



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

**APPROVAL OF**

**SHAKOPEE MDEWAKANTON SIOUX COMMUNITY  
BUSINESS LEASING ORDINANCE**

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The attached Shakopee Mdewakanton Sioux Community Business Leasing Ordinance, submitted by the Shakopee Mdewakanton Sioux Community (listed in the Federal Register, 80 FR 1946 (Jan. 14, 2015) as the Shakopee Mdewakanton Sioux Community of Minnesota), and prepared in accordance with the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012, consisting of 24 pages (including introductory pages) and adopted by the Shakopee Mdewakanton Sioux Community General Council on May 12, 2015, is hereby approved.

Dated: **MAR 03 2016**

  
Assistant Secretary – Indian Affairs  
United States Department of the Interior

Pursuant to the authority delegated by 209 DM 8

# SHAKOPEE MDEWAKANTON SIOUX COMMUNITY

## BUSINESS LEASING ORDINANCE

Adopted by General Council  
Resolution No. 05-12-15-008, amended by  
Business Council Resolution No. 10-14-15-01

SHAKOPEE MDEWAKANTON SIOUX COMMUNITY  
BUSINESS LEASING ORDINANCE

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## **CHAPTER 1 INTRODUCTION**

**1.1 Authority and Delegation.** This Business Leasing Ordinance is enacted under the inherent sovereign authority of the Shakopee Mdewakanton Sioux Community General Council, as the governing body of the Shakopee Mdewakanton Sioux Community, and pursuant to Article V, §1(h) of the Constitution of the Shakopee Mdewakanton Sioux Community and as recognized by the United States under Section 16 of the Indian Reorganization Act of 1934, 25 U.S.C. § 476. Article V, §1(c) of the Constitution provides that the General Council shall “approve or veto any sale, disposition, lease or encumbrance of community lands, interest in lands, or other community assets.” The General Council retains this authority and must approve all proposed leasing projects. If the General Council approves a leasing project, it shall delegate the necessary authority to the Business Council to negotiate and execute all documents and agreements required to consummate the leasing arrangement, provided that the Business Council conducts appropriate due diligence, complies with any limiting parameters set forth by the General Council, and the lease satisfies the review requirements delineated in this Ordinance. The General Council hereby delegates to the Business Council all powers necessary and proper to enforce the lease terms, laws, ordinances, regulations, rules, policies, and covenants and all powers necessary to perform the duties and responsibilities of the Lessor on behalf of the Tribe.

**1.2 Scope.** The scope of this Ordinance shall be limited to Business Site Leases approved pursuant to the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012, H.R. 205, 112 Cong. (2012)(“HEARTH Act”), which governs leases of Indian trust or restricted lands, and to all actions and decisions taken in connection with those leases. This Ordinance shall apply only to the leasing of Tribal trust or restricted lands and shall not apply to individually-owned Indian lands or tribal fee lands. This shall not affect the terms and conditions of existing leases.

**1.3 Purpose.** The purposes of this Ordinance are to:

- (a) Implement the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012 (“HEARTH Act”), H.R. 205, 112<sup>th</sup> Cong. (2012), and this Ordinance;
- (b) Promote self-determination, encourage economic self-sufficiency, and increase business activity and employment on the lands of the Shakopee Mdewakanton Sioux Community (“Tribe”);
- (c) Recognize the authority of the Tribe to review, approve, issue, and enforce Business Site Leases and establish streamlined procedures for environmental review;
- (d) Provide standards and procedures for leasing trust and restricted Indian lands subject only to approval of the Tribe in accordance with the HEARTH Act.

**1.4 Effective Date and Amendments.** This Ordinance shall take effect upon its adoption by the General Council and approval by the Secretary of the Interior. This Ordinance may be

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

**1.5 Amend and Supersedes Inconsistent Laws.** This Ordinance shall amend and supersede inconsistent tribal laws which were enacted prior to the passage and approval of this Ordinance.

**1.6 Sovereign Immunity.** Nothing in this Ordinance shall be deemed to waive the sovereign immunity of the Tribe or any of its enterprises, authorities, officers, agents, or employees. However, in approving leasing projects, the General Council may exercise its inherent authority to authorize any such waiver on a case-by-case basis.

## **CHAPTER 2 DEFINITIONS**

**2.1 Definitions.** As used in this Ordinance, the terms set forth below shall have the following meanings.

- (a) "*Appeal bond*" means a bond posted when filing an appeal.
- (b) "*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, which is approved by the General Council and executed by the Business Council.
- (c) "*Best interest of the Tribe*" means the balance of interests in order to attain the highest economic income, provide incentives to increase economic development, preserve and enhance the value of Tribal trust or restricted land, increase employment and jobs on Tribal trust or restricted land, and preserve the sovereignty of the Tribe.
- (d) "*BIA*" means the Bureau of Indian Affairs within the Department of the Interior or the Secretary of the Interior.
- (e) "*Business Council*" means the Shakopee Mdewakanton Sioux Community Business Council, which is the governmental entity, or its designee, that has statutory authority pursuant to this Ordinance to perform the duties and responsibilities of the Lessor on behalf of the Tribe.
- (f) "*Business site lease*" means a lease of Tribal land for economic development purposes.
- (g) "*Cancellation*" means Tribal action to end a lease.

- (h) “*Change in Land Use*” means the change from an existing land use, such as residential to non-residential, commercial to industrial, or one industrial use to another that significantly differs from the former use.
- (i) “*Constructive notice*” means notice:
  - 1) Posted at the SMSC Community Center, or the United States Post Office; and
  - 2) Published in the local newspaper nearest to the affected land or announced on a local radio station.
- (j) “*Construction plan*” means a plan that describes the type and location of any improvements the lessee intends to install including a schedule showing the tentative commencement and completion dates for installation of those improvements.
- (k) “*Court of competent jurisdiction*” means the SMSC Tribal Court or a Federal court with proper jurisdiction.
- (l) “*Development period*” means the time period from when a lease is executed to when improvements are expected to be substantially completed.
- (m) “*Environmental Review Process*” means the process for conducting tribal environmental review to assess the environmental impacts of a proposed development or project.
- (n) “*Environmental Reviewer*” means an official from the Tribe’s Land Department or as otherwise designated by the Business Council who shall conduct the Environmental Review Process.
- (o) “*Executing Official*” means the Chairman of the Shakopee Mdewakanton Sioux Community, if properly authorized, who shall execute all Business Site Leases on behalf of the Tribe and take all necessary and proper action on leases and subleases including amendments, modification, assignments, and cancellations of lease and subleases.
- (p) “*Fair Annual Lease Value*” means the most probable dollar amount a property should bring in a competitive and open market reflecting all conditions and restrictions of the specified lease agreement including term, rental adjustment and revaluation, permitted uses, use restrictions, and expense obligations; the Lessee and Lessor each acting prudently and knowledgeable, and assuming consummation of a lease contract as of a specified date and the passing of the leasehold from Lessor to Lessee under conditions whereby:

- 1) Lessee and Lessor are typically motivated;
  - 2) Both parties are well-informed or well-advised, and acting in what they consider their best interests;
  - 3) A reasonable time is allowed for exposure in the open market; and
  - 4) The rent payment is made in terms of cash in United States dollars, and is expressed as an amount per time period consistent with the payment schedule of the lease contract; and the rental amount represents the normal consideration for the property leased unaffected by special fees or concessions granted by anyone associated with the transaction.
- (q) "*Fee interest*" means an interest in land that is held in unrestricted fee status, and is thus freely alienable by the fee owner.
- (r) "*General Council*" means the Shakopee Mdewakanton Sioux Community General Council, the governing body of the Tribe.
- (s) "*HEARTH Act*" means Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012, Public Law 112-151 July 20, 2012, codified as 25 U.S.C. §415.
- (t) "*Holdover*" means circumstances in which a lessee remains in possession of the leased premises after the lease term expires.
- (u) "*Improvements*" shall have the same meaning as "permanent improvements" under this Ordinance.
- (v) "*Lease*" means a written contract between the Tribe and a lessee, whereby the lessee has a right to possess Indian land, for a specified purpose and duration. The lessee's right to possess will limit the Tribe's right to possess the leased premises only to the extent provided in the lease.
- (w) "*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.
- (x) "*Leasing Decision*" in the context of the Environmental Review Process means the following types of lease transactions that will be acted on by the Business Council: lease issuance, lease amendments or modification, subleasing, and lease assignments.
- (y) "*Lessee*" means a person or entity that has acquired a legal right to possess Tribal land by a lease under this Ordinance.

- (z) “*Lessor*” means the Tribe, who holds property title and conveys the right to use and occupy the property under a lease agreement.
- (aa) “*LTRO*” means the Land Titles and Records Office of the BIA.
- (bb) “*Mortgagee*” means the holder of a leasehold mortgage.
- (cc) “*Nominal rental or nominal compensation*” means a rental amount that is so insignificant that it bears no relationship to the value of the leased property.
- (dd) “*Notice of violation*” means a letter notifying the lessee of a violation of the lease and providing the lessee with a specified time to show-cause why the lease should not be cancelled for the violation.
- (ee) “*Performance bond*” means security for the performance of certain lease obligations, as furnished by the lessee, or a guaranty of such performance as furnished by a third-party surety.
- (ff) “*Permanent improvements*” means buildings, other structures, and associated infrastructure attached to the leased premises.
- (gg) “*Permit*” means a written, non-assignable agreement between the Tribe and the permittee, and the permittee has a temporary, revocable privilege to use Tribal land for a specified purpose.
- (hh) “*Permittee*” means a person or entity that has acquired a privilege to use Tribal land by a permit.
- (ii) “*Project*” means any economic development activity occurring on Indian lands.
- (jj) “*Public*” for purposes of Chapter 8 of this Ordinance means the enrolled members of the Shakopee Mdewakanton Sioux Community, individuals who live or work on Tribal trust or restricted lands, and/or business entities or other institutions that are engaged in programs or activities on Tribal trust or restricted lands that have a definable, concrete interest that may reasonably be affected by a proposed Business Site Lease.
- (kk) “*Significant effect on the environment*” means a substantial, or potentially substantial, adverse change in the environment, including land, air, water, minerals, flora, fauna, ambient noise, cultural areas and objects of historic, cultural, or aesthetic significance.
- (ll) “*Space lease*” means a lease of space within existing facilities on tribal land that is not already leased, i.e. not subleases.

- (mm) “*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, which is approved by the General Council.
- (nn) “*Surety*” means one who guarantees the performance of another.
- (oo) “*Trespass*” means any unauthorized occupancy, use of, entry, or action on any Tribal land.
- (pp) “*Tribal land*” means any tract, or interest therein, in which the surface estate is owned by the Tribe in trust or restricted status, and includes such lands reserved for BIA administrative purposes. The term also includes the surface estate of lands held by the United States in trust or restricted status for the Tribe under Section 17 of the Act of June 18, 1934 (48 Stat. 988; 25 U.S.C. 477).
- (qq) “*Tribe*” means the Shakopee Mdewakanton Sioux Community, a federally recognized Indian tribe.
- (rr) “*Trust or restricted land*” means any tract, or interest therein, held in trust or restricted status for the Tribe and/or is inalienable absent the approval of the United States.
- (ss) “*Trust or restricted status*” means that the United States holds title to the tract or interest in trust for the benefit of the Tribe.
- (tt) “*USPAP*” means the Uniform Standards of Professional Appraisal Practice promulgated by the Appraisal Standards Board of the Appraisal Foundation to establish requirements and procedures for professional real property appraisal practice.
- (uu) “*Violation*” means a failure to take an action, including payment of compensation, when required by the lease, or otherwise failure to comply with a term of the lease. This definition applies for purposes of enforcement of a lease under this part no matter how a particular lease defines “violation” or “default.”

## **CHAPTER 3 LEASING PROCESS**

**3.1 Business Site Lease Application Packet.** A prospective lessee must prepare and submit a Business Site Lease Application Packet to the Business Council including the following documents:

- (a) A completed Business Site Lease Application on a form supplied by the Business Council;
- (b) A site survey and legal description, if applicable;
- (c) A proposed lease on a form supplied by the Business Council that conforms to the requirements of this Ordinance;
- (d) Evidence and analysis that proves that the lease is in compliance with tribal environmental laws, zoning laws, cultural preservation laws, and tribal building, fire, and mechanical codes; and
- (e) Other relevant documents requested by the Business Council including but not limited to the following:
  - 1) 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 Business Council 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;
  - 2) 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 Business Council 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 leased premises;
  - 3) If new improvements are to be constructed by the lessee on the leased premises, the Business Council may, in addition to all other requirements, request that the lessee demonstrate that: (1) it has the ability to finance the



construction; and (2) it has the ability to successfully design and construct the improvements.

- (f) If a Community member or the spouse, parent, child, or sibling of a Community member has a financial, proprietary, or commercial relationship with a proposed lessee, the proposed lessee must disclose the existence and extent of such a relationship in its Business Site Lease Application Packet.
- (g) The Business Council, at its discretion may waive the submission of a formal Business Site Lease Application Packet, provided that the prospective lessee furnishes the requisite information described in this subpart.

**3.2 Initial Business Council Review.** The Business Council shall review a completed Business Site Lease Application Packet and decide whether to: deny the lease; request modification of the proposed documents; request further information; or submit the proposed lease to the General Council for consideration. If a member of the Business Council has a real or perceived conflict of interest, including the type of relationship discussed in Section 3.1(f) of this Chapter, the Business Council member shall be prohibited from participating directly or indirectly in the review, consideration, or approval of the proposed Business Site Lease.

**3.3 General Council Approval.** The Business Council shall submit satisfactory proposed leases to the General Council for consideration. The proposed lease and details related to the proposed project, including any disclosures made pursuant to Section 3.1(f) of this Chapter, shall be presented to the General Council at a duly called General Council meeting. The General Council shall decide whether to approve the project or decline the project pursuant to its constitutional authority. The General Council may approve proposed leasing projects by a majority vote at a duly called General Council meeting at which a quorum is present. General Council approval shall be through written resolution delegating such necessary authority to the Business Council to negotiate and execute all documents and agreements required to consummate the leasing arrangement, provided that the Business Council conducts appropriate due diligence, complies with any limiting parameters set forth by the General Council, and the lease satisfies the review requirements delineated in this Ordinance. If a Community member or the spouse, parent, child, or sibling of a Community member has a financial, proprietary, or commercial relationship with a proposed lessee, the General Council resolution approving such a lease shall include the following language: “the General Council has specifically considered the existence of a financial, proprietary, or commercial relationship between the lessee and a Community member or the spouse, parent, child, or sibling of a Community member, and the General Council concludes that the leasing arrangement is in the best interest of the Tribe.” A Business Site Lease may not be executed in the absence of General Council approval of the proposed project.

**3.4 Business Council Negotiations.** Pursuant to and in compliance with the requirements of the General Council resolution approving the project, the Business Council may enter into further negotiations with a prospective lessee to finalize the leasing arrangement. A prospective



lessee must directly negotiate with the Business Council, or an authorized agent of the Business Council, for a Business Site Lease.

**3.5 Review Procedures.** Before a lease can be executed by the Business Council, it must be referred to:

- (a) The Environmental Reviewer to complete the Environmental Review Process as set out in Chapter 8 of this Ordinance;
- (b) The Land Department to review the project's zoning compliance and building, fire, and mechanical code compliance;
- (c) The Cultural Resources Department to review the project's compliance with tribal cultural preservation law; and
- (d) The Legal Department for legal compliance, including but not limited to ensuring that the lease complies with any limiting parameters set forth by the General Council.

**3.6 Business Council Execution of Lease.** The Business Council shall review the final leasing documents and may execute the Business Site Lease if:

- (a) the Business Council determines that the lease is in the best interest of the Tribe;
- (b) the lease complies with any limiting parameters set forth by the General Council; and
- (c) the reviews performed pursuant to Section 3.5 of this Chapter indicate that entering into the lease will not result in any violation of applicable law or regulations.

## **CHAPTER 4 BUSINESS SITE LEASE REQUIREMENTS**

**4.1 Terms and Conditions.** Leases shall be governed by the terms and conditions set forth in the Business Site Lease agreement on a form approved by the Business Council. The standard terms and conditions may be modified only with the approval of the Business Council. The Lessee is responsible for understanding these terms and conditions.

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

**4.3 Contents of Business Site Leases.** All Business Site Leases shall contain, at a minimum, the following provisions on a form approved by the Business Council:

- (a) The BIA tract number or parcel number and physical address of the 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, including any options for renewal;
- (e) The effective date of the lease;
- (f) An indemnification and hold-harmless provision in favor of the United States and the Tribe, as lessor;
- (g) Payment requirements and how late payments will be handled, including interest and penalties, if any;
- (h) 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, owning, operating, maintaining, and managing those improvements and, if applicable, each parties' responsibility for the removal of improvements at the end of the Lease;
- (i) If improvements are to be built, applicable due diligence requirements;
- (j) Insurance and bonding requirements as provided for in this Ordinance;
- (k) The lessee's restoration and/or reclamation implementation plan at the expiration of the lease, if applicable;
- (l) The action required, such as a mitigation plan, as a result of the Environmental Review Process of the proposed lease and associated improvements, if applicable;
- (m) If applicable, the timing and process for lease rate reviews or adjustments, including effective dates of any adjustments;
- (n) Unless the lease provides otherwise, all disputes arising from a Business Site Lease should be addressed as provided in Chapter 7 of this Ordinance; and
- (o) Unless the Business Site Lease states otherwise, a lease may include, consistent with tribal law, a provision to give Indian preference in hiring for employment purposes.

**4.4 Land Descriptions.** Business Site Leases shall contain adequate site surveys and legal descriptions based on metes and bounds, rectangular or lot and block systems that meet the recording requirements of the BIA's Land Title and Records Office ("LTRO"). Space leases shall contain adequate descriptions of the location and square footage of the space being leased and may include renderings, architectural drawings, or other schematics to illustrate the location.

**4.5 Appraisal; Local Studies.** The Fair Annual Lease Value shall be determined by an appraisal or equivalent procedure performed by the Business Council, 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 Business Council and deemed to be in the best interest of the Tribe. An appraisal log reporting the methods of appraisal and value of trust or restricted land shall be attached to every Business Site Lease. Alternatively, the fair annual lease value shall be determined by an appraisal performed by a licensed appraiser utilizing the Uniform Standards of Professional Appraisal Practice or commonly accepted method of appraisal. An appraisal log describing the method of appraisal and value of trust or restricted land shall be attached to every Business Site Lease.

**4.6 Fair Annual Lease Value.**

- (a) No lease shall be approved for less than the present Fair Annual Lease Value as set forth in the appraisal, except as follows:
  - 1) The proposed project related to the lease is in the Development Period;
  - 2) The Tribe is providing an incentive for the business to locate on Tribal trust or restricted lands, and must provide lease concessions, lease improvement credits, and lease abatements to attract such businesses; and
  - 3) The General Council determines such action is in the best interest of the Tribe.
- (b) A lease may be structured at a flat lease rate.
- (c) A lease may be structured at a flat lease rate plus a percentage of gross receipts, if the lessee is a business located in a shopping center or mall, or the lessee generates over One Million Dollars (\$1,000,000.00) annually in gross receipts.
- (d) A lease may be structured based on a percentage of gross receipts, or based on a market indicator.
- (e) A lease must specify the amount of rent and the dates when payments are due.
- (f) A lease shall state what form of payment is acceptable.

- (g) A lease must specify that the lessee shall make payments directly to the Tribe.
- (h) Unless otherwise provided in the lease, payments may not be made or accepted more than one year in advance of the due date.
- (i) The lease may provide for a periodic review of the rental rates included in the lease. Such review may give consideration to the economic conditions, exclusive of improvement or development required by the contract or the contribution values of such improvements.
- (j) Leases for terms of less than five years may be structured to allow for lease rate adjustments. The lease shall specify how adjustments will be made, who will make such adjustments, when adjustments will go into effect, and how disputes shall be resolved.
- (k) Leases may be amended to allow for lease rate adjustments.
- (l) The Business Council shall keep written records of the basis used in determining the fair annual lease value, as well as the basis for adjustments. These records shall be presented to the lessee for its review and acceptance or non-acceptance and included in any lease file.

**4.7 Environmental Review Process.** Unless exempted from this requirement under this Ordinance, the Business Council shall not execute a Business Site Lease until the proposed lease has completed the Environmental Review Process under Chapter 8 of this Ordinance. Leases approved and executed without compliance with this section shall be null and void.

**4.8 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 insurance may include, but is not limited to, property, liability or casualty insurance or other insurance as specified in the Business Site Lease.
- (c) The Tribe and the United States must be identified as additional insured parties.
- (d) The Business Council may waive this requirement if the waiver is in the best interest of the Tribe. The waiver may be revoked at any time if the waiver ceases to be in the Tribe's best interest.

**4.9 Performance Bond.**

- (a) Unless waived in writing by the Business Council in accordance with this Ordinance, the lessee shall obtain a satisfactory performance bond in an amount

sufficient to secure the contractual obligations of the lease. Such bond shall be for the purpose of securing the lessee's contractual obligations under the Business Site Lease and may guarantee:

- 1) The annual lease payment;
  - 2) The estimated development cost of improvements; and
  - 3) Any additional amount necessary to ensure compliance with the lease.
- (b) The Business Council may waive the bond requirement, or reduce the amount, if doing so is in the best interest of the Tribe. The Business Council shall maintain written records of waivers and reductions.
- (c) The performance bond may be in one of the following forms:
- 1) Certificates of deposit issued by a federally insured financial institution authorized to do business in the United States;
  - 2) Irrevocable letters of credit issued by a federally insured financial institution authorized to do business in the United States;
  - 3) Negotiable 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.

**4.10 Improvements.** All Business Site Leases shall require the lessee to exercise due diligence and best efforts to complete construction of any improvements within the schedule specified in the Business Site Lease.

- (a) Lessee, at lessee's expense or as otherwise provided in the Business Site Lease, may construct improvements under a Business Site Lease if the lease specifies, or provides for the development of:
- 1) A construction plan that describes the type and location of any improvements to be built by the lessee; and
  - 2) A construction schedule that describes the commencement and completion dates of any improvements to be built by the lessee.
- (b) Lessee shall provide the Tribe written justification as to the nature of any delay, the anticipated date of construction of the improvements, and evidence of progress toward commencement of construction.

- (c) When requested by the Tribe or otherwise required in the Business Site Lease, lessee shall further provide the Tribe, in writing, an updated schedule for construction.
- (d) Failure of the Lessee to comply with these requirements will be deemed a violation of the Business Site Lease and may lead to cancellation of the Business Site Lease pursuant to Chapter Six of this Ordinance.
- (e) Improvements to the premises shall become the property of the Tribe unless otherwise provided for in the Business Site Lease. If improvements will be removed, the Business Site Lease may specify the maximum time allowed for such removal.
- (f) A lessee may develop equity value in the improvements, and sell its interest in the Business Site Lease based on the equity value. The Tribe has a right of first refusal to purchase the interest.
- (g) The Business Site Lease may provide that at expiration, cancellation or termination of the Business Site Lease, the lessor shall purchase improvements to the premises at fair market value.
- (h) Improvements may be subject to taxation by the Tribe.

**4.11 Subleases, Assignments, Amendments and Leasehold Mortgages.**

- (a) Subleases, assignments, amendments or leasehold mortgages of any Business Site Lease shall be subject to the approval of the General Council as stated in Section 3.3 of this Ordinance.
- (b) Subleases, assignments, amendments or leasehold mortgages shall be executed by the Business Council pursuant to Sections 3.6 of this Ordinance and the lessee.
- (c) The lease may authorize leasehold mortgages to the leasehold interest for the purpose of financing to develop and improve the premises subject to approval by the General Council.

**4.12 Space Leases.** Leases of space within existing facilities on tribal land (“space leases”) shall be reviewed and approved pursuant to this Ordinance.

**4.13 Record Keeping.**

- (a) The Business Council is responsible for maintaining all records of all Business Site Leases and for disseminating recorded Lease Documents to the appropriate tribal and federal agencies. It shall insure that each lease/lease document has an

effective date included in its provisions. The Business Council shall record Business Site Leases, subleases, assignments, amendments, encumbrances, renewals, modifications and cancellations with:

Land Title and Records Office  
Midwest Regional Office  
Bureau of Indian Affairs  
Department of the Interior  
916 W. Lakeshore Drive  
Ashland, WI 54806

- (b) The Business Council shall send an original and two copies of Business Site Leases and all amendments and renewals to the Regional Director, Midwest Regional Office, Bureau of Indian Affairs, 5600 W. American Blvd., Suite 500, Bloomington, MN 55437 or the BIA office having jurisdiction over the Tribe's leasing activities.
- (c) The Business Council shall send a copy of this Ordinance and an original and two copies of an approved and executed lease that allows for lease payments to be made directly to the Tribe, to the Regional Director, Midwest Regional Agency, Bureau of Indian Affairs or the BIA office having jurisdiction over the Tribe's leasing activities.
- (d) Records of activities taken pursuant to this Ordinance are the property of the Tribe. Records compiled, developed, or received by the Business Council in the course of business with the Secretary are the property of the Tribe. Records compiled, developed, or received by the BIA pursuant to this Ordinance are the property of the United States.

## **CHAPTER 5**

### **BUSINESS LEASE MANAGEMENT**

#### **5.1 Lease Management.**

- (a) Except where required otherwise by agreement or applicable law, the Business Council or its designee shall manage all Business Site Leases pursuant to these regulations. The law that will apply to all leases authorized under this Ordinance will be, in the following order: federal law, Tribal law, (including but not limited to this Ordinance) and state laws if applicable.
- (b) The Business Council shall institute, with the approval of the General Council, a business site leasing management plan or policy that employs real estate

management practices, addresses accounting, collections, monitoring, enforcement, relief and remedies that are consistent with this Ordinance.

**5.2 Administrative Fees.** The Business Council may charge administrative fees for costs associated with issuing a lease, sublease, assignment, amendment, mortgage or other administrative transaction.

## **CHAPTER 6 ENFORCEMENT**

**6.1 Generally.** The Business Council 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 premises at a reasonable time, with or without notice, assess penalties, and assess late payments.

### **6.2 Defaults.**

- (a) If the Business Council determines the lessee is in default, the Business Council shall send the lessee a written notice of default within five (5) business days of the determination. The notice of default may be provided by certified mail, return receipt requested.
- (b) Within 10 days of the mailing, the lessee shall:
  - 1) Cure the default and notify the Business Council in writing that the default has been cured.
  - 2) Dispute the Business Council's determination that the lease is in default and explain why the lease should not be canceled; or
  - 3) Request additional time to cure the default.

### **6.3 Remedies.**

- (a) If the lessee fails to cure the default within the prescribed period, the Business Council may:
  - 1) Cancel the lease pursuant to these regulations;
  - 2) Grant an extension of time to cure the default;
  - 3) Pursue or negotiate other remedies, including execution on bonds or collection of insurance proceeds;



- 4) Any combination of remedies listed above; or
  - 5) Any other remedy set forth in the business site lease management plan or policy.
- (b) If the Business Council cancels a Business Site Lease, the Business Council shall send the lessee a cancellation letter within a reasonable time period. The cancellation letter may be sent to the lessee by certified mail, return receipt requested. The cancellation letter shall:
- 1) Explain the grounds for cancellation;
  - 2) Notify the lessee of unpaid amounts, interest charges, or late payment penalties due under the lease;
  - 3) Notify the lessee of its right to appeal; and
  - 4) Order the lessee to vacate the premises within 30 days of mailing of receipt of the cancellation letter, if an appeal is not filed by that time.
- (c) A cancellation shall become effective 31 days after mailing the 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.
- (d) If the Business Council 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. The grant of an extension of time does not waive any right or remedy available to the Business Council.

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

**6.5 Harmful or Threatening Activities.** If a lessee or other party causes or threatens to cause immediate and significant harm to the premise, or undertakes criminal activity thereon, the Business Council may take appropriate emergency action.

**6.6 Holdover.** If a lessee remains in possession after the expiration or cancellation of a lease, the Business Council shall treat such occupation as a trespass. The Business Council shall take action under Chapter 10 of the SMSC Consolidated Land Management Ordinance to recover possession and pursue additional remedies. Tribal Court filings shall be pursuant to Tribal laws,

or alternatively, the Business Council may make a written request sent by certified mail to the BIA for resolution under any applicable federal laws.

**6.7 Trespass.** If a person occupies the premises without the Tribe's approval, the Tribe may pursue appropriate remedies, including filing an action to regain possession of the property under Chapter 10 of the SMSC Consolidated Land Management Ordinance.

## **CHAPTER 7 APPEALS**

**7.1 Appeals.** The lessee or interested party may appeal a leasing determination within ten (10) days of the determination. Appeals may be filed with the Tribal Court or other hearing body as set forth in the business site lease management plan or policy. Such appeals shall be effectuated by: (1) a written notice setting forth the basis for the appeal; (2) a short statement indicating the nature and circumstances of the appeal; and (3) a short statement indicating the remedy being sought.

**7.2 Scope and Standard of Review.** The Tribal Court or other hearing body shall conduct a limited review to determine whether the determination was arbitrary, capricious, or an abuse of discretion; not supported by substantial evidence in the record; or otherwise, not in accordance with the law. The decision of the Tribal Court or other hearing body shall be final.

## **CHAPTER 8 ENVIRONMENTAL REVIEW PROCESS**

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

### **8.2 Threshold Determination.**

- (a) **Lessee Not Subject to Environmental Review Process:** If the Environmental Reviewer determines that the leasing decision by its nature would not have a significant effect on the environment, the leasing decision is exempt from additional requirements of the Environmental Review Process, subject to the environmental record requirements of applicable Tribal environmental regulations.
- (b) **Lessee Subject to Environmental Review Process:** If the Environmental Reviewer determines that the leasing decision might have a significant effect on the environment, the lessee must fulfill the requirements of the Environmental Review Process. The effect on the environment must be direct, such as land clearing, new

building construction, or discharge of emission or effluent associated with the project.

- (c) **Exemption for Leases in Gaming Facility:** Leasing decisions involving the proposed use of space within the footprint of a Gaming Facility shall be exempt from the Environmental Review Process.

### **8.3 Action on Leasing Decision Subject to Completion of Environmental Review**

**Process.** If the Environmental Reviewer determines that the leasing decision is subject to the Environmental Review Process, the Business Council may not approve the lease until the Environmental Reviewer conducts the Environmental Review Process in accordance with applicable Tribal environmental regulations.

### **8.4 Environmental Review Process.**

- (a) Unless an exemption applies under this Ordinance or a lease is otherwise not subject to the Environmental Review Process, then, before the execution of any Business Site Lease, the Business Council shall cause to be prepared a comprehensive and adequate Tribal Environmental Impact Report (“TEIR”), analyzing the potentially significant effects of the proposed action on the environment. Provided, however, that information or data which is relevant to such a TEIR and is a matter of public record or is generally available to the public need not be repeated in its entirety in the TEIR, but may be specifically cited as the source for conclusions stated therein. Further such information or data shall be briefly described, that its relationship to the TEIR shall be indicated, and that the source shall be reasonably available for inspection at a public place or public building. The TEIR shall provide detailed information about the significant effect(s) on the environment that the lease is likely to have. The TEIR shall include a detailed statement setting forth the following:
  - 1) A description of the physical conditions in the vicinity of the project (the environmental setting and existing baseline conditions), as they exist at the time the notice of preparation is issued;
  - 2) All significant effects on the environment of 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.

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

#### **8.5 Notice of Completion of Draft TEIR.**

- (a) 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 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 TEIR are available; and
  - 4) Notice that the Tribe will receive comments on the draft TEIR for a period of 30 days.
- (b) To satisfy the requirement for public notice and opportunity to comment under the HEARTH Act, the Notice of Completion shall be posted on the Tribal website and the Business Council will provide public notice by at least one of the procedures specified below:
  - 1) Publication of the Environmental Reviewer's draft TEIR in a newspaper of general circulation in the area affected by the proposed Business Site Lease, with notice to the public of the opportunity to comment on any Significant Effect on the Environment of the proposed action; or
  - 2) Posting of the Tribe's draft TEIR in the offices of the Tribe and the Environmental Reviewer's with notice to the public of the opportunity to comment on any Significant Effect on the Environment of the proposed action.

**8.6 Response to Public Comments.** After the thirty (30) day comment period has ended, the Business Council will review all comments received from the public. Prior to the approval of the lease, the Business Council 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. The Tribe's written

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responses will be posted in the offices of the Tribe and a copy shall be mailed directly to the individual or entity that submitted public comments.