

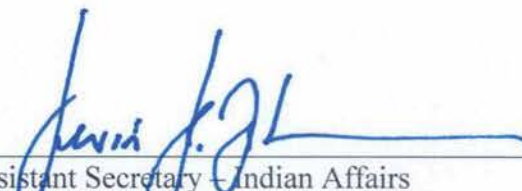


**UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS**

**APPROVAL OF
BUSINESS LEASE CODE
OF THE
JAMESTOWN S'KLALLAM TRIBE**

The attached Business Lease Code, submitted by the Jamestown S'Klallam Indian Tribe, prepared in accordance with the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012, the HEARTH Act of 2012, consisting of 21 pages and adopted by the Jamestown S'Klallam Indian Tribe's governing body on October 8, 2013, is hereby approved.

Dated: APR 04 2014


Assistant Secretary – Indian Affairs
United States Department of the Interior

Pursuant to the authority delegated by 209 DM 8

**JAMESTOWN S'KLALLAM TRIBE
TRIBAL CODE**

TITLE 31 - BUSINESS LEASE CODE

Chapters:

Chapter 31.01 General Provisions

Chapter 31.02 Requirements for Business Site Leases

Chapter 31.03 Business Lease Decision Process and Lease Management

Chapter 31.04 Business Lease Enforcement

Chapter 31.05 Administrative Appeals

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Chapter 31.01 General Provisions

Sections:

Section 31.01.01 Name of Title

Section 31.01.02 Definitions

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Section 31.01.04 Scope

Section 31.01.05 Purposes

Section 31.01.01 Name of Title

This Title shall be known and cited as the Business Lease Code of the Jamestown S’Klallam Tribe ("Tribe").

Section 31.01.02 Definitions

As used in this Title, 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. "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 Non-Fee Land, increase employment and jobs on those lands and preserve the sovereignty of the Tribe;
- C. "BIA" means the Bureau of Indian Affairs, United States Department of the Interior;
- D. "Business Site Lease(s)" means any of the following types of Leases: 1) a Ground Lease, 2) a Facilities Lease, 3) a Space Lease and 4) specifically *will apply* to wind and/or solar energy facilities Leases. The term *does not* include the following: 1) an agricultural Lease, 2) a mineral Lease, 3) a Lease of individually owned land of a Tribal citizen, or 4) Leases for public, educational, recreational and residential purposes;
- E. "CEO" means the Chief Executive Officer of the Tribe which is the tribal governmental officer, or their designee, having the legal authority to perform all of the duties and responsibilities of the Tribe, as Lessor, pursuant a Business Site Lease including but not limited to: approval or disapproval of all Business Site Leases, Lease execution, bonding, Lease amendment or modification, subleasing, Lease Assignment or transfer, tenant Leases and Lease terminations. In addition, the CEO has authority to delegate certain aspects of the Lease review and approval process to the staff of the Office of the CEO or other Tribal agencies or staff;
- G. "Development Period" means the time period from when a Lease is executed to when improvements are expected to be substantially completed;
- H. "Environmental Review Process" means the process for conducting an environmental review, pursuant to the relevant provisions of this Title and Title 27 - Tribal Environmental Policy Act ("TEPA") of the Tribal Code, to assess what impact a proposed Lease, and any associated development, will have on the environment, if any, and the degree of significance of any such potential impacts;
- I. "Environmental Reviewer" means an official from the Tribe's Planning Department who is responsible for conducting reviews and assessments under this Title and the provisions of the TEPA;
- J. "Executing Official" means the CEO, or their designee, who shall execute all Business Site Leases on behalf of the Tribe and take any and all necessary and proper actions regarding Lease Documents as required under this Title;
- K. "Facilities Lease" means a Business Site Lease of: 1) an existing building, structure, or related improvement on Tribal Non-Fee Land, or 2) a proposed building, structure, or related improvement to be constructed under the terms of a Lease. The scope of this type of Business Site Lease may include

associated infrastructure and land for parking or storage, undeveloped land, and related access and egress rights, depending on the terms of the Lease, etc.;

- 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, provided that, the Tribe, in entering into a Lease with one of its governmental or business entities or political subdivisions, may set the annual lease rate at a nominal value, if it is in the Best Interests of the Tribe;
- M. "Ground Lease" means the Lease of Tribal Non-Fee Land, without building, structure, related improvements, or possibly without infrastructure. It can include part of all of one or more tracts, depending on the terms of the Lease;
- N. "Holdover" means circumstances in which a Lessee remains in possession of the Lease premises after the Lease term expires;
- O. "Lease" means a written agreement or contract between the Lessor and a Lessee whereby the Lessee is granted a right to possess Tribal Non-Fee Land for a specified purpose and duration. The Lessee's right to possess will limit the Lessor's right to possess the Lease premises only to the extent provided in the Lease. For the purposes of this Code it includes a Business Site Lease between the Tribal government as Lessor and any Lessee and may take the form of a Ground Lease, a Facilities Lease, a Space Lease or some combination of them pursuant to the definition of Business Site Lease herein;
- P. "Lease Documents" mean a Lease, amendment, Assignment, sublease, or Leasehold Mortgage;
- Q. "Leasehold Mortgage" means a mortgage, deed of trust or other instrument that pledges a Lessee's leasehold interest on Tribal Non-Fee Land as security for debt or other obligations owned by the Lessee to a lender or other mortgagee. At no time may such security instrument include an interest in the Tribal Non-Fee Land itself;
- R. "Leasing Decision" means, in the context of whether the Environmental Review Process is triggered, the following type of Lease transactions that might be acted on by the CEO: Lease issuance, Lease amendment or modification, sublease, and Lease Assignment or transfer;
- S. "Lessee" means a person or entity that has acquired a legal right to possess Tribal Non-Fee Land by a Lease pursuant to this Title and may include any Tribal government entity, such as a Tribally chartered corporation;
- T. "Lessor" means the Tribe, acting by and through the CEO, pursuant to this Code to grant the right to possess Tribal Non-Fee Land under a Business Site Lease agreement;
- U. "LTRO" means the Land Titles and Records Office of the BIA;
- V. "Non-Fee Land", "Tribal Non-Fee Land", "Trust or restricted land", or "Tribal land" means, land over which the Tribe exercises governmental powers, the title to which is held in trust or restricted status by the United States Government for the Tribe as beneficial owner. The term does not include any fee land owned by the Tribe. The term shall not include individually owned Indian land regardless of whether such land is in fee, trust, or restricted status; or whether the Tribe exercises governmental power over that land;
- W. "Office" means the Office of the CEO;
- X. "Permit" or "License" means a revocable privilege granted to a Permittee or Licensee to use Tribal Non-Fee Land for a specific purpose, where such privilege is not transferable or assignable;
- Y. "Public," for purposes of this Title, refers to enrolled citizens of the Tribe;

- Z. "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, aesthetic or socio-economic significance;
- AA. "Space Lease" means either 1) a Lease of floor space within an existing or to be constructed facility on Tribal Non-Fee Land, or 2) a Lease of a section of ground on Tribal Non-Fee Land, such as for outside storage;
- AB. "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;
- AC. "TEPA" means the Jamestown S'Klallam Tribal Environmental Policy Act, Title 27 of the Tribal Code;
- AD. "Tribe" means the Jamestown S'Klallam Tribe; and
- AE. "Tribal Council" or "Council" means the duly elected governing body of the Tribe elected pursuant to the provisions of the Tribal Constitution.

Section 31.01.03 Authority and Delegation

This Title has been enacted by the Tribal Council pursuant to the powers vested in it under the Constitution of the of the Jamestown S'Klallam Tribe of Indians, Article VII, Section 1(c), as amended from time to time. The Council hereby delegates to the CEO the authority and power to lease any Tribal Non-Fee Land under a Business Site Lease provided such Lease complies with applicable federal law and this Title. The CEO and the Office shall take all necessary actions and make all necessary decisions regarding such Leases in compliance with this Title.

Section 31.01.04 Scope

- A. Application of this Title shall be limited solely to Business Site Leases as defined herein, which, but for this Title, would have required approval by the Bureau of Indian Affairs ("BIA") pursuant to 25 U.S.C. §415 governing Leases on Indian trust or restricted lands. This Title *does not apply* to the following:
 - 1. Permits or Licenses for the use of Tribal Non-Fee Land;
 - 2. Agricultural or mineral Leases of Tribal Non-Fee Land; or
 - 3. Leases of individually owned Indian land, including any associated space or facilities; and
- B. Nothing herein shall be construed to affect the terms and conditions of Leases that were in effect before this Title became effective. The Tribe shall not exercise Business Site Lease approval authority as provided herein until such time as the Secretary approves this Title pursuant to, 25 U.S.C. §415, and after such approval no Business Site Lease or Lease Document shall be valid or binding upon any party until approved according to this Title.

Section 31.01.05 Purposes

The purposes of this Title are to:

- A. Implement the authority of the Tribe, acting by and through the CEO and the Office, to issue, review, approve and enforce Business Site Leases and establish streamlined procedures for environmental review, pursuant to the provisions of this Title and the TEPA;
- B. Promote Tribal sovereignty and self-determination through enhanced economic self-sufficiency arising from increased business activity and employment on Tribal Non-Fee Land; and
- C. Implement the relevant provisions of the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012 ("HEARTH Act") for the benefit of the Tribe.

Chapter 31.02
Requirements for Business Site Leases

Sections:

Section 31.02.01 Lease Terms and Conditions

Section 31.02.02 Commencement, Duration and Renewal

Section 31.02.03 Obtaining a Business Site Lease

Section 31.02.04 Description of Leased Premises and Access

Section 31.02.05 Appraisal; Local Studies

Section 31.02.06 Fair Annual Lease Value

Section 31.02.07 Environmental, Cultural and Historical Review

Section 31.02.08 Insurance; Waivers of Insurance

Section 31.02.09 Performance Bond

Section 31.02.10 New Improvements or Modifications to Existing Improvements

Section 31.02.11 Subleases, Assignments, Amendments and Encumbrances

Section 31.02.01 Lease Terms and Conditions

Leases shall be governed by the terms and conditions set forth in a given Business Site Lease agreement or equivalent document approved by the Office. Those terms and conditions may be modified only with the written approval of the parties. The Lessee is responsible for understanding the Lease terms and conditions utilizing their own consultants and advisors. Neither the CEO nor any person in the Office is authorized to give a potential Lessee legal advice regarding the interpretation of the terms and conditions included in a Lease. At a minimum, any Lease entered into under this Title shall contain terms and conditions, addressing the following issues, as applicable:

- A. The tract or parcel of land being leased;
- B. The purpose of the lease and authorized uses of the leased premises;
- C. The parties to the lease;
- D. The term of the lease;
- E. The ownership of permanent improvements and the responsibility for constructing, operating, maintaining, and managing permanent improvements;
- F. Payment requirements and late payment charges, including interest;
- G. Due diligence requirements;
- H. Insurance requirements; and
- I. Bonding requirements.

Section 31.02.02 Commencement, Duration and Renewal

- A. The initial term of the Lease shall not be more than twenty-five (25) years except that a Lease may include an option to renew for up to two additional terms, each of which terms may not exceed twenty-five (25) years, for a total Lease term of seventy-five (75) years. The Lessee shall notify the Office, in writing, of its intent to renew a Lease at least one (1) year before the Lease is due to expire;
- B. If the Lease provides for an option to renew, the Lease must specify:
 - 1. The time and manner in which the option: a) must be exercised, or b) is automatically effective;
 - 2. That the confirmation of the renewal will be submitted to the Office, in writing, unless the Lease provides for automatic renewal;

3. Whether consent by the CEO to the renewal is required;
4. That the Lessee must provide notice of the renewal to, besides the Office, any sureties or mortgagees or other parties holding a security interest in the leasehold interest;
5. The additional consideration, if any, that will be due: a) upon the exercise of the option to renew, or b) the start of the renewal term; and
6. Any other conditions for renewal, such as the Lessee must not be in violation of the Lease at the time of renewal, as may be warranted and prudent in the discretion of the CEO or the Office.

Section 31.02.03 Obtaining a Business Site Lease

A. All applicants for a proposed Business Site Lease shall submit to the Office the following documents:

1. A completed Business Site Lease application on a form supplied by the Office;
2. A site survey and legal description;
3. Evidence of compliance with a TEPA review; and
4. Other relevant documents, as more fully discussed under B., below, such as proof of financing for proposed improvements, evidence of business and technical capabilities, a business plan, etc.;

B. All Business Site Leases shall contain, as applicable, the following provisions:

1. The BIA tract number or parcel number, and physical address;
2. The purpose of the Lease and the proposed uses of the leased premises;
3. The parties to the Lease;
4. The term of the Lease, including any options for renewal;
5. An indemnification and hold-harmless provision in favor of the United States and the Tribe, as Lessor;
6. Payment requirements and how late payments will be handled, including interest and penalties, if any;
7. If improvements are to be built, applicable due diligence requirements;
8. Insurance and bonding requirements as provided for in this Title;
9. The Lessee's restoration and/or reclamation implementation plan at the expiration of the Lease, if applicable;
10. The action required, such as a mitigation plan, as a result of the Environmental Review of the proposed Lease and associated improvements, if applicable;
11. If applicable, provisions detailing whether permanent improvements will be constructed, how they will be financed, the ownership of those improvements during the Lease and at the end of the Lease, each parties' responsibility for constructing, operating, maintaining and managing those improvements and, if applicable, each parties' responsibility for removal of the improvements at the end of the Lease;

12. If applicable, the timing and process for Lease rate reviews or adjustments, including effective date of any adjustments; and
 13. Unless the Lease provides otherwise, all disputes arising from a Business Site Lease should be addressed as provided in Chapter 31.05 - Administrative Appeals of this Title;
- C. If the proposed Lessee is a corporation, limited liability company, partnership, joint venture or other legal entity, including such entities as are owned by the Tribe, such Lessee shall provide to the Office for review certified copies of its organizational documents, certificates, filing records, licenses, permits, resolutions, etc., that demonstrate that: 1) an authorized representative of such Lessee has been appointed to sign the Lease, 2) the Lease will be enforceable against the Lessee; and 3) the legal entity is in good standing and authorized to conduct business in the jurisdiction where it was organized;
 - D. If existing improvements on the leased premises are to be used by the Lessee for a proposed project, the Lessee will provide a Business Plan to the Office regarding the proposed project demonstrating that the Lessee or its agent: 1) has secured the necessary financing, 2) possesses the necessary business experience and technical ability, and 3) can successfully operate, maintain and terminate, at the end of the Lease, the proposed Lease activity on the Lease premises;
 - E. If new improvements are to be constructed by the Lessee on the Lease premises, the Office, in addition to the requirements under subsection D., above, will, with regard to the proposed new improvements, request that the Lessee demonstrate the: 1) ability to finance the construction, and 2) ability to successfully design and construct those improvements;
 - F. The Office is responsible for maintaining all records of all Business Site Leases and for disseminating recorded Lease Documents. It shall insure that each Lease/Lease document has an effective date included in its provisions. It shall record Business Site Leases, subleases, Assignments, amendments, encumbrances, renewals, modifications and cancellations, but not residential subleases, with the Land, Titles and Records Office (LTRO) having jurisdiction over the land;
 - G. Records of activities undertaken pursuant to this Title are the property of the Tribe. Records compiled, developed, or received by the Tribe in the course of business with the Secretary are the property of the Tribe and the United States; and
 - H. A Lease may include, consistent with Tribal and federal law, a provision giving Tribal citizens a preference for employment purposes, if applicable.

Section 31.02.04 Description of Leased Premises and Access

- A. Business Site Leases shall contain an accurate and detailed description of the Lease premises including site surveys, legal descriptions, physical location (including an address, if applicable), existing improvements, existing utilities and square footage. Such description may include renderings, architectural drawings or other schematics, as appropriate. The Office, in its discretion shall determine what is appropriate for the Lessee to supply under this section; and
- B. A Lease may address access to the Lease premises by roads or other infrastructure as long as the access complies with applicable Tribal and federal laws, including 25 CFR Part 169 related to Rights-of-Way over Indian Lands. Roads or other infrastructure within the perimeter of the Lease premises do not require compliance with 25 CFR Part 169, during the term of the Lease.

Section 31.02.05 Appraisal; Local Studies

- A. The Fair Annual Lease Value may be determined by an appraisal or equivalent procedure performed by the Office, or its designee, 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 Office and deemed to be in the Best Interest of the Tribe. If this option is selected by the Office, an appraisal/local studies log reporting the methods of appraisal and value of the Tribal Non-Fee Land, and any space or facilities associated with the transaction, shall be attached to the Business Site Lease as an exhibit; and

- B. Alternatively, the Fair Annual Lease Value may be determined by an appraisal performed by a licensed appraiser utilizing the Uniform Standards of Professional Appraisal Practice or another commonly accepted method of appraisal. If this option is selected by the Office, an appraisal log describing the method of appraisal and value of the Tribal Non-Fee Land, and any space or facilities associated with the transaction, shall be attached to the Business Site Lease as an exhibit.

Section 31.02.06 Fair Annual Lease Value

- A. No Lease payments shall be approved for less than the present Fair Annual Lease Value, as set forth in the appraisal, except as follows:
1. The proposed project related to the Lease is in the Development Period;
 2. The Tribe is providing an incentive for a business to locate on Tribal Non-Fee Lands and to achieve this goal, the Office, with the CEO's approval, must provide Lease concessions, Lease improvement credits, and/or Lease abatements to attract such business; or
 3. The Office, with the CEO's approval, determines that negotiated Lease payments of less than Fair Annual Lease Value are in the Best Interest of the Tribe;
- B. A Lease may provide for flat rate Lease payments;
- C. A Lease may provide for flat rate Lease payments plus an additional payment based on a percentage of gross receipts, if the Lessee is a business located in a shopping center or mall, or the Lessee generates over One Million Dollars (\$1,000,000.00) annually in gross receipts;
- D. A Lease may provide for payments based on 1) a percentage of gross receipts, or 2) based on a standard market indicator;
- E. A Lease must specify the dates on which all payments, including late charges or other penalty charges, if any, are due;
- F. A Lease must specify that the Lessee shall make payments directly to the Tribe;
- G. The Lease may provide for periodic review of the rental rates included in the Lease. The Lease shall specify how any adjustments will be made, who will make such adjustments, and when the adjustments will go into effect. Such review may give consideration to changed economic conditions, among other relevant factors. When improvements or development has been undertaken by the Lessee, as required by the Lease, the value of those improvements shall not be included in the review under this subsection; and
- H. The Office shall keep written records of the basis it used in determining the Fair Annual Lease Value, as well as the basis for adjustments made, if any. These records may be reviewed by the Lessee, if requested. Copies of all such determinations, whether implemented or not, shall be included in the file for the relevant Lease.

Section 31.02.07 Environmental, Cultural and Historical Review

Unless exempted from this requirement under this Title, the CEO shall not approve a Business Site Lease until the Environmental Review Process, set out in Chapter 31.06 of this Title, is satisfactorily completed. Additionally, the Office may require that a cultural and historical review of a proposed lease site be conducted by Tribal staff. Leases approved and executed without complying with this section shall be null and void.

Section 31.02.08 Insurance; Waivers of Insurance

- A. A Lessee shall provide insurance necessary to protect the interests of the Tribe and in amounts sufficient to protect all insurable improvements on the premises;

- B. The required insurance coverage may include, but is not limited to, property, liability, casualty or other insurance as specified in the Business Site Lease;
- C. The Tribe and the United States must be identified as additional insured parties in all policies; and
- D. The Office, with the approval of the CEO, may waive the insurance requirements if the waiver is in the Best Interest of the Tribe, provided, however, that the waiver may be unilaterally revoked by the CEO at any time if the waiver is determined to no longer be in the Best Interest of the Tribe. Upon such revocation, the CEO shall notify the Lessee and indicate the type and level of insurance protection that has been determined adequate to protect insurable improvements on the Lease premises. The Office shall maintain written records of waivers and revocations.

Section 31.02.09 Performance Bond

- A. Unless waived in writing by the CEO in accordance with this Title, the Lessee shall obtain a satisfactory performance bond in an amount sufficient to secure its contractual obligations under the Business Site Lease. Such bond may be called upon to guarantee:
 - 1. The annual Lease payment;
 - 2. The estimated development and construction cost of improvements; and
 - 3. Any additional, reasonable amount necessary to ensure compliance with the Lease;
- B. The CEO may waive the bond requirement, or reduce the amount of the performance bond, if doing so is determined to be in the Best Interest of the Tribe, provided, however, that the waiver may be unilaterally revoked by the CEO at any time if the waiver is determined to no longer be in the Best Interest of the Tribe.. Upon such revocation, the CEO shall notify the Lessee and indicate the type and level of performance bond that has been determined adequate to secure Lessee's contractual obligations. The Office shall maintain written records of waivers and revocations; and
- C. A performance bond may only be provided 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 United States Treasury securities; or
 - 4. Surety bonds issued by a company authorized to do business in the United States and approved by the U.S. Department of the Treasury.

Section 31.02.10 New Improvements or Modifications to Existing Improvements

- A. If a proposed Business Site Lease provides for either (or both) the construction of new improvements or the modification of existing improvements on the Lease premises, the Lease shall require that the Lessee will:
 - 1. Provide to the Tribe a construction plan, including a schedule; that describes the type, location, and tentative commencement and completion dates of any proposed new improvements or modifications to existing improvements. Such construction plan will be included as an exhibit to an approved Lease;
 - 2. Exercise appropriate due diligence and best efforts to complete the construction plan; and
 - 3. Meet the relevant requirements of the TEPA and Title 29 - Building and Development Code of the Tribal Code, related to any improvements and/or modifications at the Lease premises;

- B. The Lessee shall provide the Office periodic information, as required in its construction plan, of its progress under the plan and any actual or anticipated delays, including written justification showing good cause as to the nature of such delays and the anticipated date of recommencement of construction after such delay. If the construction plan or its incorporated schedule requires modification as a result of any delays, the modified construction plan or schedule will be presented to the Office for its review and approval. Such modified construction plan or schedule, when approved by both parties, shall become a modified exhibit to the Lease;
- C. Failure of the Lessee to comply with the requirements of this Chapter will be deemed a violation of the Business Site Lease and may lead to termination of the Business Site Lease pursuant to Chapter 31.04 of this Title;
- D. Improvements to the Lease premises shall become the property of the Tribe, at the end of the Lease or at the end of any renewal period of the Lease, unless otherwise provided for in the Lease. If the improvements are to become the property of the Tribe, then the Lease may provide that at its expiration or termination, the Tribe will: 1) acquire title to the improvements at no cost to it, or 2) purchase the improvements at a negotiated price, or 3) purchase the improvements at fair market value; and
- E. If improvements are to be removed by the Lessee at the expiration or termination of a Lease or at the end of any renewal period of the Lease, the Lease shall specify: 1) the maximum time allowed for such removal, and 2) if there is a plan for reclamation/restoration of the site imposed on the Lessee, and if so it has been attached as an exhibit to the Lease.

Section 31.02.11 Subleases, Assignments, Amendments and Encumbrances

- A. Subleases, Assignments, amendments or encumbrances of any Business Site Lease shall only be effective with the written approval of the CEO and Lessee, unless otherwise provided herein;
- B. Business Site Leases may authorize subleases and Assignments provided a copy of the sublease or Assignment is provided to the Office and the following conditions are met, and stated in the Business Site Lease, as applicable:
 - 1. There is no event of default under the Business Site Lease, this Title or other applicable law or regulation;
 - 2. Any restrictions and/or limitations on the use of the Lease premises shall continue to apply to any sublessee, assignee or similar party;
 - 3. The proposed assignee, sublessee or similar party submits a current financial statement showing financial adequacy and, if appropriate, business and technical capabilities, etc., which the Office may request, in its discretion; and
 - 4. The Lessee shall not be relieved or released from any of its obligations under the Business Site Lease, thereby acting as a guarantor of the sublessee's or assignee's commitments under a sublease or Assignment or the commitments of similar parties under related documents;
- C. The Business Site Lease may authorize encumbrances, such as a Leasehold Mortgage on the leasehold interest for the purpose of securing financing to develop and/or improve the Lease premises, subject to approval by the CEO. At no time may a direct encumbrance on the Tribal Non-Fee Land be allowed. Only a Lessee's leasehold interest may be encumbered; and
- 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 CEO or the Lessee, provided the assignee agrees, in writing, to be bound by all the terms and conditions of the Lease. Any such agreement shall become an exhibit to the Lease.

Chapter 31.03
Business Lease Decision Process and Lease Management

Sections:

Section 31.03.01 Business Lease Decision Process

Section 31.03.02 Lease Management

Section 31.03.03 Lease Payments; Related Charges

Section 31.03.04 Administrative Fees

Section 31.03.01 Business Lease Decision Process

- A. Upon receiving a business Lease application, a non-refundable application processing fee, and the supporting documentation, as set out in section 31.02.03 of this Title, the Office will:
1. Make a preliminary determination if the application contains sufficient information for the Office to proceed with reviewing it and reaching a Leasing Decision. The Lessee will be notified, in writing, within seven (7) business days of receipt of the application, regarding the results of this preliminary determination, and, if applicable, any required additional information that must be submitted by the Lessee before processing of the application can proceed. This step in the process is basically a checklist review of the application's adequacy and is not part of the substantive review associated with the Leasing Decision;
 2. Notify the Lessee in writing, once a Lease application has been determined to contain sufficient information to be further processed and that a Leasing Decision on the application will be rendered within sixty (60) business days ("Decision Review Period") from the date of the notice letter provided that no additional information will be required after commencement of the substantive review of the application associated with the Leasing Decision;
 3. During the Decision Review Period, conduct, or have conducted, all environmental, cultural, historical, archeological, financial, technical, business, legal and related reviews concerning the application, as required under this Title, and evaluate those reviews to determine if any additional information is needed from Lessee, including any plans that might be required, such as a mitigation plan, construction plan, restoration plan, etc. If further information is required as a result of the review process, then Lessee will be notified in writing of what additional information must be provided and the time frame for providing it. The Leasing Decision will not be due until thirty (30) days from the date the additional requested information has been tendered by the Lessee to the Office ("Extended Review Period"). If the Lessee fails to respond, in a timely manner, to the request for additional information under this subsection, the Office, in its discretion, may deem the application to be null and void, and shall notify the Lessee, in writing, to that effect;
 4. Determine if Lessee is required to implement any plans, whether as a condition precedent or as a condition subsequent, related to the Lease in question, and if so, reflect that determination in the Lease Documents; and
 5. At the end of the Decision Review Period, or the Extended Review Period, if applicable, in writing: a) approve the Lease, or b) disapprove the Lease, stating the reasons and informing the Lessee of its right to appeal under this Title. If the Lease is approved, the Office will: a) create duplicate original copies of the Lease, along with all attachments and exhibits, and b) arrange the closing at a time and place convenient to the parties; and
- B. Generally, once a Lease application is complete and all questions that may have arisen regarding it have been satisfactory answered, and no issues remain unresolved to the satisfaction of the Office, the Office will not unreasonably withhold a recommendation that the CEO approve and execute the Lease. Provided, however, that the Office may, within its discretionary authority, make a recommendation that, in the Best Interests of the Tribe, the CEO should not approve and sign the Lease. A decision to disapprove by the

CEO can be appealed by the Lessee to the Tribal Council, pursuant to the provisions of Chapter 31.05 of this Title.

Section 31.03.02 Lease Management

- A. Except where required otherwise by agreement or applicable law, the Office shall manage all Business Site Leases entered into by the Tribe pursuant to this Title;
- B. The Office, or its designated representative, may enter any Business Site Lease premises at any reasonable time, upon reasonable notice in accordance with notice requirements set out in the Lease Document, in order to protect the interests of the Tribe and to determine if the Lessee is in compliance with the requirements of the Lease. Provided, however, if the Lease premises are subject to special security requirements, the person designated by the Office to inspect such premises will have secured the required security clearances to conduct such inspections for the Office;
- C. If a Lease violation is found pursuant to an inspection of the Lease premises, then the Office will notify the CEO who shall determine what course of action to pursue, based on the provisions in the Lease for Lease enforcement, the provisions of this Title, and any other relevant laws or regulations; and
- D. The Office may, in its discretion, institute business site leasing management policies and procedures consistent with this Title that employ standard real estate management practices which address accounting, collections, monitoring, enforcement, relief and remedies.

Section 31.03.03 Lease Payments; Related Charges

- A. The Lease must specify the acceptable method of payment. All Lease payments due under a Lease covered by this Title shall be made, unless otherwise stipulated in the body of the Lease, to:

The Jamestown S’Klallam Tribe
1033 Old Blyn Hwy.
Sequim, WA 98382
Attn: Chief Financial Officer;

- B. The Lessee shall pay, when due, all other charges which may arise from the use and/or activities of the Lessee on the Lease premises, including, but not limited to, utilities, telecommunications, solid waste disposal, security, Tribal taxes, etc., whether due to the Tribe or to other third parties; and
- C. The failure to timely pay any required Lease payment amounts, fees, assessments or other costs as required by this Code will be treated as a Lease violation. The Lease must specify the how often payments are due. Lease payments are due when specified in the Lease, and the Tribe is not required to give the Lessee additional notice or provide any type of advance billing, or invoice for the amount due.

Section 31.03.04 Administrative Fees

- A. Administrative fees are in addition to the late payment charges that must be paid as specified in the Lease. The Office may charge reasonable administrative fees to: 1) recover the Tribe’s costs associated with processing an application for a Lease, whether or not the application is approved, and 2) for issuing a Lease, sublease, Assignment, amendment, mortgage or other administrative transaction;
- B. Items for which such administrative fees may be charged are: 1) environmental, cultural and historical reviews, 2) financial reviews, 3) general and technical business feasibility reviews, 4) architectural and engineering reviews, 5) legal reviews by outside counsel for the Tribe, and 6) other related charges; and
- C. A schedule of administrative fees, or service charges, to be collected may be established by the Office and provided to all prospective Lessees.

Chapter 31.04
Business Lease Enforcement

Sections:

Section 31.04.01 General Enforcement Powers

Section 31.04.02 Defaults

Section 31.04.03 Remedies

Section 31.04.04 Penalties

Section 31.04.05 Harmful or Threatening Activities

Section 31.04.06 Holdover

Section 31.04.07 Trespass

Section 31.04.01 General Enforcement Powers

The CEO, acting through the Office, shall have all powers consistent with this Chapter 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: a) enter the premises, subject to the limitations set out in Section 31.03.02, above, at a reasonable time, with or without notice, b) assess penalties, and c) assess late payments.

Section 31.04.02 Defaults

- A. If the Office determines that the Lessee is in default, it shall promptly send the Lessee a notice of default. The notice of default shall be provided by certified mail, return receipt requested; and
- B. Within ten (10) days of receipt of the default notice, the Lessee shall:
1. Cure the default and notify the Office, in writing, that the default has been cured or request additional time to cure the default; or
 2. Dispute the Office's determination, in writing, that the Lease is in default and explain why the Lease should not be terminated.

Section 31.04.03 Remedies

- A. If the Lessee fails to cure the default within the prescribed period, set out in Section 31.04.02, above, the Office may:
1. Terminate the Lease pursuant to this Title;
 2. Grant a written extension of time to cure the default;
 3. Pursue other remedies, including execution on bonds or collection of insurance proceeds;
 4. Negotiate other remedies with the Lessee;
 4. Undertake any combination of the remedies listed above;
 5. Undertake any other appropriate remedies; or
 6. Notify the BIA, and request that it enforce the provisions of, or to cancel a document pursuant to the BIA enforcement and cancellation provisions of 25 C.F.R. Part 162;
- B. If the Office terminates a Business Site Lease, it shall send the Lessee a termination notice letter within a reasonable time period. The termination notice letter may be sent to the Lessee by certified mail, return receipt requested. The termination notice letter shall:
1. Explain the grounds for termination;

2. Notify the Lessee of unpaid amounts, interest charges, late payment penalties or other appropriate charges due under the Lease;
 3. Notify the Lessee of its right to appeal; and
 4. Order the Lessee to vacate the premises within thirty (30) days of receipt of the termination notice letter, if an appeal is not filed by that time;
- C. A termination shall become effective thirty-one (31) days after receipt of the notice letter by the Lessee. The filing of an appeal shall not change the effective date of the termination. Pending the outcome of an appeal, the Lessee shall make all requisite payments under the Lease, as well as comply with the terms of the Lease; and
- D. If the Office 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.

Section 31.04.04 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, as appropriate. 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 Office, and the failure of the Lessee to pay such amounts automatically shall be treated as a breach of the Lease.

Section 31.04.05 Harmful or Threatening Activities

If a Lessee or other party causes or threatens to cause immediate and significant harm to the premises, or undertakes illegal activity thereon, the Office may take appropriate emergency action. A Lease violation will be deemed to have occurred when a Lessee creates a public nuisance, unsanitary or unsightly conditions, or other condition that is a danger to the safety or property of others.

Section 31.04.06 Holdover

If a Lessee remains in possession after the expiration or cancellation of a Lease, the Office shall treat such occupation as a trespass. The Office shall take action to recover possession of the Lease Premises, and pursue any additional remedies available under this Code or applicable law, such as a forcible entry and detainer action. Tribal Court filings shall be pursuant to Tribal Code.

Section 31.04.07 Trespass

If a person or entity occupies the premises without an approved Business Site Lease, the Office may pursue appropriate remedies, including the filing of a trespass action in Tribal Court to recover possession of the Lease Premises, and pursue any additional remedies available under this Code or applicable law, such as a forcible entry and detainer action.

Chapter 31.05

Administrative Appeals

Sections:

Section 31.05.01 Administrative Appeals

Section 31.05.02 Appeal Bonds

Section 31.05.03 Scope of Review

Section 31.05.01 Administrative Appeals

The Lessee or interested party may appeal a final Business Site Lease decision of the CEO, under this Title, within thirty (30) days of the decision. Administrative appeals may be filed with the Tribal Council. Such appeals shall be initiated by: a) a written Notice of Appeal setting forth the basis for the appeal, b) a short statement indicating the nature and circumstances of the appeal, and c) a short statement indicating the remedy being sought. No extensions of time will be granted for filing a Notice of Appeal.

Section 31.05.02 Appeal Bonds

- A. If a party appeals a decision of the CEO under this Title to the Tribal Council, the Council may determine that the appealing party must post a bond with the Tribe in an amount reasonably estimating any damage to the Tribe from deferring action pending the appeal. The Tribe will not require an appeal bond under this Chapter:
1. For an appeal of a decision on a Leasehold Mortgage; or
 2. If the Tribe is a party to the appeal and requests a waiver of the appeal bond; and
- B. The appellant may not appeal an appeal bond decision by the Council. The appellant may, however, request that the Council reconsider the bond decision based on extraordinary circumstances. Any reconsideration decision is final.

Section 31.05.03 Scope of Review

The Tribal Council or other hearing body shall review whether the decision in question 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 Council or other hearing body shall be a final administrative appeal under this Title.

Chapter 31.06 Environmental Review Process

Sections:

Section 31.06.01 General Requirements

Section 31.06.02 Threshold Determination

Section 31.06.03 Action on Leasing Decision

Section 31.06.04 Environmental Review Process

Section 31.06.05 Notice of Completion of Draft TLEIR

Section 31.06.06 Response to Public Comments

Section 31.06.07 Controlling Law

Section 31.06.01 General Requirements

Unless exempt under this Chapter, the Office shall not recommend a Business Site Lease for the CEO's approval and signature until the Environmental Review Process has been completed pursuant to this Chapter and the TEPA. Leases mistakenly approved or executed without compliance with this Chapter shall be null and void. Since no federal action is involved in the execution of Leases under this Title, the provisions of the National Environmental Policy Act ("NEPA") do not apply.

Section 31.06.02 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, natural 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 provisions of the Tribal Code;
- B. Lessee Subject to Environmental Review Process: If the Environmental Reviewer determines that the Leasing Decision might be expected to 1) impact, 2) alter, 3) disturb, or 4) otherwise cause physical disturbances to the biological, natural or cultural 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; and
- C. Exemption for Leases in Gaming Facility: Leasing Decisions involving Business Site Leases proposing use of space within the footprint of the Gaming Facility, as that term is defined the Tribe's Class III Tribal-State Gaming Compact with the State of Washington, shall be exempt from the Environmental Review Process.

Section 31.06.03 Action on Leasing Decision

If the Environmental Reviewer determines that the Leasing Decision is subject to the Environmental Review Process, the CEO may not issue a Leasing Decision until the Environmental Reviewer closes the Environmental Review Process.

Section 31.06.04 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 such Lease, the Office shall cause to be prepared a comprehensive and adequate Tribal Lease environmental impact report ("TLEIR"), conducted pursuant to the relevant provisions of the TEPA, analyzing the potentially significant effects of the proposed action on the environment; provided, however, that information or data which is relevant to such a TLEIR that is a matter of public record or is generally available to the public, need not be repeated in its entirety in the TLEIR, 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 TLEIR shall be indicated, and that the source thereof shall be reasonably available for inspection at a Tribal facility open to the public. The TLEIR 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:

1. A description of the physical environmental conditions in the vicinity of the Lease premises (the environmental setting and existing baseline conditions) as they exist at the time the notice of preparation of the report is issued;
 2. All Significant Effects on the Environment from the proposed Lease;
 3. 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; and
- B. In addition to the information required pursuant to subsection A., above, the TLEIR shall also contain a statement indicating the reasons for determining whether the various effects of the Lease on the off-reservation environment are significant and consequently whether those effects have been discussed in detail in the TLEIR. In the TLEIR, 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.

Section 31.06.05 Notice of Availability of Draft TLEIR

- A. Within no less than thirty (30) days following the completion of the draft TLEIR, the Environmental Reviewer shall file a copy of the draft with the Office which shall then prepare a Notice of Availability which shall include all of the following information:
1. A brief description of the Project;
 2. The proposed location of the Project;
 3. An address where copies of the draft TLEIR are available; and
 4. Notice of a period of thirty (30) days during which the Tribe will receive comments on the draft TLEIR; and
- B. The Office shall post the Notice of Availability and a copy of the draft TLEIR in Tribal facilities accessible to the public during normal business hours. Additionally, the Notice of Availability shall be published, once, in a newspaper of general circulation in the local community where the Tribal Non-Fee Land that is associated with the proposed Lease is located. The notice shall specify that the public has thirty (30) days to submit comments on the TLEIR to the Office.

Section 31.06.06 Response to Public Comments

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

Section 31.06.07 Controlling Law

If any provisions of this Chapter 31.06 conflict with the TEPA, the provisions of this Chapter shall control.

Chapter 31.07
Miscellaneous Provisions

Sections:

Section 31.07.01 Applicable Laws

Section 31.07.02 Taxation of Lease Related Interests and Activities

Section 31.07.03 Sovereign Immunity

Section 31.07.04 Severability Clause

Section 31.07.05 Savings Clause

Section 31.07.06 Effective Date

Section 31.07.01 Applicable Laws

- A. The provisions of the Tribal Code generally apply to all Tribal Non-Fee Land except to the extent those laws are inconsistent, if at all, with applicable federal law;
- B. In addition to the Tribal Code, the following laws and/or regulations may apply, by operation of law, to any Business Site Leases entered into under this Title:
1. Applicable federal laws and regulations that are not incorporated into this Title by reference;
 2. The laws and regulations of the a state and/or a political subdivision of a state when the Tribe has specifically and previously agreed, in writing, to such application or when the United States Congress has made such laws and/or regulations applicable; and
 3. When the Tribal Court or a federal court has expressly applied such state or local laws and/or regulations to a specific area or circumstance on Tribal Non-Fee Land; and
- C. Unless prohibited by the Tribal Code or applicable federal law, the parties to a Lease under this Title may subject that Lease to a provision of state or local law or regulation in the absence of an applicable Tribal or federal law if: (1) the Lease includes a specific provision to that effect, and (2) the Tribe expressly agrees that the Lease will be subject to the state or local law cited in such a provision. Such incorporation must also clarify that it will only be in effect during the term of the Lease and will otherwise not apply to the Tribe, any tribal entity, or its trust or reservation land, except for the Lease premises as specifically provided.

Section 31.07.02 Taxation of Lease Related Interests and Activities

Subject only to applicable provisions of Tribal or federal law, the following shall not be subject to any fee, tax, assessment, levy or other charge imposed by a state or political subdivision of a state:

- A. Improvements on leasehold interests on Tribal Non-Fee Land, without regard to ownership of those improvements;
- B. Business activities under a Lease conducted on Tribal Non-Fee Land (e.g. business use tax, severance tax, privilege, public utility taxes, excise taxes, or any form of tax on the revenue generated from the business activity); and
- C. Leasehold or possessory interests arising from Leases on Tribal Non-Fee Land.

The Tribe may, in its sole discretion, exercise its inherent governmental authority to tax or impose fees or charges related to any of the rights, interests or activities cited in subsection A. through C., above.

Section 31.07.03 Sovereign Immunity

Nothing in this Title or any Lease executed under the authority of this Title shall be construed, interpreted or implied to have waived, or authorized the waiver of, the sovereign immunity of the Tribe or any of its agencies, departments, subdivisions, enterprises, corporations, officers, agents, employees or members. Such waiver must expressly be granted in writing by the Tribal Council.

Section 31.07.04 Severability Clause

The provisions of this Title are severable. If any part of this Title is declared invalid or unconstitutional by a court of competent jurisdiction, that finding or declaration shall not affect the remaining parts of the Title and their application to other persons or circumstances.

Section 31.07.05 Savings Clause

The repeal or amendment of this Title does not release or extinguish any penalty, forfeiture or liability incurred or right accruing under the Title, unless the repeal or amendment so expressly provides. This Title shall be treated as remaining in full force and effect for the purpose of sustaining any proper action or prosecution for the enforcement of such right, forfeiture or liability.

Section 31.07.06 Effective Date

This Title shall take effect when approved by the United States Secretary of the Interior, in writing, after its adoption by the Tribal Council. If substantive amendments are made to the Title subsequent to the initial effective date, those amendments will only become effective when approved by the United States Secretary of the Interior, in writing.

Chapter 31.08
Codification and Amendments

Sections:

Section 31.08.01 Codification

Section 31.08.02 Secretarial Approval

Section 31.08.03 Amendments

Section 31.08.01 Codification

Title 31- Business Lease Code was originally adopted by the Tribal Council on October 8, 2013, by Resolution #35-13.

Section 31.08.02 Secretarial Approval

This Title, as approved and adopted by the Tribal Council, was subsequently approved by the Secretary of the Interior, in writing, on _____.

Section 31.08.03 Amendments

- A. All substantive amendments to this Title, after adoption by the Tribal Council, must be submitted to and approved by the Secretary of the Interior before becoming effective. Minor technical amendments may be made by the Tribal Council without approval of the Secretary of the Interior.
- B. (Reserved).