UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

APPROVAL OF

BUSINESS SITE LEASING REGULATIONS

The attached Business Site Leasing Statute, submitted by the [redacted] prepared in accordance with the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012, the HEARTH Act of 2012, consisting of seventeen pages and signed by the Tribal Secretary and the Tribal Chairperson, is hereby approved.

Dated: [redacted]

Assistant Secretary – Indian Affairs
United States Department of the Interior

Pursuant to the authority delegated by 209 DM 8

RESOLUTION APPROVING THE BUSINESS SITE LEASING STATUTE AND SUBMITTING THE BUSINESS SITE LEASING STATUTE TO THE UNITED STATES DEPARTMENT OF THE INTERIOR FOR APPROVAL.

TRIBAL COUNCIL RESOLUTION NO.: #12-48
DATE APPROVED: [redacted]

WHEREAS: the [redacted] ("Tribe") is a federally recognized tribe, organized pursuant to the Constitution of the [redacted] approved by the Secretary of the Interior on [redacted] ("Constitution"); and

WHEREAS: The Constitution, at Article III, Section 1 and Article VI, Section 1, provides that the governing body of the Tribe is the Tribal Council, with the authority to create and regulate subordinate Tribal government organizations and delegate to such organizations, or to any subordinate boards or officials of the Tribe any of the Tribal Council's powers; and

WHEREAS: The Tribal Council, by and through Resolution No. 12-21 dated July 6, 2012 and the [redacted] (the "Authority Statute") enacted therein, created the [redacted] (the "Authority") as a subordinate entity of the Tribe that serves as an instrumentality of the Tribal Government for the purposes of the development of economic opportunities through the exclusive ownership, oversight, and operation of the Tribe's gaming activities and other Tribal businesses, and to manage all assets and revenues related thereto solely on behalf of and for the benefit of the Tribe and its members; and

WHEREAS: The General Council of the Tribe, through General Council Resolution No. GC-12-18 dated June 9, 2012, ratified, approved, and authorized the Tribal Council to create the Authority and delegate and assign to it such Tribal assets, property and Tribal land on such terms as the Tribal Council found necessary and ratified, approved and authorized the Tribe or the Authority to negotiate agreements for the financing, development and construction of the [redacted] (the "Resort") and

WHEREAS: The Authority Statute, Chapter Three, Section 3.4 established the Board of Directors (the "Board") as the governing entity of the Authority; and

WHEREAS: The Tribal Council by and through Resolution No. 12-27 dated August 10, 2012 confirmed the appointment of [redacted] as President of the Board of Directors of the Authority; and

WHEREAS: The Authority Statute, Chapter Five, Section 5.1(g) provides that the Authority, acting through its Board, has the power to lease property owned by or under the control of the Authority; and

WHEREAS: Due to changes in federal law governing leases on tribal lands the Tribe is diligently pursuing the United States Department of the Interior's approval of the Business Site Leasing Statute, as provided pursuant to the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012 ("HEARTH Act") which authorizes federally recognized Indian tribes to pass tribal leasing statutes to approve the leasing of tribal lands provided those tribal statutes are approved by the Secretary of the Interior; and

WHEREAS: The Business Site Leasing Statute requires Tribal Council enactment and Secretarial approval to be effective; and

WHEREAS: This Resolution does not conflict with any Tribal or federal law or require approval of any other Tribal entity.

NOW THEREFORE BE IT RESOLVED THAT the Tribal Council has reviewed the Business Site Leasing Statute and hereby approves and enacts the Business Site Leasing Statute.

BE IT FURTHER RESOLVED THAT the Tribal Council hereby authorizes the Tribal Chair to execute and deliver the Business Site Leasing Statute to the United States Department of the Interior for review and approval pursuant to the HEARTH Act.

CERTIFICATION

We the undersigned hereby certify that the foregoing Tribal Council Resolution was presented and duly adopted by the Tribal Council of the Tribe on the twenty-first day of [redacted], at a Tribal Council meeting at which a quorum was present, by a vote of [redacted] for, [redacted] opposed, and [redacted] abstaining, and that said Tribal Council Resolution has not been rescinded or amended in any way.

[redacted] Tribal Chair

ATTEST:

Tribal Secretary

BUSINESS SITE LEASING STATUTE

CHAPTER ONE
INTRODUCTION

SECTION:

1.1 Authority and Delegation. This Statute is enacted by the Tribal Council pursuant to the powers vested to it under Article VI, Section I of the Constitution of the [redacted] adopted December 2002, as may be amended from time to time ("Constitution"). Pursuant to Section 5.2(b) of the [redacted] Authority Statute, the Tribal Council hereby expressly authorizes and delegates to the [redacted] Economic Development Authority ("Authority") the power and authority to lease any real property of the Tribe or leases of space within existing facilities on tribal land that is not already leased (i.e. not subleases) in accordance with federal law and this Statute.

1.2 Scope. The scope of application of this Statute shall be limited to all Business Site Leases approved pursuant to 25 U.S.C. § 415 governing leases on Indian trust or restricted lands, and to all actions and decisions taken in connection with those leases. Nothing herein shall be construed to affect the terms and conditions of existing leases.

1.3 Purpose. The purposes of this Statute are to:

(a) Recognize the authority of the [redacted] ("Tribe"), by and through the Authority, to issue, review, approve, and enforce Business Site Leases and establish streamlined procedures for environmental review;

(b) Promote self-determination, encourage economic self-sufficiency, and increase business activity and employment on lands of the [redacted]; and

(c) Implement the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012, H.R. 205, 112th Cong. (2012), and this Statute.

1.4 Short Title. This Statute shall be known and cited as the "Business Site Leasing Statute."

CHAPTER TWO
DEFINITIONS

SECTION:

2.1 Definitions. As used in this Statute, the capitalized terms set forth below shall have the following meanings:

(a) "*Assignment*" means an agreement between a Lessee and an assignee whereby the assignee acquires all or some of the Lessee's rights and assumes all or some the Lessee's obligations under a Business Site Lease.

(b) "*Authority*" means the [redacted], which is the governmental entity, or it's designee, that has the statutory authority to perform the duties and responsibilities of the Lessor on behalf of the Tribe, and to approve or disapprove leasing transactions, which include but are not limited to: lease issuance, bond, lease amendment or modification, subleasing, lease assignment or transfer, tenant leases and lease terminations. The Authority has the statutory authority to give final approval for all Business Site Leases and has authority to delegate some or all of its statutory authority to tribal agencies on behalf of the Tribe.

(c) "*Best Interest of the Tribe*" means the balancing of interests in order to attain the highest economic income, provide incentives to increase economic development, preserve and enhance the value of Tribal Trust Land, increase employment and jobs on the Tribal Trust Land, and preserve the sovereignty of the Tribe.

(d) "*BIA*" means the Bureau of Indian Affairs, United States Department of the Interior.

(e) "*Business Site Lease(s)*" means the same as "Lease".

(f) *"Change in Land Use"* means the change from residential to non-residential, commercial to industrial, or one industrial use to another that significantly differs from the former use.

(g) "*Compact*" means the tribal-state compact entered into between the Tribe and the State [redacted] and approved by the Secretary as published in the Federal Register Notice on [redacted], governing the conduct of class III gaming activities by the Tribe pursuant to IGRA.

(h) "*Development Period*" means the time period from when a lease is executed to when improvements are expected to be substantially completed.

(i) "*Environmental Review Process*" means the process for conducting tribal environmental review to assess whether a proposed development or project as defined under applicable Tribal law or regulations will have a positive or negative environmental impact.

(j) "*Environmental Reviewer*" means an official from the Tribe's Environmental Resource Department or as otherwise designated by the Tribal Council.

(k) "*Executing Official*" means the President of the Board of Directors of the Authority, if properly delegated, who shall execute all Business Site Leases of the Tribe and the Authority and take all necessary and proper action on leases and subleases including amendments, modifications, assignments and cancellations of leases and subleases.

(l) "*Fair Annual Lease Value*" means the most probable dollar amount a property should bring in a competitive and open market reflecting all conditions and restrictions of the specified lease agreement including term, rental adjustment and revaluation, permitted uses, use restrictions, and expense obligations; the Lessee and Lessor each acting prudently and knowledgeably, and assuming consummation of a lease contract as of a specified date and the passing of the leasehold from Lessor to Lessee under conditions whereby:

(i) Lessee and Lessor are typically motivated;

(ii) Both parties are well-informed or well-advised, and acting in what they consider their best interests;

(iii) A reasonable time is allowed for exposure in the open market;

(iv) The rent payment is made in terms of cash in United States dollars, and is expressed as an amount per time period consistent with the payment schedule of the lease contract; and the rental amount represents the normal consideration for the property leased unaffected by special fees or concessions granted by anyone associated with the transaction.

(m) "*Holdover*" means circumstances in which a lessee remains in possession of the leased premises after the lease term expires.

(n) "*Lease*" means a written agreement or contract between the Lessor and a Lessee whereby the Lessee is granted a right to possess Tribal Trust Land for a specified purpose and duration. The Lessee's right to possess will limit the Lessor's right to possess the leased premises only to the extent provided in the Lease.

(o) "*Leasing Decision*" in the context of the Environmental Review Process means the following type of lease transactions that will be acted on by the Authority:

lease issuance, lease amendment or modification, subleasing, lease assignment or transfer and tenant leases.

(p) "*Lessee*" means a person or entity who has acquired a legal right to possess Tribal Trust Land by a lease pursuant to this Statute.

(q) "*Lessor*" means the Authority, on behalf of the Tribe, who holds property title and conveys the right to use and occupy the property under a lease agreement.

(r) "*Project*" means any economic development activity occurring on Indian lands which includes the Gaming Activities or Gaming Operations as those are defined in the Compact.

(s) "*Significant Effect on the Environment*" means a substantial, or potentially substantial, adverse change in the environment, including land, air, water, minerals, flora, fauna, ambient noise, cultural areas and objects of historic, cultural or aesthetic significance.

(t) "*Space Lease*" means a lease of space within existing facilities on tribal land that is not already leased, i.e. not subleases.

(u) "*Sublease*" means a written agreement by which the Lessee grants to an individual or entity a right to possession no greater than that held by the Lessee under a Business Site Lease.

(v) "*Tribe*" means the [redacted]

(w) "*Tribal Council*" means the duly elected governing body of the Tribe pursuant to the Constitution.

(x) "*Tribal Trust Land*" means all lands of the Tribe within the limits of the Tribe's Reservation or land over which the Tribe exercises governmental power and that is held in trust by the United States for the benefit of the Tribe.

CHAPTER THREE
BUSINESS SITE LEASE REQUIREMENTS

SECTION:

3.1 Terms and Conditions. Leases shall be governed by the standard terms and conditions set forth in the Business Site Lease agreement or equivalent document. The standard terms and conditions may be modified only with the approval of the Authority. The Lessee is responsible for understanding these terms and conditions.

3.2 Duration and Renewal. No lease shall be approved more than 12 months prior to the commencement of the term of the Business Site Lease. The term shall not be more than 25 years except that any such lease may include an option to renew for up to two additional terms, each of which may not exceed 25 years. The Lessee shall notify the Authority of the intent to renew, at least one year before such lease is due to expire.

3.3 Obtaining a Business Site Lease. Information on obtaining a Business Site Lease shall be available from the [redacted]

(a) All applicants for a Business Site Lease shall submit the following documents to the Authority:

(i) financial statement

(ii) site survey and legal description, if applicable

(iii) tribal environmental review where required

(iv) other documents as may be required by the Authority and pursuant to the Authority's Business Site Leasing procedures.

(b) All Business Site Leases shall contain, at a minimum, the following provisions:

(i) The tract, location, or parcel of the land being leased;

(ii) The purpose of the lease and authorized uses of the leased premises;

(iii) The parties to the lease;

(iv) The term of the lease;

(v) Identification of the responsible party for constructing, owning, operating, and maintaining any improvements to the leased premises;

(vi) Indemnification of United States and Lessor;

(vii) Payment requirements and late payments, including interest; and

(viii) Due diligence, insurance and bonding requirements as provided in this Section.

(c) The Authority shall record Business Site Leases, subleases, assignments, amendments, encumbrances, renewals, modifications and cancellations with:

(i) Land Title and Records Office
[redacted]Regional Office

Bureau of Indian Affairs
[redacted]

(ii) The Authority is responsible for maintaining all records of all Business Site Leases and for disseminating recorded lease documents to the Tribal Council Secretary, the Tribal Environmental Department, and if required by the Tribal Council, to the Housing Department.

(iii) The Authority shall send a copy of these leases and all amendments and renewals for information purposes only, to the Superintendent, [redacted] Agency, Bureau of Indian Affairs, [redacted]

(iv) The Authority shall send a copy of this Statute and a lease that allows for lease payments directly to the Tribe to the Superintendent, [redacted] Bureau of Indian Affairs, [redacted]

(c) Records of activities taken pursuant to this Statute are the property of the United States, the Authority, and the Tribe. Records compiled, developed, or received by the Authority in the course of business with the Secretary are the property of the Authority and the Tribe.

(d) Unless the Business Site Lease states otherwise, a Lease may include, consistent with tribal law, a provision to give Indian preference in hiring for employment purposes.

3.4 Space Leases. To the extent these leases require approval pursuant to federal laws and policies, space leases shall be reviewed and approved pursuant to this Statute.

3.5 Land Descriptions. Business Site Leases shall contain adequate site surveys and legal descriptions based on metes and bounds, rectangular or lot and block systems. Space leases shall contain adequate descriptions of the location and square footage of the space being leased and may include renderings, architectural drawings or other schematics to illustrate the location of the space.

3.6 Appraisal; Local Studies.

(a) The Fair Annual Lease Value shall be determined by an appraisal or equivalent procedure performed by the Authority utilizing the following data: improvement cost, replacement cost, earning capacity, sales and lease data of comparable sites or by similar methodology as approved by the Authority and deemed to be in the best interest of the Tribe. An appraisal log reporting the methods of appraisal and value of trust land shall be attached to every Business Site Lease.

(b) Alternatively, the fair annual lease value shall be determined by an appraisal performed by a licensed appraiser utilizing the Uniform Standards of Professional Appraisal Practice or commonly accepted method of appraisal. An appraisal log describing the method of appraisal and value of trust and shall be attached to every Business Site Lease.

3.7 Fair Annual Lease Value.

(a) No lease shall be approved for less than the present Fair Annual Lease Value as set forth in the appraisal, except as follows:

(i) The lease is in the Development Period;

(ii) The Authority is providing an incentive for business to locate on Tribal Trust Lands, and must provide lease concessions, lease improvement credits, and lease abatements to attract such businesses; or

(iii) The Authority determines such action is in the Best Interest of the Tribe.

(b) A lease may be structured at a flat lease rate.

(c) A lease may be structured at a flat lease rate plus a percentage of gross receipts, if the Lessee is a business located in a shopping center or mall, or the lessee generates over $1,000,000.00 annually in gross receipts.

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

(e) A lease must specify the dates on which all payments are due.

(f) A lease must specify that the Lessee shall make payments directly to the Authority.

(g) Unless otherwise provided in the lease, payments may not be made or accepted more than one year in advance of the due date.

(h) The lease may provide for periodic review and such review may give consideration to the economic conditions, exclusive of improvement or development required by the contract or the contribution value of such improvements.

(i) Leases for terms of less than five years may be structured to allow for lease rate adjustments. The lease shall specify how adjustments will be made, who will make such adjustments, when adjustments will go into effect, and how disputes shall be resolved.

(j) Leases may be amended to allow for lease rate adjustments.

(k) The Authority 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.

3.8 Environmental Review Process. Unless exempted from this requirement under this Statute, the Authority shall not approve a Business Site Lease until the proposed business site Lessee has completed the Environmental Review Process under Chapter Seven of this Statute. Leases approved and executed without complying with this section shall be null and void.

3.9 Insurance.

(a) A Lessee shall provide insurance necessary to protect the interests of the Landlord and in amounts sufficient to protect all insurable improvements on the premises.

(b) The insurance may include, but is not limited to, property, liability or casualty insurance or other insurance as specified in the Business Site Lease.

(c) The Landlord and the United States must be identified as additional insured parties.

(d) The Authority may waive this requirement if the waiver is in the best interest of the Landlord. The waiver may be revoked at any time if the waiver ceases to be in the Landlord's best interest.

3.10 Performance Bond.

(a) Unless waived in writing by the Authority in accordance with this Statute, the lessee shall obtain a satisfactory performance bond in an amount sufficient to secure the contractual obligations of the lease. Such bond shall be for the purpose of securing the Lessee's contractual obligations under the Business Site Lease and may guarantee:

(i) The annual lease payment;

(ii) The estimated development cost of improvements; and

(iii) Any additional amount necessary to ensure compliance with the lease.

(b) The Authority may waive the bond requirement, or reduce the amount, if doing so is in the Best Interest of the Tribe. The Authority shall maintain written records of waivers and reductions.

(c) The performance bond may be in one of the following forms:

(1) certificates of deposit issued by a federally insured financial institution authorized to do business in the United States;

(2) irrevocable letters of credit issued by a federally insured financial institution authorized to do business in the United States;

(3) negotiable Treasury securities; or

(4) surety bond issued by a company approved by the U.S. Department of the Treasury.

3.11 Improvements. All Business Site Leases shall require the Lessee to exercise due diligience and best efforts to complete construction of any improvements within the schedule specified in the Business Site Lease.

(a) Lessee, at Lessee's expense or as otherwise provided in the Business Site Lease, may construct improvements under a Business Site Lease if the lease specifies, or provides for the development of:

(i) a plan that describes the type and location of any improvements to be built by the Lessee; and

(ii) a general schedule for construction of the improvements.

(b) Lessee shall provide the Authority written justification as to the nature of any delay, the anticipated date of construction of the improvements, and evidence of progress toward commencement of construction.

(c) When requested by the Authority or otherwise required in the Business Site Lease, Lessee shall further provide the Authority, in writing, an updated schedule for construction.

(d) Failure of the Lessee to comply with these requirements will be deemed a violation of the Business site Lease and may lead to cancellation of the Business Site lease pursuant to Chapter 5 of this Statute.

(e) Improvements to the premises shall become the property of the Authority unless otherwise provided for in the Business Site Lease. If improvements will be removed, the Business Site Lease may specify the maximum time allowed for such removal.

(f) A Lessee may develop equity value in the improvements, and sell its interest in the Business Site Lease based on the equity value. The Authority has a right of first refusal to purchase the interest.

(g) The Business Site Lease may provide that at expiration, cancellation or termination of the Business Site Lease, the Lessor shall purchase improvements to the premises at fair market value.

(h) Improvements may be subject to taxation by the Tribe.

3.12 Subleases, Assignments, Amendments and Encumbrances.

(a) Subleases, assignments, amendments or encumbrances of any Business Site Lease shall be by written consent of the Authority and Lessee, unless otherwise provided herein.

(b) The Business Site Leases may authorize subleases and assignments, in whole or in part, without approval from the Authority and execution from the Executing Official, provided a copy of the sublease or assignment is provided to the Authority and the following conditions, where applicable, are met and stated in the Business Site Lease:

(i) There is no event of default under the Business Site Lease or this Statute;

(ii) Any restrictions and use limitations on the use of the premises shall continue to apply to any subtenant or assignee;

(iii) The proposed assignee or sublessee submits a current financial statement showing financial adequacy; and

(iv) The Lessee shall not be relieved or released from any of its obligations under the Business Site Lease.

This Section 3.12(b) in no way relieves the parties from carrying out their duties under the Business Site Lease, which may contain additional restrictions and conditions.

(c) The lease may authorize encumbrances to the leasehold interest for the purpose of financing to develop and improve the premises subject to approval by the Authority and execution from the Executing Official.

(d) If a sale or foreclosure of the Lessee's business or assets occurs and the encumbrancer is also the purchaser, the encumbrancer may assign the lease without approval of the Authority or Lessee, provided the assignee agrees in writing to be bound by all the terms and conditions of the lease. If the purchaser is a party other than the encumbrancer, approval by the Authority and execution from the Executing Official is required, provided the purchaser agrees in writing to be bound by all terms and conditions of the lease.

CHAPTER FOUR
BUSINESS LEASE MANAGEMENT

4.1 Management.

(a) Except where required otherwise by agreement or applicable law, the Authority shall manage all Business Site Leases pursuant to these regulations.

(b) The Authority shall institute a business site leasing management plan or policy that employs real estate management practices, addresses accounting, collections, monitoring, enforcement, relief and remedies.

4.2 Administrative Fees. The Authority may charge administrative fees for costs associated with issuing a lease, sublease, assignment, amendment, mortgage or other administrative transaction.

CHAPTER FIVE
ENFORCEMENT

SECTION:

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

5.2 Defaults.

(a) If the Authority determines the Lessee is in default, the Authority shall send the Lessee a notice of default within five (5) business days of the determination. The notice of default may be provided by certified mail, return receipt requested.

(b) Within 10 days of the mailing, the Lessee shall:

(i) Cure the default and notify the Authority in writing that the default has been cured.

(ii) Dispute the Authority's determination that the lease is in default and explain why the lease should not be canceled; or

(iii) Request additional time to cure the default.

5.3 Remedies.

(a) If the Lessee fails to cure the default within the prescribed period, the Authority may:

(i) Cancel the lease pursuant to these regulations;

(ii) Grant an extension of time to cure the default;

(iii) Pursue other remedies, including execution on bonds or collection of insurance proceeds;

(iv) Any combination of remedies listed above; or

(v) Any other remedy set forth in the business site lease management plan or policy.

(b) If the Authority cancels a Business Site Lease, the Authority shall send the Lessee a cancellation letter within a reasonable time period. The cancellation letter may be sent to the Lessee by certified mail, return receipt requested. The cancellation letter shall:

(i) Explain the grounds for cancellation;

(ii) Notify the Lessee of unpaid amounts, interest charges or late payment penalties due under the lease;

(iii) Notify the Lessee of its right to appeal; and

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

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

(d) If the Authority decides to grant an extension of time to cure a default, the Lessee shall proceed diligently to perform and complete the corrective actions within a reasonable time period.

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

5.5 Harmful or Threatening Activities. If a Lessee or other party causes or threatens to cause immediate and significant harm to the premises, or undertakes criminal activity thereon, the Authority may take appropriate emergency action.

5.6 Holdover. If a Lessee remains in possession after the expiration or cancellation of a lease, the Authority shall treat such occupation as a trespass. The Authority shall take action to recover possession and pursue additional remedies. Filing shall be pursuant to Tribal laws, or alternatively, the Authority may make a written request sent by certified mail to the BIA for resolution under any applicable federal laws.

5.8 Trespass. If a person occupies the premises without the Authority's approval, the Authority may pursue appropriate remedies, including the filing of a trespass action to regain possession under tribal law.

CHAPTER SIX
APPEALS

SECTION:

6.1 Appeals. The Lessee or interested party may appeal a determination of the Authority, within ten (10) days of the determination. Appeals may be filed with the Tribal Council or other hearing body as set forth in the business site lease management plan or policy. Such appeals shall be effectuated by: a written notice setting forth 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.

6.2 Scope of Review. The Tribal Council or other hearing body shall review whether the determination was arbitrary, capricious, or an abuse of discretion; not supported by substantial evidence in the record; or otherwise, not in accordance with the law. The decision of the Tribal Council or other hearing body shall be final.

CHAPTER SEVEN
ENVIRONMENTAL REVIEW PROCESS

SECTION:

7.1 Generally. Unless exempt under this Chapter, the Authority shall not approve a Business Site Lease until the proposed Business Site Lease has completed the Environmental Review Process pursuant to this Chapter and applicable Tribal regulations. Leases approved and executed without compliance with this Chapter shall be null and void.

7.2 Threshold Determination.

(a) **Lessee Not Subject to Environmental Review Process**: If the Environmental Reviewer determines that the Leasing Decision by its nature would not affect the biological and cultural resources of the Tribe, the Leasing Decision is exempt from additional requirements of the Environmental Review Process, subject to the environmental record requirements of applicable Tribal environmental regulations.

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

(c) **Statutory Exemption for Leases in Gaming Facility**: Consistent with Section 11.8.9 of the Compact, Leasing Decisions involving Business Site Leases proposing use of space within the footprint of the Gaming Facility as that term is defined under Section 2.12 of the Compact shall be exempt from the Environmental Review Process, and the Authority shall not be required to prepare a TEIR under Section7.4 of this Chapter.

7.3 Action on Leasing Decision Subject to Completion of Environmental Review Process. If the Environmental Reviewer determines that the Leasing Decision is subject to the Environmental Review Process, the Authority may not consider the Leasing Decision until the Environmental Reviewer closes the Environmental Review Process in accordance with applicable Tribal environmental regulations.

7.4 Environmental Review Process.

(a) Unless an exemption applies or a lease is otherwise not subject to the Environmental Review Process, then, before the execution of any Business Site Lease, the Authority shall cause to be prepared a comprehensive and adequate tribal environmental impact report ("TEIR"), analyzing the potentially significant effects of the proposed action on the environment; provided, however, that information or data which is relevant to such a TEIR and is a matter of public record or is generally available to the public need not be repeated in its entirety in the TEIR, but may be specifically cited as the source for conclusions stated therein; and provided further that such information or data shall be briefly described, that its relationship to the TEIR shall be indicated, and that the source thereof shall be reasonably available for inspection at a public place or public building. The TEIR shall provide detailed information about the Significant Effect(s) on the Environment which the Lease is likely to have, and shall include a detailed statement setting forth all of the following:

(i) A description of the physical environmental conditions in the vicinity of the Project (the environmental setting and existing baseline conditions), as they exist at the time the notice of preparation is issued;

(ii) All Significant Effects on the Environment of the proposed Lease;

(iii) In a separate section:

(1) Any Significant Effect on the Environment that cannot be avoided if the Lease is executed; and

(2) Any Significant Effect on the Environment that would be irreversible if the lease is executed.

(3) Any mitigation measures proposed, recommended, or required.

(b) In addition to the information required pursuant to subdivision (a), the TEIR shall also contain a statement indicating the reasons for determining that various effects of the Lease on the off-reservation environment are not significant and consequently have not been discussed in detail in the TEIR. In the TEIR, the direct and indirect Significant Effects on the Environment shall be clearly identified and described, giving due consideration to both the short-term and long-term effects.

7.5 Notice of Completion of Draft TEIR.

(a) Within no less than thirty (30) days following the completion of the draft TEIR, the Authority shall file a copy of the draft TEIR and a Notice of Completion with the Tribe. The Authority shall also post the Notice of Completion and a copy of the draft TEIR on its website. The Notice of Completion shall include all of the following information:

(i) A brief description of the Project;

(ii) The proposed location of the Project;

(iii) An address where copies of the draft TEIR are available; and

(iv) Notice of a period of thirty (30) days during which the Tribe will receive comments on the draft TEIR.

(b) To satisfy the requirement for public notice and opportunity to comment under 25 U.S.C. §415, the Authority will provide public notice by at least one of the procedures specified below:

(i) Publication of the Authority's draft TEIR in a newspaper of general circulation in the area affected by the proposed Business Site Lease, with notice to the public of the opportunity to comment on any Significant Effect on the Environment of the proposed action.

(ii) Posting of the Tribe's draft TEIR in the offices of the Tribe and the Authority with notice to the public of the opportunity to comment on any Significant Effect on the Environment of the proposed action.

7.5 Response to Public Comments. After the thirty (30) day comment period has ended, the Authority will review all comments received from the public. Prior to the approval and execution of the Business Site Lease, the Authority will provide responses to relevant and substantive public comments on any Significant Effect on the Environment arising as a result of the proposed project and proposed or recommended mitigation measures addressing any such impacts.

CHAPTER EIGHT
SOVEREIGN IMMUNITY

SECTION:

8.1 Nothing in this Statute shall be deemed to waive the sovereign immunity of the Tribe or any of its enterprises, authorities, officers, agents, or employees.

CHAPTER NINE
EFFECTIVE DATE; AMENDMENT

SECTION:

9.1 This Statute shall take effect upon its adoption by the Tribal Council and approved by the Secretary of the Interior.

9.2 This Statute may be amended by a majority vote of the Tribal Council at a duly called Tribal Council meeting at which a quorum is present. All substantive amendments to this Statute must be submitted to and approved by the Secretary of the Interior.

CERTIFICATION

I, the undersigned, as Secretary of the [redacted], do hereby certify that the Tribal Council is composed of seven (7) members, of which [redacted] were present, constituting a quorum, at a regularly scheduled meeting called, noticed, convened, and held on this [redacted] day of [redacted], [redacted], consistent with Article VII Section 1 of the Tribe's Constitution, and the foregoing Statute was adopted by a vote of [redacted] yes, [redacted] no, and 0 abstaining.

[redacted]
Tribal Secretary

Date: [redacted]

[redacted]
Tribal Chairperson

Date: [redacted]