



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

**APPROVAL OF**

**CHEYENNE AND ARAPHO TRIBES  
BUSINESS SITE LEASING ORDINANCE**

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The attached Business Site Leasing Ordinance, submitted by the Cheyenne and Arapaho Tribes and prepared in accordance with the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012, consisting of 15 pages and adopted by the Legislature of the Cheyenne and Arapaho Tribes on May 11, 2017, is hereby approved.

Dated: NOV 09 2017

Principal Deputy Assistant Secretary – Indian Affairs  
Exercising Authority of the Assistant Secretary – Indian Affairs  
United States Department of the Interior

Pursuant to the authority delegated by 209 DM 8

**SIXTH LEGISLATURE  
OF THE  
CHEYENNE & ARAPAHO TRIBES  
SPECIAL SESSION  
May 5, 2017  
Concho, OK**

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**RESOLUTION:** A Resolution to Amend the HEARTH Act

**RESOLUTION NO:** 6L-SS-2017-0505-05  
**FORMALLY INTRODUCED:** April 28, 2017  
**LEGISLATOR SPONSOR:** Alan Fletcher, C2  
**LEGISLATOR CO-SPONSOR:** Christine Morton, A2

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**SUBJECT:** A Resolution to amend Legislative Resolution SL-SS-2015-1229-009, titled "A Bill to Adopt the Hearth Act"

**WHEREAS:** The Cheyenne and Arapaho Tribes are a federally recognized Indian tribe organized pursuant to a Constitution approved by tribal membership on April 4, 2006 and approved by the Secretary of the Interior; and

**WHEREAS:** Article VI, Section 5(a) of the Constitution provides that Legislative power shall reside with the Legislature; and

**WHEREAS:** Article VI, Section 5(a) of the Constitution grants the Legislature the "power to make all laws and resolutions in accordance with the Constitution which are necessary and proper for the good of the Tribes"; and

**WHEREAS:** Article VI, Section 5(a) of the Constitution requires "Laws and resolutions which have been enacted shall remain valid until amended or repealed"; and

**WHEREAS:** The Legislature has the Constitutional obligation and public responsibility to the Tribes to oversee the Tribes' operations in order to establish and promote justice, establish guidance and direction for the government and advance the general welfare of the Tribes; and

**WHEREAS:** The Cheyenne and Arapaho Tribes Fifth Legislature enacted Resolution 5L-SS-2015-1229-009, titled "A Bill to Adopt the Hearth Act," in order to: give the Tribes an alternative to land leasing for surface leases, permitting the Tribes to enter a surface lease of tribal trust property or restricted land without further approval of the Secretary of the Interior; exercise the inherent sovereignty of the Tribes over tribal trust or restricted lands; and to implement leasing regulations specifically meeting the needs of the Tribes; and

**WHEREAS:** The federal HEARTH Act, 25 U.S.C. § 415(h), provides that tribes may adopt regulations permitting tribes to approve certain types of leases on tribal lands without requiring further approval of the Secretary of the Department of the Interior, so long as those regulations meet federal guidelines and are approved by the Secretary of the Interior; and

**WHEREAS:** To obtain approval of the Secretary of the Interior for regulations adopted under 25 U.S.C. § 415, tribes must: (1) adopt tribal regulations issued in accordance with 25 U.S.C. § 415(a); (2) submit the regulations for review to the Secretary of the Interior (or the Secretary's delegated official); (3) amend the regulations as required by the Secretary of the



Interior; and (4) submit the final amended regulations to the Secretary of the Interior for final review and approval; and

**WHEREAS:** Resolution 5L-SS-2015-1229-009, titled "A Bill to Adopt the HEARTH Act," created a Business Site Leasing Ordinance to implement the HEARTH Act for commercial leases on tribal lands, which required federal approval, and which was submitted to the Secretary of the Interior for review; and

**WHEREAS:** After review, the Secretary of the Interior, through the Secretary's delegated official, has approved the amendments of Resolution 5L-SS-2015-1229-009 as being compliant with 25 U.S.C. § 415, and has indicated that, once amended, the Resolution is ready to be submitted to the Secretary of the Interior for final review and approval; and

**WHEREAS:** The Cheyenne and Arapaho Tribes Sixth Legislature has determined that, to obtain approval of the Secretary of the Interior as called for in Resolution 5L-SS-2015-1229-009, the Resolution must be amended; and

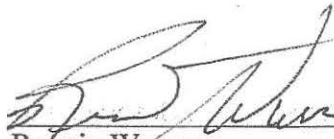
**WHEREAS:** The Cheyenne and Arapaho Tribes Sixth Legislature has determined that amending Resolution 5L-SS-2015-1229-009 to obtain approval of the Secretary of the Interior is necessary and proper and for the good of the Tribes.

**NOW, THEREFORE BE IT RESOLVED,** The Sixth Legislature of the Cheyenne and Arapaho Tribes hereby amends Resolution 5L-SS-2015-1229-009, which is hereby replaced in its entirety with the amended Business Site Leasing Ordinance, attached and incorporated hereto.

**BE IT FURTHER RESOLVED,** that, upon its adoption, this Ordinance shall be submitted to the Secretary of the Interior for final review and approval as required by 25 U.S.C. § 415.

**BE IT FURTHER RESOLVED,** that this Ordinance shall take effect upon its adoption by the Legislative Branch, once it is signed by the Governor and approved by the Secretary of the Interior.

**BE IT FURTHER RESOLVED,** that this Ordinance may be amended by a majority vote of the Legislature at a duly called Legislative meeting, and that any such amendments to this Ordinance must be submitted and approved by the Secretary of the Interior.

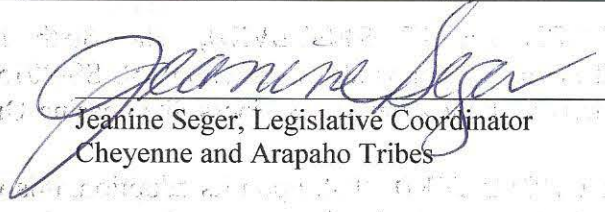
  
Reggie Wassana,  
Speaker of the Sixth Legislature  
Cheyenne and Arapaho Tribes

**ATTEST:**

I, Jeanine Seger, hereby certify that the foregoing is a true and correct copy of Resolution No. 6L-SS-2017-0505-05 which was passed by the Legislature of the Cheyenne and Arapaho Tribes in the Sixth Legislature Special Session, by a roll call vote on May 5, 2017, by a vote of - 7 - for, - 2 - against, - 0 - abstaining, and - 1 - absent.

**VOTE RECORD:**

DISTRICT	LEGISLATOR	YES	NO	ABSTAIN	ABSENT
C1	Burl Buffalomeat	XX			
C2	Alan Fletcher	XX			
C3	Reggie Wassana	XX			
C4	Kyle Orange				XX
A1	Eugene Mosqueda		XX		
A2	Christine Morton	XX			
A3	Patrick Spottedwolf	XX			
A4	Winslow Sankey		XX		
<b>TOTAL</b>		7	2		1
<b>Passed ( XX ) Fail ( ) Tabled ( ) Allowed to Die ( )</b>					

  
 Jeanine Seger, Legislative Coordinator  
 Cheyenne and Arapaho Tribes


Resolution No. 6L-SS-2017-0505-05 was received by the Governor's office of the Cheyenne & Arapaho Tribes on the 8 day of May, 2017 @ 4:32 O'clock pursuant to 7 Article VI of the Constitution and will become effective 30 days after signature of the Governor or the Legislature's veto override or as otherwise provided by law unless repealed by Tribal Council.

**ATTEST:**

{ ☒ } APPROVED

{ ☐ } VETOED: Attachment \_\_\_\_; Governor's written explanation of any objections.

On the 11 day of May, 2017

  
 Eddie Hamilton, Governor  
 Cheyenne and Arapaho Tribes

**Veto Override:**

I, \_\_\_\_\_, hereby certify that the foregoing is a true and correct copy of Resolution No. \_\_\_\_\_ which was passed by the Legislature of the Cheyenne and Arapaho Tribes in the Sixth Legislature Special Session, by a roll call vote on the \_\_\_\_ day of \_\_\_\_\_, 2017, by a vote of \_\_\_\_ for, \_\_\_\_ against, \_\_\_\_ abstaining, and \_\_\_\_ absent.

**VOTE RECORD:**

DISTRICT	LEGISLATOR	YES	NO	ABSTAIN	ABSENT
C1	Burl Buffalomeat				
C2	Alan Fletcher				
C3	Reggie Wassana				
C4	Kyle Orange				
A1	Eugene Mosqueda				
A2	Christine Morton				
A3	Patrick Spottedwolf				
A4	Winslow Sankey				
	<b>TOTAL</b>				
<b>Pass ( ) Fail ( ) Allow to Die ( )</b>					

\_\_\_\_\_  
Jeanine Seger, Legislative Coordinator  
Cheyenne and Arapaho Tribes

Resolution No. 6L-SS-2017-0505-05 was submitted to the Tribal Council Coordinator of the Cheyenne-Arapaho Tribes on this \_\_\_\_ day of \_\_\_\_\_, 2017, pursuant to Article VI, 7 of the Tribes Constitution and will become effective thirty (30) days after signature by the Governor or thirty (30) days subsequent to a successful veto override, unless otherwise provided by this law or unless repealed by the Tribal Council.

X\_\_\_\_\_  
Coordinator of the Tribal Council  
Cheyenne & Arapaho Tribes

**{ } REQUEST TO REPEAL BY TRIBAL COUNCIL**

Date of Tribal Council Meeting: \_\_\_\_\_

Location: \_\_\_\_\_ Time: \_\_\_\_\_

**Vote Record:**

YES	NO	ABSTAIN	NOT VOTING	TOTAL

{ } REPEALED: Attach signed resolution of Repeal  
{ } FAILED TO REPEAL



**ATTEST:**

{ } REPEALED  
{ } EFFECTIVE

On the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

Resolution No. 6L-SS-2017-0505-05 was submitted to the Office of Records Management of the Cheyenne and Arapaho Tribes on the \_\_\_\_\_ day of \_\_\_\_\_, 2017 at \_\_\_\_\_ o'clock, pursuant to Article VI, Section 7(v), of the Tribes Constitution and shall be compiled into a comprehensive Code in an orderly manner that shall be published annually.

X

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Office of Records Management

**Cheyenne and Arapaho Tribes**  
**BUSINESS SITE LEASING ORDINANCE**

**CHAPTER ONE**  
**INTRODUCTION**

**SECTION:**

**1.1 Authority and Delegation.** This Ordinance is enacted by the Legislative Branch of the Cheyenne and Arapaho Tribes pursuant to the powers vested to it under Article VI, Section 5(a) and (c) of the Constitution of the Cheyenne and Arapaho Tribes, ratified April 4, 2006, as may be amended from time to time ("Constitution").

**1.2 Scope.** The scope of application of this Ordinance shall be limited to all Business Site Leases approved pursuant to this Ordinance, and to all actions and decisions taken in connection with those Leases. Nothing herein shall be construed to affect the terms and conditions of existing Leases.

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

- (a) Recognize the authority of the Cheyenne and Arapaho Tribes ("Tribes") to issue, review, approve, and enforce Business Site Leases and establish streamlined procedures for environmental review; and
- (b) Promote self-determination, encourage economic self-sufficiency, and increase business activity and employment on lands of the Cheyenne and Arapaho Tribes; and
- (c) Implement the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012, H.R. 205, 112th Cong. (2012).

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

**CHAPTER TWO**  
**DEFINITIONS**

**SECTION:**

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

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

- b) "Best Interest of the Tribes" means the balancing of interests in order to attain the highest economic income, provide incentives to increase economic development, preserve and enhance the value of Tribal Trust Land, increase employment and jobs on the Tribal Trust Land, and preserve the sovereignty of the Tribes as determined by, and in the sole discretion of, the Executive Branch.
- c) "BIA" means the Bureau of Indian Affairs, United States Department of the Interior.
- d) "Business Site Lease(s)" means any "Lease" for a business purpose issued upon Tribal Trust Land under the authority of 25 U.S.C. § 415(h), in accordance with this Business Site Leasing Ordinance.
- e) "Business Site Leasing Procedures" means procedures promulgated under this Ordinance by the Executive Branch, or other entity appointed by the Executive Branch to implement this Ordinance and execute the duties contained therein.
- f) "Change in Land Use" means the change from one use to another that significantly differs from the former use.
- 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 tribal environmental review to assess whether a proposed development or Project as defined under applicable Tribal law or regulations will have a Significant Effect on the Environment.
- i) "Environmental Reviewer" means an official from the Tribes' Department of Environmental Programs or as otherwise designated by the Executive Branch.
- j) "Executive Branch" means the duly elected Governor, Lieutenant Governor, and Executive Departments of the Tribes pursuant to the Constitution, and as such is vested with the authority to perform the duties and responsibilities of the Lessor, and to approve or disapprove leasing transactions, which include but are not limited to: Lease issuance, bond, Lease amendment, Subleasing, Lease Assignment, Leases and Lease terminations. The Executive Branch has the statutory authority to give final approval for all Business Site Leases and has authority to delegate some or all of its statutory authority to tribal agencies on behalf of the Tribes.
- k) "Executing Official" means the Governor of the Tribes (or such other official properly delegated the responsibility by the Executive Branch) to execute all Business Site Leases of the Tribes and take all necessary and proper action on Leases and Subleases including amendments, Assignments and cancellations of Leases and Subleases.
- l) "Fair Market Lease" means the amount of rental income that a leased tract of land would most probably command in an open and competitive market, or as determined by competitive bidding.
- m) "Holdover" means circumstances in which a Lessee remains in possession of the leased premises after the Lease term expires.
- n) "Lease" means a written agreement or contract between the Lessor and a Lessee whereby the Lessee is granted a right to possess Tribal Trust Land for a specified purpose and duration. The Lessee's right to possess will limit the Lessor's right to possess the leased premises only to the extent provided in the Lease.
- o) "Leasehold Mortgage" means a mortgage, deed of trust, or other instrument in which a Lessee pledges the Lessee's leasehold interest as security for a debt or other obligation owed by the Lessee to a lender or other mortgagee.



- p) "Leasing Decision" in the context of the Environmental Review Process means the following type of Lease transactions that will be acted on by the Executive Branch: Lease issuance, Lease amendment, Subleasing, and Lease Assignment.
- q) "Legislative Branch" means the Legislature of the Tribes pursuant to the Constitution.
- r) "Lessee" means a person or entity who has acquired a legal right to possess Tribal Trust Land by a Lease pursuant to this Ordinance.
- s) "Lessor" means the Tribes whose rights are exercised by the Executive Branch (or such other tribal agency properly delegated the responsibility by the Executive Branch).
- t) "LTRO" means the Land Titles and Records Office of the BIA (or of the Tribes if that administrative function has been contracted by the Tribes).
- u) "Project" means any economic development activity occurring on Tribal Trust Land, except in reference to "Indian irrigation projects" in Section 3.3(b)(xiii) of this Ordinance.
- v) "Public" means: (1) tribal members; and (2) a business entity and/or institution, of which a tribal member(s) owns a majority interest, which is located contiguous to the Tribal Trust Land which have definable business or economic interests that reasonably may be affected by the Leasing Decision.
- w) "Significant Effect on the Environment" means a substantial, or potentially substantial, impact in the environment, including land, air, water, minerals, flora, fauna, ambient noise, cultural areas and objects of historic, cultural or aesthetic significance.
- x) "Space Lease" means a lease of space within existing facilities on Tribal Trust Land that is not already leased.
- y) "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.
- z) "Tribes" means the Cheyenne and Arapaho Tribes.
- aa) "Tribal Trust Land" means any tract of land, or interest therein, in which the surface estate is wholly owned by the Tribes and held in Trust or Restricted Status by the United States for the benefit of the Tribes, or a federally chartered tribal corporation.
- bb) "Trust or Restricted Status" means (1) that the United States holds title to the tract or interest in trust for the benefit of the Tribes; or (2) that the Tribes hold title to the tract or interest, but can alienate or encumber it only with the approval of the United States because of limitations in the conveyance instrument under Federal law or limitations in Federal law.

### CHAPTER THREE BUSINESS SITE LEASE REQUIREMENTS

#### SECTION:

**3.1 Terms and Conditions.** Leases shall be governed by the terms and conditions set forth in the Business Site Lease subject to the provisions of this Ordinance. The standard terms and conditions may be modified only with the approval of the Executive Branch. The Lessee is responsible for understanding these terms and conditions within the Lease.

**3.2 Duration and Renewal.** Unless otherwise stated in the Lease, no Lease shall be approved more than 12 months prior to the commencement of the term of the Business Site

Lease. The term shall not be more than 25 years except that any such Lease may include an option to renew for up to two additional terms, each of which may not exceed 25 years. The Executive Branch will not make an approval determination regarding a Lease renewal, unless the Lessee notifies the Executive Branch of the intent to renew, no later than one year before such Lease is due to expire.

**3.3 Obtaining a Business Site Lease.** Information on obtaining a Business Site Lease shall be available from the Executive Branch of the Tribes.

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

- (i) financial statement;
- (ii) site survey and legal description, as required under Section 3.5;
- (iii) tribal environmental review as required pursuant to Chapter Seven; and
- (iv) other documents as may be required by the Executive Branch and pursuant to the Business Site Leasing Procedures.

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

- (i) The tract, location, or parcel of the land being leased;
- (ii) The purpose of the Lease and authorized uses of the leased premises;
- (iii) The parties to the Lease;
- (iv) The term of the Lease;
- (v) The effective date of the Lease;
- (vi) The ownership of permanent improvements and identification of the responsible party for constructing, owning, operating, maintaining, and removing any improvements to the leased premises;
- (vii) Indemnification of United States and Lessor;
- (viii) Payment requirements, including provisions regarding, late payments, penalties, and interest;
- (ix) The dates on which all payments are due;
- (x) Language specifying that that the Lessee shall make payments directly to the Executive Branch;
- (xi) Unless otherwise provided in the Lease, payments may not be made or accepted more than one year in advance of the due date;
- (xii) Due diligence, insurance and bonding requirements as provided in this Section; and



(xiii) If the leased premises are within an Indian irrigation project or drainage district, the Lease must state the following: "If the leased premises are within an Indian irrigation project or drainage district, except as provided by 25 CFR 171, the Lessee must pay all operation and maintenance charges that accrue during the Lease term. The Lessee must pay these amounts to the appropriate office in charge of the irrigation project or drainage district."

(c) The Executive Branch shall ensure that all Leases, Subleases, Assignments, amendments, and renewal notices related to a Lease, Leasehold Mortgages, and Terminations shall be provided to the Secretary of the Interior, or such office delegated authority by the Secretary of the Interior, as required by 25 U.S.C. § 415(h)(6)(A) and for purposes of recording with the LTRO. The Executive Branch shall endeavor to provide such notices within thirty (30) days of the effective date of the instrument or action. Additionally proof of Lease payment made directly to the Tribes shall be provided pursuant to 25 U.S.C. § 415(h)(6)(B).

(d) The Executive Branch is responsible for maintaining all records of all Business Site Leases and for disseminating recorded Lease documents to the Executive Branch, the Tribes' Department of Environmental Programs, and any other tribal department as deemed necessary by the Executive Branch.

(e) Records of activities taken pursuant to this Ordinance are the property of the Tribes. Records compiled, developed, or received by the Secretary are the property of the United States.

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

**3.4 Space Leases.** Space Leases shall be reviewed and approved pursuant to this Ordinance.

**3.5 Land Descriptions.** Business Site Leases shall contain adequate site surveys and legal descriptions based on metes and bounds, rectangular or lot and block systems sufficient to permit the BIA's Land Title and Records Office to identify the particular leased site and record the Lease. Space Leases shall contain adequate descriptions of the Tribal Tract, location and square footage of the space being leased and may include renderings, architectural drawings or other schematics to illustrate the location of the space.

**3.6 Appraisal; Local Studies.**

(a) The Fair Annual Lease Value shall be determined by an appraisal or equivalent procedure 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 Executive Branch and deemed to be in the Best Interest of the Tribes. An appraisal log reporting the methods of appraisal and value of trust land shall be attached to every Business Site Lease.



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

### **3.7 Fair Market Lease.**

- (a) No Lease shall be approved for less than the present Fair Market Lease value as set forth in the appraisal, except as follows:

- (i) The Lease is in the Development Period;
- (ii) The Executive Branch is providing an incentive for business to locate on Tribal Trust Lands, and must provide Lease concessions, Lease improvement credits, and Lease abatements to attract such businesses; or
- (iii) The Executive Branch determines such action is in the Best Interest of the Tribes.

- (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.
- (d) A Lease may be structured based on a percentage of gross receipts, or based on a market indicator.
- (e) The Lease may provide for periodic review for Lease rate adjustments and such review may give consideration to the economic conditions, exclusive of improvement or development required by the contract or the contribution value of such improvements.
- (f) Leases 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.
- (g) The Executive Branch shall keep written records of the basis used in determining the fair annual Lease value, as well as the basis for adjustments. These records shall be presented to the Lessee for its review and acceptance or non-acceptance and included in any Lease file.

**3.8 Environmental Review Process.** Unless exempted pursuant to Section 7.2(a)-(b), the Executive Branch shall not approve a Business Site Lease until the proposed business site Lessee has completed the Environmental Review Process under Chapter Seven of this Ordinance. Leases approved and executed without complying with this section shall be null and void.

### **3.9 Insurance.**

- (a) A Lessee shall provide insurance necessary to protect the interests of the Lessor 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 Lessor and the United States must be identified as additional insured parties.
- (d) The Executive Branch may waive this requirement if the waiver is in the best interest of the Lessor. The waiver may be revoked at any time if the waiver ceases to be in the Lessor's best interest.

### **3.10 Performance Bond.**

- (a) Unless waived in writing by the Executive Branch 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:
  - (i) The annual Lease payment;
  - (ii) The estimated development cost of improvements; and
  - (iii) Any additional amount necessary to ensure compliance with the Lease.
- (b) The Executive Branch may waive the bond requirement, or reduce the amount, if doing so is in the Best Interest of the Tribes. The Executive Branch shall maintain written records of waivers and reductions.
- (c) The performance bond may be in one of the following forms:
  - (i) certificates of deposit issued by a federally insured financial institution authorized to do business in the United States;
  - (ii) irrevocable letters of credit issued by a federally insured financial institution authorized to do business in the United States;
  - (iii) negotiable Treasury securities; or
  - (iv) surety bond issued by a company approved by the U.S. Department of the Treasury.
- (d) The Executive Branch may impose additional requirements for performance bonds beyond those listed in this Ordinance; including, but not limited to, requiring performance bonds to be irrevocable, or requiring notification to the Tribes in the event the performance bond is canceled.

**3.11 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:
  - (i) a plan that describes the type and location of any improvements to be built by the Lessee; and
  - (ii) a general schedule for construction of the improvements.
- (b) Lessee shall provide the Executive Branch 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 Executive Branch or otherwise required in the Business Site Lease, Lessee shall further provide the Executive Branch, in writing, an updated schedule for construction.
- (d) Failure of the Lessee to comply with these requirements will be deemed a violation of the Business Site Lease and may lead to cancellation of the Business Site Lease pursuant to Chapter 5 of this Ordinance.
- (e) Improvements to the premises shall become the property of the Tribes unless otherwise provided for in the Business Site Lease. If improvements will be removed, the Business Site Lease shall 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 Executive Branch, on behalf of the Tribes, has a right of first refusal to purchase the interest.
- (g) The Business Site Lease may provide that at expiration of the Business Site Lease, the Lessor may purchase improvements to the premises at fair market value.
- (h) If the Business Site Lease provides that at expiration of the Business Site Lease any reclamation, restoration, remediation is required due to the nature of the improvements a plan for such action shall be included that sets forth the obligations of the Lessor and the Lessee.
- (i) Unless allowed by applicable federal law, no fee, tax, assessment, levy or charge imposed by a state or political subdivision shall apply to permanent improvements, activities under Business Site Leases, or the leasehold or possessory interest on Tribal Trust Land. The Tribes may impose its own taxes or other charges on the same.

### **3.12 Subleases, Assignments, Amendments and Leasehold Mortgage.**

- (a) Subleases, Assignments, amendments or Leasehold Mortgages of any Business Site Lease shall be by written consent of the Executive Branch and Lessee, unless otherwise provided herein.



(b) The Business Site Lease may authorize Subleases and Assignments, in whole or in part, without approval from the Executive Branch and execution from the Executing Official, provided a copy of the Sublease or Assignment is provided to the Executive Branch and the following conditions, where applicable, are met and stated in the Business Site Lease:

- (i) There is no event of default under the Business Site Lease or violation of this Ordinance;
- (ii) Any restrictions and use limitations on the use of the premises shall continue to apply to any sublessee or assignee;
- (iii) The proposed assignee or sublessee submits a current financial statement showing financial adequacy; and
- (iv) The Lessee shall not be relieved or released from any of its obligations under the Business Site Lease, except as otherwise expressly authorized therein.

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

(c) The Lease may authorize a Leasehold Mortgage for the purpose of financing to develop and improve the premises subject to approval by the Executive Branch and execution from the Executing Official.

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

**3.13 Applicable Law.** The Lease shall state that it is governed by applicable Tribal and Federal law. The parties to the Lease may further provide for the application of any other body of law, such as the laws of a specified state and the order of application. The Lease shall further mandate compliance with all applicable laws, ordinances, rules and regulations, and the Business Site Leasing Procedures.

**3.14 Lease Approval and Issuance.** The Executive Branch has the authority to give final approval for all Business Site Leases and may to delegate some or all of its authority to tribal agencies on behalf of the Tribes.

(a) Unless otherwise provided herein pursuant to Section 3.12, a Lease that meets the requirements of this Ordinance shall be submitted to the Executive Branch or other entity designated by the Executive Branch for consideration and final determination of whether the Lease shall be approved or not. After review, if an

approval is given the Executing Official shall be authorized to sign the Lease on behalf of the Tribes.

- (b) Notice of Decision. The Executing Official or other person designated by the Executive Branch shall provide written notice of all final Executive Branch decisions to the prospective Lessee, by personal delivery, facsimile transmission, e-mail, or United States First Class mail to the mailing address as set forth in the Lease documents. Failure to give or receive such notice shall not affect the validity of any determination, recommendation, or action.

## **CHAPTER FOUR BUSINESS LEASE MANAGEMENT**

### **4.1 Management.**

- (a) Except where required otherwise by agreement or applicable law, the Executive Branch shall manage all Business Site Leases pursuant to this Ordinance.
- (b) The Executive Branch shall institute Business Site Leasing Procedures that employs real estate management practices, addresses accounting, collections, monitoring, enforcement, relief, and remedies.

**4.2 Administrative Fees.** The Executive Branch may charge administrative fees for costs associated with issuing a Lease, Sublease, Assignment, amendment, mortgage, or other administrative transaction.

## **CHAPTER FIVE ENFORCEMENT**

### **SECTION:**

**5.1 Generally.** The Executive Branch shall have all powers necessary and proper to enforce the Lease terms, laws, ordinances, regulations, rules, policies, and covenants, consistent with the Business Site Leasing Procedures. This includes the power to enter the premises at a reasonable time, with or without notice, assess late payment interest and penalties, and assess late payments.

### **5.2 Defaults.**

- (a) If the Executive Branch determines the Lessee is in default, the Executive Branch shall send the Lessee a notice of default within a reasonable time of the determination. Such time period for notice shall be expressly defined either in the Business Site Leasing Procedures, or in the Lease itself. The notice of default may be provided by certified mail, return receipt requested.
- (b) Within 10 business days of receipt of the mailing, the Lessee shall:
  - (i) Cure the default and notify the Executive Branch in writing that the default has been cured.



- (ii) Dispute the Executive Branch's determination that the Lease is in default and explain why the Lease should not be canceled; or
- (iii) Request additional time to cure the default.

### **5.3 Remedies.**

- (a) If the Lessee fails to cure the default within the prescribed period, the Executive Branch may:
  - (i) Cancel the Lease pursuant to the Lease or this Ordinance;
  - (ii) Grant an extension of time to cure the default;
  - (iii) Pursue other negotiated remedies, including execution on bonds or collection of insurance proceeds;
  - (iv) Any combination of remedies listed above; or
  - (v) Any other remedy set forth in the Business Site Lease Procedures.
- (b) If the Executive Branch cancels a Business Site Lease, the Executive Branch shall send the Lessee a cancellation letter within a reasonable time period. The cancellation letter may be sent to the Lessee by certified mail, return receipt requested. The cancellation letter shall:
  - (i) Explain the grounds for cancellation;
  - (ii) Notify the Lessee of unpaid amounts, interest charges, or late payment penalties due under the Lease;
  - (iii) Notify the Lessee of its right to appeal; and
  - (iv) Order the Lessee to vacate the premises within 30 business days of receipt of mailing of the cancellation letter, if an appeal is not filed by that time.
- (c) A cancellation shall become immediately effective 31 business days after receipt of mailing of the order to vacate. The filing of an appeal shall not change the effective date of the cancellation. If the Lessee submits a request in writing to the Executive Branch and the request is received within 7 business days of the mailing date of the order to vacate, the Executive Branch in its discretion may grant the Lessee permission to occupy the premises beyond the cancellation effective date during the pendency of an appeal. If permission is granted, the Lessee shall be required to make Lease payments during the pendency of the appeal. Pending the outcome of an appeal, the Lessee shall comply with the terms of the Lease.
- (d) If the Executive Branch 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.



- (e) At the Tribes' request, the BIA may, upon reasonable notice from the Tribes and at the BIA's discretion, enforce the provisions of, or cancel, a Lease document.

**5.4 Penalties.** The Lease shall specify the rate of interest to be charged if the Lessee fails to make payments in a timely manner. The Lease shall identify additional late payment penalties. Unless the Lease provides otherwise, interest charges and late payment penalties are not subject to notice and shall apply automatically and the failure to pay such amount shall be treated as a breach of the Lease.

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

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

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

## **CHAPTER SIX APPEALS**

### **SECTION:**

**6.1 Appeals.** The Lessee or interested party may appeal final determination of the Executive Branch made pursuant to this Ordinance, within ten (10) business days of the determination. Appeals may be filed with the Executive Branch or other hearing body or official as set forth in the Business Site Leasing Procedures. Such appeals shall be effectuated by: a written notice setting forth the basis for the appeal, a short statement indicating the nature and circumstances of the appeal, and a short statement indicating the remedy being sought.

**6.2 Scope of Review.** The Executive Branch or other hearing body or official, as set forth in the Business Site Lease Procedures, shall review whether the determination was arbitrary, capricious, or an abuse of discretion; not supported by substantial evidence in the record; or otherwise, not in accordance with the law. The decision of the Executive Branch or other hearing body or official on the appeal shall be final.

## **CHAPTER SEVEN ENVIRONMENTAL REVIEW PROCESS**

### **SECTION:**

**7.1 Generally.** Unless exempt under this Chapter, the Executive Branch shall not approve a Business Site Lease until the proposed Business Site Lease has completed the



Environmental Review Process pursuant to this Chapter and applicable Tribal regulations. Leases approved and executed without compliance with this Chapter shall be null and void.

## **7.2 Threshold Determination.**

- (a) **Lessee Not Subject to Environmental Review Process:** If the Environmental Reviewer determines as a threshold matter 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 Exempt from Environmental Review Process:** If the Environmental Reviewer determines that: (i) there is no significant change in use resulting from the proposed Business Site Lease; (ii) the Environmental Reviewer confirms that the site was the subject of an Environmental Review Process within the last twenty-four months for a substantially similar Business Site Lease; or (iii) the site is within the footprint of an existing site for which an Environmental Review Process was already conducted (for example, a Space Lease), then such Leasing Decision is exempt from the Environmental Review Process.
- (c) **Lessee Subject to Environmental Review Process:** If the Environmental Reviewer determines that the Leasing Decision might be expected to i) impact, ii) alter, iii) disturb, or iv) otherwise cause physical disturbances to the biological or natural resources of the Tribes, 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.

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

## **7.4 Environmental Review Process.**

- (a) Unless an exemption applies or a Lease is otherwise not subject to the Environmental Review Process, then, before the execution of any Business Site Lease, the Executive Branch shall cause to be prepared a comprehensive and adequate tribal environmental impact report ("TEIR"), analyzing the potentially significant effects of the proposed action on the environment; provided, however, that information or data which is relevant to such a TEIR and is a matter of Public record or is generally available to the Public need not be repeated in its entirety in the TEIR, but may be specifically cited as the source for conclusions stated therein; and provided further that such information or data shall be briefly described, that its relationship to the TEIR shall be indicated, and that the source thereof shall be reasonably available for inspection at a Public place or Public

building. The TEIR shall provide detailed information about the Significant Effect(s) on the Environment which the Lease is likely to have, and shall include a detailed statement setting forth all of the following:

- (i) A description of the physical environmental conditions in the vicinity of the Project (the environmental setting and existing baseline conditions), as they exist at the time the notice of preparation is issued;
- (ii) All Significant Effects on the Environment of the proposed Lease;
- (iii) In a separate section:
  - (1) Any Significant Effect on the Environment that cannot be avoided if the Lease is executed; and
  - (2) Any Significant Effect on the Environment that would be irreversible if the Lease is executed.
  - (3) Any mitigation measures proposed, recommended, or required.
- (b) In addition to the information required pursuant to subdivision (a), the TEIR shall also contain a statement indicating the reasons for determining that various effects of the Lease on the off-reservation environment are not significant and consequently have not been discussed in detail in the TEIR. In the TEIR, the direct and indirect Significant Effects on the Environment shall be clearly identified and described, giving due consideration to both the short-term and long-term-effects.

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

- (a) Within no less than thirty (30) business days following the completion of the draft TEIR, the Executive Branch shall file a copy of the draft TEIR and a Notice of Completion with the Secretary of the Executive Branch. The Executive Branch shall also post the Notice of Completion and a copy of the draft TEIR on its website. The Notice of Completion shall include all of the following information:
  - (i) A brief description of the Project;
  - (ii) The proposed location of the Project;
  - (iii) An address where copies of the draft TEIR are available; and
  - (iv) Notice of a period of thirty (30) business days during which the Tribes will receive comments on the draft TEIR.
- (b) To satisfy the requirement for Public notice and opportunity to comment under 25 U.S.C. §415(h), the Executive Branch will provide Public notice by at least one of the procedures specified below:
  - (i) Publication of the draft TEIR in a newspaper of general circulation in the area affected by the proposed Business Site Lease, with notice to the



Public of the opportunity to comment on any Significant Effect on the Environment of the proposed action.

- (ii) Posting of the draft TEIR in the offices of the Tribes and the Executive Branch with notice to the Public of the opportunity to comment on any Significant Effect on the Environment of the proposed action.

**7.6 Response to Public Comments.** After the thirty (30) day comment period has ended, the Executive Branch will review all comments received from the Public. Prior to the approval and execution of the Business Site Lease, the Executive Branch will provide responses, using the same notification process as provided above in 7.5(b), to relevant and substantive Public comments on any Significant Effect on the Environment arising as a result of the proposed Project and proposed or recommended mitigation measures addressing any such impacts.

## **CHAPTER EIGHT SOVEREIGN IMMUNITY**

### **SECTION:**

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

## **CHAPTER NINE EFFECTIVE DATE; AMENDMENT**

### **SECTION:**

**9.1** This Ordinance shall take effect upon its adoption by the Legislative Branch and approval by the Secretary of the Interior.

**9.2** This Ordinance may be amended by a majority vote of the Legislative Branch at a duly called Legislative Branch 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.