personal injury or death.

6.2 The insurance shall expressly identify the Lessor and the United States as the insured parties.

**§ 407. Improvements**

7.1 Improvements to the premises shall become the property of the Local Government Unit, DED, Shopping Centers or an Entity, unless otherwise provided for in the Standard Form Business Site Lease. If improvements are to be removed, the Standard Form Business Site Lease shall specify the maximum time allowed for such removal.

7.2 Lessee may develop equity value in the improvements and sell its interest in the Standard Form Business Site Lease based on equity value. The Local Government Unit, DED, Shopping Centers or an Entity has a right of first refusal to purchase the interest.

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

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

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

8.2 The business site leases may authorize subleases, in whole or in part, without approval from the Local Government Unit, DED, Shopping Centers or an Entity and execution from the Executing Official, provided a copy of the sublease is provided to the Local Government Unit, DED, Shopping Centers or an Entity. This does not



relieve any party from carrying out their duties under the business site lease.

8.3 The business site lease may authorize encumbrances to the leasehold interest for the purpose of financing to develop and improve the premises.

8.3.1 Approval by the Local Government Unit, DED, Shopping Centers or an Entity and execution from the Executing Official is required.

8.3.2 If a sale or foreclosure occurs and the encumbrancer is the purchaser, the encumbrancer may assign the business site lease without approval from the Local Government Unit, DED, Shopping Centers or an Entity or Lessee, provided the Assignee agrees in writing to be bound by all the terms and conditions of the business site lease.

8.3.3 If the purchaser is a party other than the encumbrancer, approval by the Local Government Unit, DED, Shopping Centers or an Entity and execution from the Executing Official is required, provided the purchaser agrees in writing to be bound by all the terms and conditions of the business site lease.

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

### **§ 501. Transfer of Records**

1.1 The Local Government Unit, DED, Shopping Centers, or an Entity shall cooperate with DED, Real Estate Department, upon approval of the Administrative and Business Site Lease Management Plan, for purposes of transferring records.

1.2 The Local Government Unit, Shopping Centers, DED or an Entity may obtain contact information for business site leases within the boundaries and/or authority of the Local Government Unit, Shopping Centers, or an Entity from the DED, Real Estate Department. However, the original records of the documents shall remain with DED, Real Estate Department until a proper Novation Lease Modification is executed.

**§ 502. Novation**

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

**Chapter 600. Business Site Lease Management**

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

- 1.1 The Local Government Unit, DED, Shopping Centers, or an Entity shall manage, negotiate and approve business site leases executed under its approved Administrative and Business Site Leasing Management Plan. The Administrative and Business Site Leasing Management Plan shall be tailored to the particular needs of each Local Government Unit, DED, Shopping Centers or Entities, pursuant to the Purpose Section of these Regulations.
- 1.2 The Local Government Unit or an Entity shall submit the Administrative and Business Site Leasing Management Plan to the DED for review and DOJ for legal review to ensure it is developed in accordance with the 25 U.S.C. § 415(e), the Tribal Regulations and these Regulations. The Shopping Centers shall submit the Administrative and Business Site Leasing Management Plan to DOJ for legal review to ensure it is developed in accordance with the 25 U.S.C. § 415(e), the Tribal Regulations and these Regulations.

- 1.2.1 The DED shall sign and concur on the Administrative and Business Site Leasing Management Plan recommending to the EDC approval, this shall also include a signature line for DOJ indicating the Administrative and Business Site Leasing Management Plan is legally sufficient.
- 1.2.2 The Shopping Centers shall sign and concur on the Administrative and Business Site Leasing Management Plan recommending to the EDC approval. The DOJ shall also indicate by signature that the Administrative and Business Site Leasing Management Plan is legally sufficient.
- 1.2.3 Non-compliance of this section shall deem the Administrative and Business Site Lease Management Plan null and void.

**§ 602. Administrative Management Plan**

- 2.1 The Administrative Management Plan shall address procedures for negotiation, limitations, and approval of business site leases.
- 2.2 The Administrative Management Plan shall consist of policies and procedures for the negotiation of the business site lease or permit from the point of advertisement to the execution of the business site leases. Such Administrative Management Plan shall include at least a new business site leases, renewal of business sites with a new business site lease, options to renew, subleases, assignments, modifications, collateral assignment of lease, revocable use permit.
- 2.3 Local Government Units shall also establish the approval process for business leasing transactions, including establishment of an Approving Entity, with final execution by the Executing Official.
- 2.4 DED, Shopping Centers or an Entity shall establish an approval process and Approving Entity for business leasing transactions, upon seeking Approval Authority from the EDC.

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

- 3.1 The Business Site Leasing Management Plan shall address the procedure for the management of executed business site leases.
- 3.2 The Business Site Leasing Management Plan shall address lease compliance, environmental review, appraisals, financial management, enforcement, monitoring and collections, relief and remedies. It shall address the process from point of execution to the expiration or termination of the leases and legal remedies thereafter.
- 3.3 A section shall address appeals of the lessee or an interested party, pursuant to the Tribal Regulations.

**§ 604. Accounting**

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

**§ 605. Administrative Fees**

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

**§ 606. Environmental Review**

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

**Chapter 700. Enforcement**

**§ 701. Enforcement**

- 1.1 The Local Government Unit, DED, Shopping Centers and an Entity shall enforce the Lease terms, Ordinances, Regulations, Rules, Policies and Covenants, in accordance with their Administrative and Business Site Leasing Management Plan.
- 1.2 The Local Government Unit, DED, Shopping Centers and an Entity may request the Office of Attorney General to assist in enforcement of the above mentioned.

**§ 702. Defaults**

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

**Chapter 800. Administrative and Business Office**

**§ 801. Establishment**

- 1.1 The Local Government Unit shall establish a Business Office for the administration and management of business

site leases. Such Office must be operating before any business site leasing transaction can be approved.

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

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

### **§901.    Reports**

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

### **§902 Amendments**

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

### **§903 Severability**

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

**Corrected  
Uniform  
Business  
Leasing  
Regulations  
Of  
2008**

**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.....	2
§ 101.    Definitions.....	2
§ 102.    Purpose and Applicability.....	4
§ 103.    Scope.....	5
§ 104.    Effective Date.....	5
§ 105.    Approval.....	5
§ 106.    Choice of Law.....	5
§ 107.    Duration and Renewal.....	5
Chapter 200. Obtaining Business Site Leasing Authority.....	6
§ 201.    Approval Authority.....	6
§ 202.    Management Authority.....	6
§ 203.    Rescinding of Authority.....	7
Chapter 300. Obtaining a Business Site Lease.....	8
§ 301.    Information.....	8
§ 302.    Supporting Documents.....	8
§ 303.    Records.....	9
§ 304.    Ownership of Records.....	11
Chapter 400. Business Site Lease Requirements.....	11
§ 401.    Terms and Conditions.....	11



§ 402.	Land Description.....	12
§ 403.	Appraisal, Local Studies.....	12
§ 404.	Fair Annual Lease Value.....	12
§ 405.	Security.....	13
§ 406.	Insurance.....	14
§ 407.	Improvements.....	14
§ 408.	Subleases, Assignments, Amendments, and Encumbrances.....	15
Chapter 500. Transfer of Business Site Leases.....		16
§ 501.	Transfer of Records.....	16
§ 502.	Novation.....	16
Chapter 600. Business Site Lease Management.....		17
§ 601.	Administrative and Business Site Lease Management Plan.....	17
§ 602.	Administrative Management Plan.....	18
§ 603.	Business Site Leasing Management Plan.....	18
§ 604.	Accounting.....	18
§ 605.	Administrative Fees.....	19
§ 606.	Environmental Review.....	19
Chapter 700. Enforcement.....		19
§ 701.	Enforcement.....	20
§ 702.	Defaults.....	20
Chapter 800. Administrative and Business Office.....		20
§ 801.	Establishment.....	20
Chapter 900. Miscellaneous, Amendments, Severability.....		21
§ 901.	Reports.....	21
§ 902.	Amendments.....	21
§ 903.	Severability.....	21

**Chapter 100. General Provisions**

**§ 101. Definitions**

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

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

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

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

**§ 102. Purpose and Applicability**

2.1 The Purpose of these Regulations is to:

- 2.1.1 Implement uniform rules and regulations to delegate the authority of the EDC to the Division of Economic Development, an entity, Local Government Units, Shopping Centers or Townships.
- 2.1.2 Promote self-determination, encourage economic self-sufficiency, and increase business activity and employment on lands of the Navajo Nation.
- 2.1.3 Implement the *Local Governance Act, 26 N.N.C. §§ 101 et seq.*
- 2.1.4 Implement enabling legislation of other Local Government Acts, including but not limited to *Kayenta Township Homerule Municipality.*
- 2.1.5 Implement the *Division of Economic Development Master Plan of Operation ("DED")* to allow the Division to approve business site leases.
- 2.1.6 Implement the enabling legislation for the *Navajo Nation Shopping Centers, Inc. ("Shopping Centers").*
- 2.1.7 Implement the enabling legislation for entities authorized to approve business site leases on the Navajo Nation.

2.2 These Regulations are applicable to those entities who can properly receive delegation of final approval authority for business site leases and agree to comply and be governed by the Tribal Regulations.

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

**§ 103. Scope**

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

**§ 104. Effective Date**

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

**§ 105. Approval**

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

**§ 106. Choice of Law**

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

**§ 107. Duration and Renewal**

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

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

### **§ 201. Approval Authority**

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

### **§ 202. Management Authority**

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

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

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

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

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

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

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

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

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

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

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

### **§ 301. Information**

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

### **§ 302. Supporting Documents**

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

2.1.1 Business plan;

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

**§ 303. Records**

- 3.1 The DED, Real Estate Department or successor shall record all business site leases, subleases, assignments, amendments, encumbrances, renewals, modifications and cancellations on behalf of the Local Government Unit, Shopping Centers, or Entity.
- 3.2 The Local Government Unit, Shopping Centers, or Entity shall file all the fully executed above-mentioned transactions at the DED. The DED, Real Estate Department or successor shall record the above-mentioned transactions with the:  
  
Land Title and Records Office  
Southwest Regional Office  
Bureau of Indian Affairs  
P.O. Box 26567  
Albuquerque, NM 87125-6567
- 3.3 Real Estate Department, DED shall return the recorded documents to the Local Government Unit, Shopping Centers, or Entity, if applicable. At all times the Real Estate Department, DED shall maintain a copy of all such transactions.
- 3.4 The Local Government Unit, DED, Shopping Centers, or Entity shall disseminate the recorded documents as follows:
  - 3.4.1 Local Government Unit:
    - a. Navajo Nation Division of Economic Development, Real Estate Department
    - b. Navajo Nation Records Management Department
    - c. Navajo Land Department
    - d. The Lessee
    - e. Local Government Unit Business Office



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

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

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

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

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

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

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

**Chapter 400. Business Site Lease Requirements**

**§ 401. Terms and Conditions**

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

"Upon determination by the Economic Development Committee that \_\_\_\_\_ [Chapter/Township] has its Approval Authority rescinded, the Lease shall immediately revert to the authority of the Navajo Nation Division of Economic Development. The Lessees shall be immediately notified by the Economic Development Committee upon its decision."

**§ 402. Land Description**

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

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

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

**§ 404. Fair Annual Lease Value**

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

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

#### **§ 405. Security**

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

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

- 5.1.1 The annual lease payment;
- 5.1.2 The estimated development cost of improvements; and
- 5.1.3 Any additional amount necessary to ensure compliance with the business site lease.

5.2 The Local Government Unit, DED, Shopping Centers or an Entity may waive the security requirement or reduce the amount, if doing so is in the Best Interest of the Navajo Nation. The Local Government Unit, DED, Shopping Centers or an Entity shall maintain written records of all waivers and reductions granted.

#### **§ 406. Insurance**

6.1 The Lessee shall secure insurance from a nationally accredited insurance company with a financial strength rating of "A" or equivalent, and authorized to do business in the state where the premises are located. Such insurance shall:

- 6.1.1 Cover property business interruption, liability and casualty.
- 6.1.2 In an amount sufficient to cover improvements, personal injury or death.

6.2 The insurance shall expressly identify the Lessor and the United States as the insured parties.

#### **§ 407. Improvements**

7.1 Improvements to the premises shall become the property of the Local Government Unit, DED, Shopping Centers or an Entity, unless otherwise provided for in the Standard Form Business Site Lease. If improvements are to be removed, the Standard Form Business Site Lease shall specify the maximum time allowed for such removal.

7.2 Lessee may develop equity value in the improvements and sell its interest in the Standard Form Business Site Lease

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

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

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

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

- 8.2 The business site leases may authorize subleases, in whole or in part, without approval from the Local Government Unit, DED, Shopping Centers or an Entity and execution from the Executing Official, provided a copy of the sublease is provided to the Local Government Unit, DED, Shopping Centers or an Entity. This does not relieve any party from carrying out their duties under the business site lease.

- 8.3 The business site lease may authorize encumbrances to the leasehold interest for the purpose of financing to develop and improve the premises.

8.3.1 Approval by the Local Government Unit, DED, Shopping Centers or an Entity and execution from the Executing Official is required.

8.3.2 If a sale or foreclosure occurs and the encumbrancer is the purchaser, the encumbrancer may assign the business site lease without approval from the Local Government Unit, DED, Shopping Centers or an Entity or Lessee, provided the Assignee agrees in writing to be bound by all the terms and conditions of the business site lease.

8.3.3 If the purchaser is a party other than the encumbrancer, approval by the Local Government Unit, DED, Shopping Centers or an Entity and execution from the Executing Official is required, provided the purchaser agrees in

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

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

### **§ 501. Transfer of Records**

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

### **§ 502. Novation**

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

**Chapter 600. Business Site Lease Management**

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

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



**§ 602. Administrative Management Plan**

- 2.1 The Administrative Management Plan shall address procedures for negotiation, limitations, and approval of business site leases.
- 2.2 The Administrative Management Plan shall consist of policies and procedures for the negotiation of the business site lease or permit from the point of advertisement to the execution of the business site leases. Such Administrative Management Plan shall include at least a new business site leases, renewal of business sites with a new business site lease, options to renew, subleases, assignments, modifications, collateral assignment of lease, revocable use permit.
- 2.3 Local Government Units shall also establish the approval process for business leasing transactions, including establishment of an Approving Entity, with final execution by the Executing Official.
- 2.4 DED, Shopping Centers or an Entity shall establish an approval process and Approving Entity for business leasing transactions, upon seeking Approval Authority from the EDC.

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

- 3.1 The Business Site Leasing Management Plan shall address the procedure for the management of executed business site leases.
- 3.2 The Business Site Leasing Management Plan shall address lease compliance, environmental review, appraisals, financial management, enforcement, monitoring and collections, relief and remedies. It shall address the process from point of execution to the expiration or termination of the leases and legal remedies thereafter.
- 3.3 A section shall address appeals of the lessee or an interested party, pursuant to the Tribal Regulations.

**§ 604. Accounting**

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

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

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

#### **§ 605. Administrative Fees**

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

#### **§ 606. Environmental Review**

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

### **Chapter 700. Enforcement**

#### **§ 701. Enforcement**

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

with their Administrative and Business Site Leasing Management Plan.

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

#### **§ 702. Defaults**

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

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

#### **§ 801. Establishment**

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

**Chapter 900      Miscellaneous, Amendments, Severability**

**§901.    Reports**

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

**§902 Amendments**

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

**§903 Severability**

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