



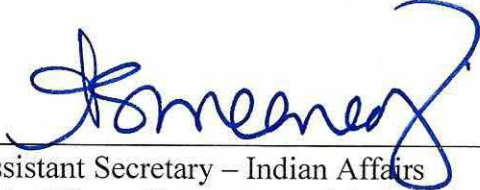
**UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS**

APPROVAL OF

**JAMUL INDIAN VILLAGE OF CALIFORNIA
BUSINESS LEASING ORDINANCE**

The attached Business Leasing Ordinance, submitted by the Jamul Indian Village (listed in the Federal Register, Vol. 83, No. 20 FR 4237 (January 30, 2018) as the Jamul Indian Village of California, and prepared in accordance with the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012, consisting of 19 pages and adopted by the Jamul Tribal Council on December 10, 2018, is hereby approved.

Dated: **JUN 14 2019**



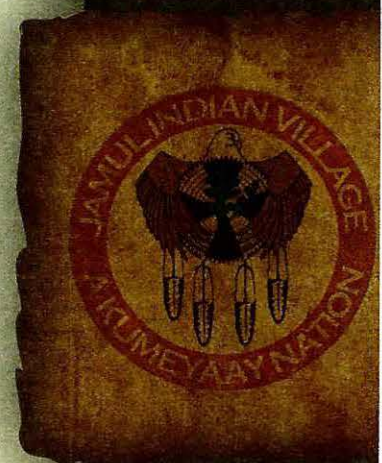
Assistant Secretary – Indian Affairs
United States Department of the Interior

Pursuant to the authority delegated by 209 DM 8

JAMUL INDIAN VILLAGE
BUSINESS LEASING ORDINANCE

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Section 1. Title

This Ordinance shall be entitled the "Jamul Indian Village of California Business Leasing Ordinance".

Section 2. Definitions

As used in this Ordinance, 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 of the Lessee's obligations, under a Lease.

(b) "**Best Interest of the Tribe**" means the balancing of interests to attain economic income, promote economic development, preserve and enhance the Lands of the Tribe, increase employment and revenue for the Tribe, preserve and maintain the Tribe's culture and preserve the sovereignty of the Tribe.

(c) "**BIA**" means the Bureau of Indian Affairs within the Department of the Interior.

(d) "**Business Day**" means Monday through Friday, excluding federally recognized holidays and other days that the Tribe's governmental offices are closed.

(e) "**Business Lease**" means a written agreement or contract between the Tribe and Lessee whereby the Lessee is granted a right to possess Tribal Lands for a specified purpose and duration, which purpose shall be limited to the business and commercial purposes that are specifically stated in the Business Lease. The Lessee's right to possess will limit the Lessor's right to possess the Lease Premises only to the extent provided in the Business Lease.

(f) "**Cancellation**" means Executing Official or BIA action to end or terminate a Lease.

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

(h) "**Development Period**" means the time period between the effective date of the Lease and substantial completion of improvements on the Lease Premises.

(i) "**Day**" means a calendar day, unless otherwise specified.

(j) "**Environmental Review Process**" means the process outlined in this Ordinance for determining whether the Lease Decision will have a Significant Effect on the Environment.

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(k) **“Environmental Reviewer”** means the official of the Jamul Environmental Agency designated by the Tribal Council to undertake the Environmental Review Process pursuant to this Ordinance.

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

(m) **“Executing Official”** means the Chairperson of the Tribal Council, or his or her designee, who is authorized pursuant to this Ordinance to take all necessary action on Leases or Subleases, including execution, amendments and assignments of the same, as authorized by the Tribal Council.

(n) **“Fair Annual Lease Value”** means the most probable dollar amount land should bring in a competitive open market reflecting all conditions and restrictions of the specified Lease agreement, including term, including duration, rental adjustments and revaluation, permitted uses, use restrictions, and expense obligations or other considerations that drive commercial viability of a proposed Project or development of land where both the Lessor and Lessee are equally motivated to consummate the Lease under the particular market conditions applicable to the transaction.

(o) **“Holdover”** means circumstances in which a Lessee remains in possession of the Lease Premises after the Lease term expires or has been cancelled.

(p) **“Lands of the Tribe”** mean all Trust Land within the exterior boundaries of the Jamul Indian Village of California Reservation.

(q) **“Lease”** means a written contract between the Tribe and a Lessee, whereby the Lessee is granted a right to possess Lands of the Tribe, for a specified purpose and duration, including Business Leases. The Lessee’s right to possess will limit the Tribe’s right to possess the Lease Premises only to the extent provided in the Lease.

(r) **“Lease Administrator”** means the individual selected by the Tribal Council having delegated authority to manage the application process, manage all Leases, and implement enforcement actions in accordance with this Ordinance on the Tribe’s behalf.

(s) **“Lease Decision”** means the decision of the Tribal Council following completion of the Environmental Review Process with respect to approval of the issuance, amendment, sublease or assignment of a Lease.

(t) **“Lease Premises”** means that portion of the Lands of the Tribe that is subject to a Lease approved by the Tribe pursuant to this Ordinance.

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(u) **"Leasehold Mortgage"** means a mortgage, deed of trust, or other instrument that pledges a Lessee's leasehold interest as security for a debt or other obligation owed by the Lessee to a lender or other Mortgagee.

(v) **"Lessee"** means person or entity who has acquired a legal right to possess Lands of the Tribe by a Lease authorized by this Ordinance.

(w) **"Lessor"** means the Tribe.

(x) **"LTRO"** means the Land Titles and Records Office of the BIA.

(y) **"Mortgagee"** means the holder of a Leasehold Mortgage.

(z) **"Permanent Improvement"** means buildings, other structures, and associated infrastructure attached to the Lease Premises.

(aa) **"Project"** means any economic development activity on the Lands of the Tribe that is subject to a Lease.

(bb) **"Public"** means, for purposes of this Ordinance, the enrolled members of the Tribe, individuals who live or work on Lands of the Tribe, and/or business entities or other institutions that are engaged in programs or activities on Lands of the Tribe that have a definable, concrete interest that may reasonably be affected by a proposed Business Lease.

(cc) **"Restoration and Reclamation Plan"** means a plan that defines the reclamation, revegetation, restoration, and soil stabilization requirements for the project area, and requires the expeditious reclamation of construction areas and revegetation of disturbed areas to reduce invasive plant infestation and erosion.

(dd) **"Secretary"** means the Secretary of the Interior, U.S. Department of the Interior, or its authorized representative.

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

(ff) **"Space Lease"** means a lease of space within an existing facility or building on Lands of the Tribe that is not already leased, but not including subleases.

(gg) **"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 the Lease.

(hh) **"Sublessee"** means a third party who receives a Sublease from a Lessee.

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(ii) **“Trespass”** means any unauthorized occupancy, use of, or action on any Lands of the Tribe.

(jj) **“Tribal Administration”** means the governmental administrative offices and departments of the Tribe responsible for managing programs and services on behalf of the Tribe within the Lands of the Tribe.

(kk) **“Tribal Constitution”** means the Constitution of the Jamul Indian Village of California, adopted on April 1, 2017 and approved by the Regional Director, Bureau of Indian Affairs on April 28, 2017.

(ll) **“Tribal Council”** means the duly elected governing body of the Tribe pursuant to the Tribal Constitution.

(mm) **“Tribe”** means the Jamul Indian Village of California, the federally-recognized Indian tribe with jurisdiction over the Lands of the Tribe.

(nn) **“Tribal Law”** means the body of non-Federal law that governs lands and activities under the jurisdiction of the Tribe, including ordinances or other enactments by the Tribe, and any tribal court rulings.

(oo) **“Trust Land”** means any tract, or interest therein, held in trust or restricted status by the United States for the benefit of the Tribe.

Section 3. Purpose and Intent

(a) The purpose and intent of this Ordinance is to:

- (1) Implement the voluntary, alternative leasing process available to the Tribe pursuant to 25 U.S.C. § 415(h), the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012, H.R. 205, 112th Cong. (2012) (the “Act”), for Business Leases on the Lands of the Tribe; and
- (2) Promote self-determination, encourage economic self-sufficiency, and increase business activity and employment within the Lands of the Tribe.

Section 4. Scope

This Ordinance shall apply to all Business Leases within the Lands of the Tribe and to all actions and decisions taken in connection with such Business Leases that would, in the absence of this Ordinance, require approval pursuant to 25 U.S.C. §415(a). Nothing herein shall be construed to affect the terms and conditions of existing Leases.

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Section 5. Authority

This Ordinance is authorized by and subject to the Act and Article 9, Section 1 of the Constitution.

Section 6. Business Lease Requirement

(a) **Terms and Conditions.** Any Lease authorized by this Ordinance shall be governed by the terms and conditions set forth in the Lease and the provisions of this Ordinance. The terms of the Lease may be amended by written approval of the Lessee and the Tribal Council. The Lessee is responsible for understanding the terms and conditions set forth in the Lease and herein.

(b) **Duration and Renewal.** Unless otherwise expressly provided in the Lease, no Lease shall be approved more than twelve (12) months prior to the first day of the Lease term. The Lease term shall not be more than twenty-five (25) years except that a Lease may include an option to renew for two (2) additional terms, provided that each term of which shall not exceed twenty-five (25) years. Unless otherwise expressly provided in the Lease, the Lessee shall notify the Tribal Council of the intent to renew not less than one (1) year prior to the expiration date set forth therein.

(c) **Obtaining a Business Lease.** Information to obtain a Business Lease shall be available at the Tribal Administration office.

- (1) Any applicant for a Business Lease must submit the following documents to the Lease Administrator:
 - i. Any financial information the Lease Administrator deems necessary to determine whether the proposed Lessee can financially meet the obligations of the Lease and/or the conditions and requirements of this Ordinance;
 - ii. Legal description, survey-grade global positioning system description, or another description prepared by a registered land surveyor that is sufficient to identify the Lease Premises;
 - iii. Environmental Review Process documents; and
 - iv. Any other documents deemed necessary by the Lease Administrator pursuant to this Ordinance.
- (2) A Business Lease shall contain the following provisions:

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- i. The tract, location or parcel of the Lands of the Tribe subject to the Lease;
- ii. The purpose and authorized use of the Lands of the Tribe subject to the Lease;
- iii. The parties to the Lease;
- iv. The effective date, term and provisions for renewal, if any;
- v. Identification of the parties responsible for ownership of the Permanent Improvements and the parties responsible for construction, operation, maintenance and/or management, and if applicable, removal, of the Permanent Improvements to the Lands of the Tribe subject to the Lease;
- vi. Indemnification of the United States and Lessor for the Lessor's use and occupancy of the Lands of the Tribe subject to the Lease;
- vii. Payment and late payment requirements, including, the party to receive the rent, acceptable forms of payment, due date for payment, late payment penalty(ties) and interest;
- viii. Due diligence, insurance and bonding requirements. If a performance bond is required pursuant to this Ordinance, the Lease must state that the Lessee must obtain the consent of the surety for any legal instrument that directly affects their obligations and liabilities;
- ix. Removal and Restoration Plan requirements applicable to the Lease Premises at expiration or Cancellation of the Lease;
- x. Timelines for Lease approval, requirements for Tribal Council approval and the Executing Official authorized to execute the Lease, if any;
- xi. The requirements for Tribal Council approval of any amendments, assignments, subleases and Leasehold Mortgages, and the Executing Official authorized to execute any amendments, assignments, Subleases and Leasehold Mortgages during the Lease term; and

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xii. If the Lease Premises is within an Indian irrigation project or drainage district, except as provided in 25 C.F.R. §71, the Lessee must pay all operation and maintenance charges that accrue during the Lease term to the appropriate office in charge of the irrigation project or drainage district.

- (3) The Lease Administrator shall cause the Lease, any amendments, renewals and Cancellations to be recorded with the LTRO, Pacific Regional Office having jurisdiction over the Lands of the Tribe subject to the Lease.
- (4) The Lease Administrator is responsible for maintaining all records of any Business Lease with original execution documents to be maintained by legal counsel of the Tribe.
- (5) The Tribal Council shall cause copies of this Ordinance and any Business Lease, amendments, renewals or Cancellations to be sent to the BIA Superintendent, Southern California Agency, 1451 Research Park Drive, Riverside, CA 92507, or any other address designated by the BIA Superintendent.
- (6) Records of activities taken pursuant to this Ordinance are the property of the Tribe. Records compiled, developed or received by the Secretary of the Interior are the property of the Secretary of the Interior.

(d) **Land Descriptions.** A Business Lease shall contain site surveys and legal descriptions based on metes and bounds, rectangular or lot and block systems and/or be of sufficient detail to meet recording requirements for the LTRO having jurisdiction of the Lands of the Tribe subject to the Lease. A Space Lease shall contain accurate descriptions of square footage and may include renderings, drawings or other schematics to illustrate the location of the physical space to a specific location upon a tract of land subject to the Lease.

(e) **Appraisals; Local Studies.** The Fair Annual Lease Value shall be determined by an appraisal, performed by a licensed appraiser pursuant to the Uniform Standards of Professional Appraisal Practice or equivalent procedure, or performed by the Lease Administrator utilizing the following data: improvement cost, replacement cost, earning capacity, sales and lease data of comparable sites or by any similar methodology approved by the Lease Administrator and deemed to be in the Best Interest of the Tribe. A written appraisal log describing the methods of appraisal and value of the Lands of the Tribe shall be maintained in the Lease file.

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(f) **Fair Annual Lease Value.**

- (1) No Lease shall be approved for less than the present Fair Annual Lease Value set forth in the appraisal log maintained in the Lease file, except:
 - i. Where improvements to the Lands of the Tribe which will be subject to a Lease are in the pre-Development Period, e.g., design, permitting and financing;
 - ii. When the Tribe is attempting to attract business development through market incentives; or
 - iii. Where the Tribal Council determines the Lease is in the Best Interest of the Tribe.
- (2) A Lease may be structured as a flat lease rate.
- (3) A Lease may be structured as a flat lease rate plus a percentage of gross receipts, provided that the Lessee generates over \$500,000.00 annually in gross receipts.
- (4) A Lease may be structured on a market indicator such as the CPI.
- (5) A Lease must specify the date payments are due and that payments shall be made directly to the Tribe.
- (6) Unless provided in the Lease, payments may not be made or accepted more than eighteen (18) months in advance of the due date.
- (7) A Lease may provide for periodic review and such review may give consideration to prevailing market conditions, exclusive of the improvements or development required by the Lease or the contribution value of such improvements.
- (8) A Lease may be structured to allow for payment adjustments, provided that the Lease specifies the terms and procedures for adjustments and the terms and conditions of dispute resolution.
- (9) A Lease may be amended to allow for payment rate adjustments.
- (10) The Lease Administrator shall keep written records of the basis to determine Fair Annual Lease Value, or any adjustment thereof. The records shall be presented to the Lessee and included in the Lease file.

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(g) **Environmental Review Process.** The Tribal Council shall not approve a Business Lease until completion of the Environmental Review Process. Any Lease approved and executed by the Tribal Council in violation of this Ordinance shall be null and void.

(h) **Insurance.**

- (1) A Lessee shall provide insurance necessary to protect the interests of the Lessor in amounts sufficient to protect all insurable improvements on the Lease Premises.
- (2) The insurance may include, but is not limited to, property, liability or casualty insurance or other insurance as provided in the Lease.
- (3) The United States and the Tribe shall be additional insureds under any policy of insurance required by the Lease.
- (4) The Tribal Council may waive the insurance requirement(s) if the waiver is deemed to be in the Best Interest of the Tribe. The waiver may be revoked at any time if the waiver ceases to be in the Best Interest of the Tribe.

(i) **Performance Bond.**

- (1) Unless waived in writing by the Tribe pursuant to Section 6(i)(2), the Lessee shall obtain a performance bond in an amount sufficient to secure performance of the obligations of the Lessee pursuant to the Lease. The bond may guarantee:
 - i. Annual Lease payments;
 - ii. Estimated development costs of the improvements; and
 - iii. Any additional amounts necessary to ensure compliance with the Lease.
- (2) The Tribal Council may waive the bond requirement, or reduce the amount, provided that the waiver or reduction is deemed to be in the Best Interest of the Tribe. Any waiver pursuant to this Subsection shall be in writing and maintained with the Lease file. The waiver may be revoked at any time if the waiver ceases to be in the Best Interest of the Tribe.
- (3) The performance bond may be in one of the following forms:

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- i. a certificate of deposit issued by a federally insured financial institution authorized to do business in the United States;
- ii. an irrevocable letter of credit issued by a federally insured financial institution authorized to do business in the United States, or
- iii. negotiable Treasury securities or surety bond issued by a company approved by the United States Department of the Treasury.

(j) **Improvements.** All Leases shall require the Lessees to exercise due diligence and best efforts to complete pre-development and construction of improvements within the schedule specified in the Lease.

- (1) Lessee, at its expense or as otherwise provided in the Lease, may construct improvements on the Lease Premises if the Lease provides for:
 - i. site development and construction of improvements to be erected thereon, and
 - ii. a development schedule, including dates for the commencement and completion of construction.
- (2) The Lessee shall provide the Lessor 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.
- (3) When requested by the Lessor or otherwise required in the Lease, Lessee shall further provide the Lessor, in writing, an updated schedule for construction.
- (4) Failure of the Lessee to comply with this Section 6(j) will be deemed a violation of the Lease and may lead to Cancellation of the Lease pursuant to Section 8 of this Ordinance.
- (5) Improvements to the Lease Premises shall become the property of the Lessor unless otherwise provided for in the Lease. If improvements will be removed, the Lease may specify the maximum time allowed for such removal.
- (6) A Lessee may develop equity value in the improvements, and sell its interest in the Lease based on the equity value. The Lessor shall have a

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right of first refusal to purchase the Lessee's interest in the Lease unless the terms of the Lease provide otherwise.

(7) The Lease may provide that at expiration or Cancellation of the Lease, the Lessor shall be given the right of first refusal to purchase improvements to the Lease Premises at fair market value.

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

(k) **Subleases, Assignments, Amendments and Leasehold Mortgages.**

(1) Subleases, Assignments, amendments or Leasehold Mortgages of any Lease shall be by written consent of the Lessor and Lessee, unless otherwise provided herein.

(2) The effective date, term and provision for renewal, if any, shall be set forth in Subleases, Assignments, amendments or Leasehold Mortgages.

(3) The Lease may authorize Subleases and Assignments, in whole or in part, without approval from the Lessor, provided that a copy of the Sublease or Assignment is provided to the Lessor and the following conditions, where applicable, are satisfied and stated in the Lease:

i. There is no event of default under the Lease or this Ordinance;

ii. Any restrictions and use limitations on the use of the Lease Premises shall continue to apply to any Sublessee or assignee;

iii. The proposed assignee or Sublessee submits a current financial statement showing financial capacity to perform Lease obligations; and

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

(4) This Section 6(k) in no way releases the duties or obligations of the parties under the Lease, which may contain additional restrictions and conditions.

(5) The Lease may authorize a Leasehold Mortgage to a Mortgagee for purposes of financing development and improvements to the Lease Premises subject to the approval of the Lessor.

(6) If a sale or foreclosure of the Lessee's business or assets occurs and the person with a legal right or interest in the property ("Encumbrancer") is

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also the purchaser, the Encumbrancer may assign the Lease without approval of the Lessor or Lessee, provided that 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 Lessor is required, provided that the purchaser agrees in writing to be bound by all terms and conditions of the Lease.

(l) **Lease Approval.** Any Lease authorized by this Ordinance shall be approved by the Tribal Council.

Section 7. Business Lease Management

(a) **Management.** Except where required otherwise by agreement or applicable law, the Lease Administrator shall manage all Leases pursuant to this Ordinance. The Tribal Council may enact a Business Lease management plan or policy that employs real estate management practices, addresses accounting, collections, monitoring, enforcement, relief and remedies; provided such Business Lease management plan or policy is consistent with this Ordinance and the Act.

(b) **Administrative Fees.** The Tribe may charge administrative fees for costs associated with issuing a Lease, Sublease, Assignment, amendment, mortgage or other administrative transaction permitted pursuant to Tribal Law.

Section 8. Enforcement

(a) **Generally.** The Lease Administrator shall have all powers necessary and proper to enforce the Lease terms, laws, ordinances, regulations, rules, policies, and covenants. This includes the power to enter the Lease Premises at a reasonable time, with or without notice, and assess late payment penalties.

(b) **Defaults.**

- (1) If the Lease Administrator determines the Lessee is in default, the Lease Administrator 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 or by another nationally recognized mail carrier (FedEx, UPS).
- (2) Within ten (10) days of the receipt of mailing, the Lessee shall:
 - i. Cure the default and notify the Lease Administrator in writing that the default has been cured; or

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- ii. Dispute the Lease Administrator'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.

(c) **Remedies.**

- (1) If the Lessee fails to cure the default within the prescribed period, the Lease Administrator may:
 - i. Cancel the Lease pursuant to this Ordinance;
 - 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 Lease.
- (2) If the Lease Administrator cancels a Lease, the Lease Administrator shall send the Lessee a cancellation letter within a reasonable time period. The cancellation letter shall 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 Lease Premises within thirty (30) days of receipt of the cancellation letter, if an appeal pursuant to Section 9 is not filed by that time.
- (3) A Cancellation shall become effective thirty-one (31) days after receipt of the cancellation letter. 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.

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(4) If the Lease Administrator 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.

(d) **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 Tribe, and the failure to pay such amount shall be treated as a breach of the Lease.

(e) **Harmful or Threatening Activities.** If a Lessee or other party causes or threatens to cause immediate and significant harm to the Lease Premises, or undertakes criminal activity thereon, the Tribe may take appropriate emergency action.

(f) **Holdover.** If a Lessee remains in possession after the expiration or Cancellation of a Lease, the Tribe may treat such occupation as a trespass. If the holdover is treated as a trespass, the Tribe shall take action to recover possession and pursue additional remedies. Filing shall be pursuant to all applicable Tribal Laws (including the Eviction and Exclusion Ordinance), or alternatively, the Tribe may make a written request sent by certified mail to the BIA for resolution under any applicable Federal laws.

(g) **Trespass.** If a person occupies the Lease Premises without the Tribe's approval, the Tribe may pursue appropriate remedies, including the filing of a trespass action to regain possession under applicable Tribal Law. The BIA may, upon reasonable notice from the Tribe and at BIA's discretion, enforce the provisions of, or cancel, a Lease.

Section 9. Appeals

(a) **Appeals.** The Lessee may appeal any determination of the Lease Administrator made pursuant to this Ordinance, within ten (10) days of the determination. Appeals may be filed with the Tribal Council or other designated hearing body as set forth in the Lease. 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.

(b) **Scope of Review.** The Tribal Council or other designated hearing body shall review whether the Lease Administrator's determination was arbitrary, capricious, or an abuse of discretion; not supported by substantial evidence in the record; or otherwise, not in accordance with applicable law. The decision of the Tribal Council or other designated hearing body shall be final.

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Section 10. Environmental Review Process

(a) **Generally.** Unless exempt under this Section 10, the Tribe shall not approve a Lease until the proponent of the Lease has completed the Environmental Review Process pursuant to this Section 10 and applicable Tribal Law. Leases approved and executed without compliance with this Section 10 shall be null and void.

(b) **Threshold Determination.**

- (1) Lease Subject to Environmental Review Process. If the Environmental Reviewer determines that the Lease Decision might be expected to impact, alter or otherwise cause physical disturbances to the environment, the Lessee must fulfill the requirements of the Environmental Review Process, subject to the environmental record requirements of applicable Tribal Law. The physical disturbances must be direct, such as land clearing, new building construction, or discharge of emission or effluent associated with the Project.
- (2) Statutory Exemption for Equivalent Environmental Review. If the Project is subject to an equivalent or more extensive environmental review as that required under this Ordinance, it shall be exempt from the Environmental Review Process.

(c) **Action on Lease Decision Subject to Completion of Environmental Review Process.** If the Environmental Reviewer determines that the Lease Decision is subject to the Environmental Review Process, the Tribe may not approve the Lease until the Environmental Reviewer closes the Environmental Review Process.

(d) **Environmental Review Process.**

- (1) Unless an exemption applies or a Lease is otherwise not subject to the Environmental Review Process, then, before the execution of any Lease, the Tribe shall cause preparation of a comprehensive and adequate tribal environmental impact report (“**TEIR**”) analyzing any potential Significant Effect on the Environment of the proposed action; provided, however, that information or data which is relevant to 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 any Significant Effect on the Environment

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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 commencement of the TEIR;
 - ii. Any Significant Effect on the Environment of the proposed Lease;
 - iii. In a separate section:
 - a. Any Significant Effect on the Environment that cannot be avoided if the Lease is executed;
 - b. Any Significant Effect on the Environment that would be irreversible if the Lease is executed; and
 - c. Any mitigation measures proposed, recommended, or required to mitigate any Significant Effect on the Environment.
- (2) In addition to the information required pursuant to this Subsection (d), 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 Effect on the Environment shall be clearly identified and described, giving due consideration to both the short-term and long-term effects.
- (e) **Notice of Completion of Draft TEIR.**
- (1) Within no less than thirty (30) days following the completion of the draft TEIR, the Environmental Reviewer shall file a copy of the draft TEIR and a Notice of Completion with the Tribe. 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 are available; and

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- iv. Notice of a period of thirty (30) days during which the Tribe will receive comments on the draft TEIR.
- (2) During the Public comment period, a copy of the draft TEIR shall be available for public review at the offices of the Tribe and on a publicly accessible website.
- (3) To satisfy the requirement for public notice and opportunity to comment under the Act, the Tribe will publish its Notice of Completion by at least one (1) of the procedures specified below:
 - i. Publication of the Notice of Completion in a newspaper of general circulation in the area affected by the proposed Business 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 Notice of Completion in the offices of the Tribe, the Environmental Reviewer's office, and to a publicly accessible website, with notice to the Public of the opportunity to comment on any Significant Effect on the Environment of the proposed action.

(f) **Response to Public Comments.** After the thirty (30) day comment period has ended, the Environmental Reviewer will review all comments received from the Public. Prior to the approval and execution of the Business Lease, the Environmental Reviewer 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. Notice of availability of all responses of the Environmental Reviewer will be published in a newspaper of general circulation in the area affected by the Business Lease and posted in the offices of the Tribe and the Environmental Reviewer's office.

Section 11. Sovereign Immunity

All inherent sovereign rights of the Tribe as a federally recognized Indian tribe with respect to provisions authorized in this Ordinance are hereby expressly reserved, including sovereign immunity from unconsented suit. Nothing in the Ordinance shall be deemed or construed to be a waiver of the Tribe's sovereign immunity from unconsented suit.

Section 12. Effective Date

This Ordinance shall be effective as of the date approved by the Secretary.

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Section 13. Severability

If any provision or clause of this Ordinance or the application thereof to any person or circumstance is deemed invalid or illegal under applicable Tribal or Federal law, such provision shall be severed from this Ordinance and the remainder of this Ordinance shall remain in full force and effect.

Section 14. Amendments

This Ordinance may be amended only by a duly enacted resolution of the General Council. All substantive amendments to this Ordinance must be submitted to and approved by the Secretary.