



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

APPROVAL OF

**RAMONA BAND OF CAHUILLA
BUSINESS SITE LEASING ORDINANCE**

The attached Business Site Leasing Ordinance, submitted by the Ramona Band of Cahuilla (listed in the Federal Register, 82 FR 10 (Jan. 17, 2017) as the Ramona Band of Cahuilla, California), and prepared in accordance with the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012, consisting of 17 pages and adopted by the Ramona Band of Cahuilla's Tribal Council on July 18, 2017, is hereby approved.

Dated: December 29, 2017

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

Pursuant to the authority delegated by 209 DM 8

RAMONA BAND OF CAHUILLA

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"A SOVEREIGN NATION"

Resolution No. 2017. 07

Approval of Business Site Leasing Ordinance and Submittal to United States Department of the Interior for Review and Approval

- WHEREAS: The Ramona Band of Cahuilla ("Tribe") is a federally recognized Tribe located in Riverside County California; and
- WHEREAS: The Tribe possesses the immunities and privileges available to other federally acknowledged Indian tribes by virtue of their government-to-government relationship with the United States as well as responsibilities, powers, limitations and obligations of such tribes; and
- WHEREAS: In accordance with custom and tradition, the General Council of the Ramona Band of Cahuilla is the governing body of the Tribe with the power and authority to act on all government and business matters; and
- WHEREAS: The General Council of the Ramona Band of Cahuilla has authorized the Tribal Council to develop and enact tribal laws or ordinances which affect the health, safety, and welfare of tribal members, residents of, and visitors to the Tribe's trust lands; and
- WHEREAS: The Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012 ("HEARTH Act") authorizes federally recognized Indian tribes to pass tribal leasing statutes to approve the leasing of tribal lands; and
- WHEREAS: The Tribal Council caused to be developed a Business Site Leasing Ordinance which is applicable to tribal lands; and
- WHEREAS: The Business Site Leasing Ordinance requires Tribal Council enactment and approval by the Secretary of the United States Department of the Interior to be effective; and
- WHEREAS: The Tribe had previously submitted Business Site Leasing Ordinance for the Secretary's review and approval; and
- WHEREAS: The Secretary proposed edits, consistent with the HEARTH Act, to the Tribe's Business Site Leasing Ordinance; and
- WHEREAS: The Tribe reviewed and incorporated the edits proposed by the Secretary into a final draft of the Business Site Leasing Ordinance; and

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

THEREFORE, BE IT RESOLVED, THAT the Tribal Council of the Ramona Band of Cahuilla has reviewed the revised Business Site Leasing Ordinance and hereby approves and enacts the Business Site Leasing Ordinance.

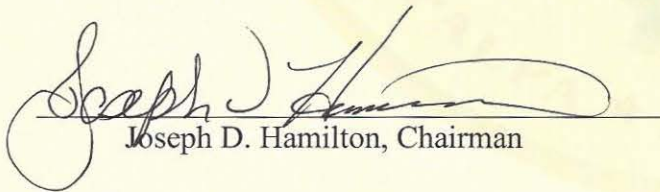
BE IT FURTHER RESOLVED THAT the Tribal Council authorizes Chairman, Joseph D. Hamilton to execute and submit the revised version of the Business Site Leasing Ordinance to the United States Department of the Interior for approval pursuant to the HEARTH ACT.

BE IT FURTHER RESOLVED THAT the Tribal Council authorizes Chairman, Joseph D. Hamilton to execute and submit a cover letter to be submitted with the revised version of the Tribe's Business Site Leasing Ordinance.

BE IT FURTHER RESOLVED THAT the Tribal Council authorizes Chairman, Joseph D. Hamilton to communicate with the United States Department of the Interior regarding the final approval of the Business Site Leasing Ordinance.

CERTIFICATION

We, the undersigned, as the duly elected officers of the Ramona Band of Cahuilla are responsible for certifying tribal resolutions and other official actions of the Tribe, do hereby by certify that the foregoing Resolution was presented and duly adopted by the Tribal Council at a Tribal Council meeting, at which a quorum was present, on July 18, 2017 by a vote of 2 in FAVOR, 0 OPPOSED, 0 ABSTAINING.


Joseph D. Hamilton, Chairman

Ramona Band of Cahuilla

BUSINESS SITE LEASING ORDINANCE

CHAPTER ONE: INTRODUCTION

1.1 Authority and Delegation. This Ordinance is enacted by the General Membership of the Ramona Band of Cahuilla. The General Membership hereby expressly authorizes and delegates to the Tribal Council the power and authority to lease any tribal trust land of the Ramona Band of Cahuilla and lease of space within an existing facility on tribal trust land that is not already leased in accordance with federal law and this Ordinance.

1.2 Scope. The scope of application of this Ordinance shall be limited to all Business Site Leases approved pursuant to the Helping Expedite and advance Responsible Tribal Home Ownership Act of 2012, H.R. 205, 112th Cong. (2012) governing leases on Indian trust or restricted lands, and to all actions and decisions taken in connection with those leases.

Nothing herein shall be construed to affect the terms and conditions of existing leases.

1.3 Purpose. The purposes of this Ordinance are to:

- (a) Recognize the authority of the Ramona Band of Cahuilla, by and through the Tribal Council, to issue, review, approve, and enforce Business Site Leases and establish streamlined procedures for environmental review;
- (b) Promote tribal self-determination, encourage economic self-sufficiency, and increase business activity and employment;
- (c) Implement the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012, H.R. 205, 112th Cong. (2012), and this Ordinance.

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

CHAPTER TWO: DEFINITIONS

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 of the Lessee's obligations under a Business Site Lease.
- (b) *"Best Interest of the Tribe"* means the balancing of interests in order to attain the highest economic income, provide incentives to increase economic development, preserve and enhance the value of Tribal Trust Land, increase employment and jobs on the Tribal Trust Land, and preserve the sovereignty of the Tribe.
- (c) *"BIA"* means the Bureau of Indian Affairs, United States Department of the Interior.
- (d) *"Business Site Lease(s)"* means any of the following types of Leases: 1) a Ground Lease; 2) a Facilities Lease; 3) a Space Lease; and 4) specifically will apply to wind/and/or solar energy facilities Leases. The term does not include the following: 1) an agriculture Lease; 2) a mineral Lease; 3) a Lease of individually owned land of a Tribal citizen; or 4) Leases for public, educational, recreational, or residential purposes.
- (e) *"Change in Land Use"* means the change from residential to non-residential, commercial to industrial, or one industrial use to another that significantly differs from the former use.
- (f) *"Development Period"* means the time period from when a lease is executed to when improvements are expected to be substantially completed.
- (g) *"Environmental Review Process"* means the process for conducting tribal environmental review to assess whether a proposed development or project, as defined under applicable Tribal law or regulations, will have a positive or negative environmental impact.
- (h) *"Environmental Reviewer"* means an official from the Tribe's Environmental Protection Agency or as otherwise designated by the Tribal Council.
- (i) *"Executing Official"* means the Chairman of the Ramona Band of Cahuilla, if properly delegated, who shall execute all Business Site Leases of the Tribe.
- (j) *"Fair Annual Lease Value"* means the most probable dollar amount a property should bring in a competitive and open market, reflecting all conditions and restrictions of the specified lease agreement including term, rental adjustment and revaluation, permitted uses, use restrictions, and expense obligations; the Lessee and Lessor each acting prudently and knowledgeably, and assuming consummation of a lease contract as of a specified date and the passing of the leasehold from Lessor to Lessee under conditions whereby:
 - (i) Lessee and Lessor are typically motivated;
 - (ii) Both parties are well-informed or well-advised, and acting in what

they consider their best interests;

- (iii) A reasonable time is allowed for exposure in the open market;
- (iv) The rent payment is made in terms of cash in United States dollars, and is expressed as an amount per time period consistent with the payment schedule of the lease contract; and the rental amount represents the normal consideration for the property leased unaffected by special fees or concessions granted by anyone associated with the transaction.
- (k) "*Holdover*" means circumstances in which a lessee remains in possession of the leased premises after the lease term expires.
- (l) "*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.
- (m) "*Leasehold Mortgage*" means mortgage given by lessee on the security of lessee's leasehold interests in the land.
- (n) "*Leasing Decision*" means the following type of lease transactions that will be acted on by the Tribal Council: lease issuance, lease amendment or modification, subleasing, lease assignment or transfer and tenant leases.
- (o) "*Lessee*" means a person or entity who has acquired a legal right to possess Tribal Trust Land by a lease pursuant to this Ordinance.
- (p) "*Lessor*" means the Ramona Band of Cahuilla, who holds property title and conveys the right to use and occupy the property under a lease agreement.
- (q) "*Project*" means any economic development activity occurring on Tribal Trust Lands.
- (r) "*Public*" means members of the Tribe who are twenty one (21) years of age or older.
- (s) "*Significant Effect on the Environment*" means a substantial, or potentially substantial, adverse change in the environment, including land, air, water, minerals, flora, fauna, ambient noise, cultural areas and objects of historic, cultural or aesthetic significance.
- (t) "*Space Lease*" means a lease of space within an existing facility on tribal land that is not already leased, i.e. not subleases.
- (u) "*Sublease*" means a written agreement by which the Lessee grants to an individual or entity a right to possession no greater than that held by the Lessee under a Business Site Lease.

- (v) *"Tribe"* means the Ramona Band of Cahuilla.
 - (w) *"Tribal Council"* means the duly elected governing body of the Tribe which is the governmental entity that has the statutory authority to perform the duties and responsibilities of the Lessor on behalf of the Tribe, and to approve or disapprove leasing transactions, which include but are not limited to: lease issuance, bond, lease amendment, subleasing, lease assignment, tenant leases and lease terminations. The Tribal Council has the statutory authority to give final approval for all Business Site Leases and has the authority to take all necessary and proper action on leases and subleases including amendments, assignments and cancellations of leases and subleases.
- The Tribal Council also has authority to delegate some or all of its statutory authority to tribal agencies on behalf of the Tribe.
- (x) *"Tribal Trust Land"* means lands held in trust for the benefit of the Tribe.

CHAPTER THREE: BUSINESS SITE LEASE

- 3.1 Terms and Conditions.** Leases shall be governed by the terms and conditions set forth in the Business Site Lease agreement or equivalent document. The terms and conditions may be modified only with the approval of the Tribal Council. The Lessee is responsible for understanding these terms and conditions.
 - 3.2 Duration and Renewal.** No lease shall be approved more than 12 months prior to the commencement of the term of the Business Site Lease. The term shall not be more than 25 years except that any such lease may include an option to renew for up to two additional terms, each of which may not exceed 25 years. The Lessee shall notify the Tribal Council of the intent to renew, at least one year before such lease is due to expire.
 - 3.3 Obtaining a Business Site Lease.** Information on obtaining a Business Site Lease shall be available from the Tribal Council.
- (a) All applicants for a Business Site Lease shall submit the following documents to the Tribal Council:
 - (i) Financial statement
 - (ii) Site survey and legal description, if applicable
 - (iii) Tribal environmental review where required
 - (iv) Other documents as may be required by the Tribal Council and pursuant to regulations developed pursuant to this Chapter in respect to additional business site leasing procedures.
 - (b) All Business Site Leases shall contain, at a minimum, the following provisions:

- (i) The tract, location, or parcel of the land being leased;
- (ii) The purpose of the lease and authorized uses of the leased premises; (iii) The parties to the lease;
- (iv) The term of the lease;
- (v) Identification of the responsible party for constructing, owning, operating, maintaining, and removing any improvements to the leased premises;
- (vi) Indemnification of United States and Lessor;
- (vii) Payment requirements and late payments, including penalties and interest; and
- (viii) Due diligence, insurance and bonding requirements as provided in this section.
- (ix) A lease shall state the due date for lease payments.
- (x) A lease must specify that the Lessee shall make payments directly to the Tribe.
- (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) The lease may provide for periodic review and such review may give consideration to the economic conditions, exclusive of improvement or development required by the contract or the contribution value of such improvements.
- (xiv) 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.
- (xv) Leases may be amended to allow for lease rate adjustments and shall follow the same process as other lease amendments.

(c) The Tribal Council shall record Business Site Leases, subleases, assignments, amendments, leasehold mortgage, renewals, modifications and cancellations with:

- (i) Land Title and Records Office
Pacific Regional Office Bureau of
Indian Affairs
2800 Cottage Way
Sacramento, CA 95825

or BIA Office having jurisdiction of the Tribe's leasing activities.

- (ii) The Tribal Council is responsible for maintaining all records of all Business Site Leases and for disseminating recorded lease documents to the Tribal Environmental Protection Agency, and, as required, to other Tribal agencies or departments.
- (iii) The Tribal Council shall send a copy of these leases and all amendments and renewals for information purposes only, to:

Superintendent
 Southern California Agency, Bureau of Indian Affairs
 1451 Research Park Drive, Suite 100
 Riverside, CA 92507

or BIA Office having jurisdiction of the Tribe's leasing activities.

- (iv) The Tribal Council shall send a copy of this Ordinance and any lease that allows for lease payments directly to the Tribe to:

Superintendent
 Southern California Agency, Bureau of Indian Affairs
 1451 Research Park Drive, Suite 100
 Riverside, CA 92507

or BIA Office having jurisdiction of 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 Tribe in the course of business with the Secretary are the property of the Tribe.
- (e) Unless the Business Site Lease states otherwise, a Lease may include, consistent with tribal law, a provision to give Indian preference in hiring for employment purposes.

3.4 Space Leases. 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 so as to provide the detail required by LTRO. A Base map of the Ramona Reservation shall be prepared from plats of official survey made by the General Land Office and the Bureau of Land Management. The base map, showing prominent physical features and section, township and range lines, shall be used to prepare land status maps. The land status maps shall reflect the individual tracts, tract numbers, and current status of the tract. Other special maps, such as plats and town site maps may also be prepared and maintained to meet the needs of the Tribe, the Land Titles and Records Offices, and BIA Agencies.

Space leases shall contain adequate descriptions of the location and square footage of the space being leased and may include renderings, architectural drawings or other schematics to illustrate the location of the space.

3.6 Appraisal.

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

3.7 Fair Annual Lease Value.

- (a) No lease shall be approved for less than the present Fair Annual Lease Value as set forth in the appraisal, except as follows:
 - (i) The lease is in the Development Period;
 - (ii) The Tribe 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 Tribal 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
- (d) A lease may be structured based on a percentage of gross receipts, or based on a market indicator.
- (e) A lease shall state the due date for lease payments.
- (f) A lease must specify that the Lessee shall make payments directly to the Tribe.
- (g) Unless otherwise provided in the lease, payments may not be made or accepted more than one year in advance of the due date.
- (h) The lease may provide for periodic review and such review may give consideration to the economic conditions, exclusive of improvement or development required by the contract or the contribution value of such

improvements.

- (i) Leases may be structured to allow for lease rate adjustments. The lease shall specify how adjustments will be made, who will make such adjustments, when adjustments will go into effect, and how disputes shall be resolved.
- (j) Leases may be amended to allow for lease rate adjustments.
- (k) Lease rate adjustments shall be processed in the same manner as lease rate amendments.
- (l) The Tribal 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.

3.8 Environmental Review Process. Unless exempted from this requirement under this Ordinance, the Tribal Council 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 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 Tribal 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.

3.10 Performance Bond.

- (a) Unless waived in writing by the Tribal 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:
 - (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 Tribal Council may waive the bond requirement, or reduce the amount, if doing so is in the Best Interest of the Tribe. The Tribal 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 Treasury securities; or
 - (4) Surety bond issued by a company approved by the U.S. Department of the Treasury.

3.11 Improvements. All Business Site Leases shall require the Lessee to exercise due 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 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 5 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 Tribe shall purchase improvements to the premises at fair market value.

- (h) Improvements may be subject to taxation by the Tribe.
- (i) The Business Site Lease may provide for the inclusion of restoration or reclamation plans to be implemented upon the expiration, cancellation or termination of the Business Site Lease.

3.12 Subleases, Assignments, Amendments and Leasehold Mortgages

- (a) Subleases, assignments, amendments or leasehold mortgage of any Business Site Lease shall be by written consent of the Tribal Council and Lessee, unless otherwise provided herein.
- (b) The Business Site Leases may authorize subleases and assignments, in whole or in part, without approval from the Tribal Council and execution from the Executing Official, provided a copy of the sublease or assignment is provided to the Tribe and the following conditions, where applicable, are met and stated in the Business Site Lease:
 - (i) There is no event of default under the Business Site Lease or this Ordinance;
 - (ii) Any restrictions and use limitations on the use of the premises shall continue to apply to any subtenant or assignee;
 - (iii) The proposed assignee or sub-lessee submits a current financial statement showing financial adequacy; and
 - (iv) In a sublease, the Lessee shall not be relieved or released from any of its obligations under the Business Site Lease.

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

- (c) The lease may authorize leasehold mortgage to the leasehold interest for the purpose of financing to develop and improve the premises subject to approval by the Tribal Council 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 Tribal Council 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 Tribe and execution from the Executing Official is required, provided the purchaser agrees in writing to be bound by all terms and conditions of the lease.

CHAPTER FOUR: BUSINESS LEASE MANAGEMENT

4.1 Management.

- (a) Except where required otherwise by agreement or applicable law, the Tribal Council shall manage all Business Site Leases pursuant to regulations promulgated by the Tribal Council pursuant to this Chapter to implement the Tribal Council's business site leasing management plan and policy.
- (b) The Tribal Council shall institute a business site leasing management plan and policy that employs real estate management practices, addresses accounting, collections, monitoring, enforcement, relief and remedies.
- (c) The regulations and management plan referenced in this Section will apply to the extent that they are consistent with this Ordinance.

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

CHAPTER FIVE: ENFORCEMENT

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

5.2 Defaults.

- (a) If the Tribal Council determines the Lessee is in default, the Tribal Council shall send the Lessee a notice of default within five (5) business days of the determination. The notice of default may be provided by certified mail, return receipt requested.
- (b) Within ten (10) days of the mailing of the notice of default, the Lessee shall:
 - (i) Cure the default and notify the Tribal Council in writing that the default has been cured.
 - (ii) Dispute the Tribal Council'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 Tribal Council may:
 - (i) Cancel the lease pursuant to this Chapter and any regulations developed to implement it;
 - (ii) Grant an extension of time to cure the default;
 - (iii) Pursue other remedies, including execution on bonds or collection of insurance proceeds;
 - (iv) Any combination of remedies listed above; or
 - (v) Any other remedy set forth in the business site lease management plan or policy.
- (b) If the Tribal Council cancels a Business Site Lease, the Tribal Council shall send the Lessee a cancellation letter within three (3) days of cancellation. 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 thirty (30) days of mailing of the cancellation letter, if an appeal is not filed by that time.
- (c) A cancellation shall become effective thirty-one (31) days after mailing of 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 Tribal 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.

- 5.4 Penalties.** The lease shall specify the rate of interest to be charged if the Lessee fails to make payments in a timely manner. The lease shall identify additional late payment penalties. Unless the lease provides otherwise, interest charges and late payment penalties shall apply in the absence of any specific notice to the Lessee from the Tribal Council, 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 Tribal Council may take appropriate emergency action.
- 5.6 Holdover.** If a Lessee remains in possession after the expiration or cancellation of a lease, the Tribal Council shall treat such occupation as a trespass. The Tribal Council shall take action to recover possession and pursue additional remedies. Filing shall be pursuant to Tribal laws, or alternatively, Tribal Council may make a written request sent by certified mail to the BIA for resolution under any applicable federal laws.

Secretarial enforcement or cancellation of leases under this Ordinance is not only at the Secretary's discretion, but also requires reasonable notice from the Tribe.

- 5.7 Trespass.** If a person occupies the premises without the Tribal Council's approval, the Tribal Council may pursue appropriate remedies, including the filing of a trespass action to regain possession under Tribal law, or alternatively, Tribal Council may make a written request sent by certified mail to the BIA for resolution under any applicable federal laws.

CHAPTER SIX: APPEALS

- 6.1 Appeals.** The Lessee or interested party may appeal a determination of the Tribal Council within ten (10) days of receipt of a notice of the determination. A notice of determination will be sent via USPS Certified Mail to Lessee at address listed in the Lease. Appeals may be filed with the Tribal Council or other hearing body in a manner as set forth in the notice of determination. Such appeals shall be effectuated by: a written notice setting forth the basis for the appeal, a short statement indicating the nature and circumstances of the appeal, and a short statement indicating the remedy being sought.
- 6.2 Scope of Review.** The Tribal Council or other hearing body shall review whether the determination was arbitrary, capricious, or an abuse of discretion; not supported by substantial evidence in the record; or otherwise, not in accordance with the law. The decision of the Tribal Council or other hearing body shall be final.

- 6.3 No Creation of Individual Right to Use.** This Ordinance is not intended to create an individual right to appeal a Tribal Council decision resulting in the Tribe's declining to enter into a Business Site Lease with a person or entity seeking the use of Tribal lands. There shall be no individual right to the use of Tribal lands prior to the Tribe entering into an approved lease as provided by this Ordinance or Federal law.

CHAPTER SEVEN: ENVIRONMENTAL REVIEW PROCESS

- 7.1 Generally.** Unless exempt under this Chapter, the Tribal 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 regulations. Leases approved and executed without compliance with this Chapter shall be null and void.
- 7.2 Threshold Determination.**
- (a) **Lessee Not Subject to Environmental Review Process:** If the Environmental Reviewer determines that the Leasing Decision by its nature would not have a Significant Effect on the Environment of the Tribe, the Leasing Decision is exempt from additional requirements of the Section 7.4 of this Chapter ("Environmental Review Process"), subject to the environmental record requirements of applicable Tribal environmental regulations.
 - (b) **Lessee Subject to Environmental Review Process:** If the Environmental Reviewer determines that the Leasing Decision might be expected to have a Significant Effect on the Environment, the Lessee must fulfill the requirements of the Environmental Review Process.
 - (c) **Statutory Exemption for Leases in Gaming Facility:** Space leases within a gaming facility are considered exempt from the environmental review process.
- 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 Tribal Council 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 under this Ordinance, before the execution of any Business Site Lease, the Tribal 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; 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; and
 - (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 Lessee Responsible for Environmental Compliance

- (a) The lessee, as the entity that will occupy and operate a business on Tribal Trust Lands leased from the Tribe, is primarily responsible for compliance review, decision-making and action in accordance with all applicable environmental laws. The Tribe or the Environmental Reviewer will provide lessee with a list of applicable laws and ordinances, including copies of listed and applicable Tribal laws and ordinances.

- (b) The lessee's responsibility to comply with these laws and ordinances is in addition to and separate from its obligations under this Chapter, and lessee's compliance obligations under those laws are not extinguished upon complying with the Environmental Review Process.

7.6 Notice of Completion of Draft TEIR.

- (a) Within no less than thirty (30) days following the completion of the draft TEIR, the Tribal Council shall file a copy of the draft TEIR and a Notice of Completion with the Tribe. The Tribal Council shall also post the Notice of Completion and a copy of the draft TEIR on its website. The Notice of Completion shall include all of the following information:
 - (i) A brief description of the Project;
 - (ii) The proposed location of the Project;
 - (iii) An address where copies of the draft TEIR are available; and
 - (iv) Notice of a period of thirty (30) days during which the Tribe will receive comments on the draft TEIR.
- (b) To satisfy the requirement for public notice and opportunity to comment under this Ordinance, the Tribal Council 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 Tribe with notice to the public of the opportunity to comment on any Significant Effect on the Environment of the proposed action.

7.7 Response to Public Comments. After the thirty (30) day comment period has ended, the Tribal Council will review all comments received from the public. Prior to the approval and execution of the Business Site Lease, the Tribal 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. Responses to the public will be posted at the Tribe's administrative offices and on the Tribe's official website.

**CHAPTER EIGHT:
CHOICE OF LAW; SOVEREIGN IMMUNITY**

- 8.1 All disputes over leases shall be governed in all respects and in order of preference by the applicable laws of the United States, or in the absence of applicable federal laws, by this Ordinance and the regulations promulgated by the Tribe under it, or in the absence of applicable federal or Tribal laws, by reference to the laws of the State of California as guidance.
- 8.2 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.

**CHAPTER NINE:
EFFECTIVE DATE; AMENDMENT**

- 9.1 This Ordinance shall take effect upon its adoption by the Tribal Council and approval by the Secretary of the Interior or his authorized designee.
- 9.2 This Ordinance may be amended by a majority vote of the Tribal Council at a duly called Tribal Council meeting at which a quorum is present. All substantive amendments to this Ordinance must be submitted to and approved by the Secretary of the Interior.

Approved by:



Joseph D. Hamilton, Chairman

Ramona Band of Cahuilla

BUSINESS SITE LEASING ORDINANCE

CHAPTER ONE: INTRODUCTION

1.1 Authority and Delegation. This Ordinance is enacted by the General Membership of the Ramona Band of Cahuilla. The General Membership hereby expressly authorizes and delegates to the Tribal Council the power and authority to lease any tribal trust land of the Ramona Band of Cahuilla and lease of space within an existing facility on tribal trust land that is not already leased in accordance with federal law and this Ordinance.

1.2 Scope. The scope of application of this Ordinance shall be limited to all Business Site Leases approved pursuant to the Helping Expedite and advance Responsible Tribal Home Ownership Act of 2012, H.R. 205, 112th Cong. (2012) governing leases on Indian trust or restricted lands, and to all actions and decisions taken in connection with those leases.

Nothing herein shall be construed to affect the terms and conditions of existing leases.

1.3 Purpose. The purposes of this Ordinance are to:

- (a) Recognize the authority of the Ramona Band of Cahuilla, by and through the Tribal Council, to issue, review, approve, and enforce Business Site Leases and establish streamlined procedures for environmental review;
- (b) Promote tribal self-determination, encourage economic self-sufficiency, and increase business activity and employment;
- (c) Implement the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012, H.R. 205, 112th Cong. (2012), and this Ordinance.

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

CHAPTER TWO: DEFINITIONS

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 of the Lessee's obligations under a Business Site Lease.
- (b) *"Best Interest of the Tribe"* means the balancing of interests in order to attain the highest economic income, provide incentives to increase economic development, preserve and enhance the value of Tribal Trust Land, increase employment and jobs on the Tribal Trust Land, and preserve the sovereignty of the Tribe.
- (c) *"BLA"* means the Bureau of Indian Affairs, United States Department of the Interior.
- (d) *"Business Site Lease(s)"* means any of the following types of Leases: 1) a Ground Lease; 2) a Facilities Lease; 3) a Space Lease; and 4) specifically will apply to wind/and/or solar energy facilities Leases. The term does not include the following: 1) an agriculture Lease; 2) a mineral Lease; 3) a Lease of individually owned land of a Tribal citizen; or 4) Leases for public, educational, recreational, or residential purposes.
- (e) *"Change in Land Use"* means the change from residential to non-residential, commercial to industrial, or one industrial use to another that significantly differs from the former use.
- (f) *"Development Period"* means the time period from when a lease is executed to when improvements are expected to be substantially completed.
- (g) *"Environmental Review Process"* means the process for conducting tribal environmental review to assess whether a proposed development or project, as defined under applicable Tribal law or regulations, will have a positive or negative environmental impact.
- (h) *"Environmental Reviewer"* means an official from the Tribe's Environmental Protection Agency or as otherwise designated by the Tribal Council.
- (i) *"Executing Official"* means the Chairman of the Ramona Band of Cahuilla, if properly delegated, who shall execute all Business Site Leases of the Tribe.
- (j) *"Fair Annual Lease Value"* means the most probable dollar amount a property should bring in a competitive and open market, reflecting all conditions and restrictions of the specified lease agreement including term, rental adjustment and revaluation, permitted uses, use restrictions, and expense obligations; the Lessee and Lessor each acting prudently and knowledgeably, and assuming consummation of a lease contract as of a specified date and the passing of the leasehold from Lessor to Lessee under conditions whereby:
 - (i) Lessee and Lessor are typically motivated;
 - (ii) Both parties are well-informed or well-advised, and acting in what

they consider their best interests;

- (iii) A reasonable time is allowed for exposure in the open market;
- (iv) The rent payment is made in terms of cash in United States dollars, and is expressed as an amount per time period consistent with the payment schedule of the lease contract; and the rental amount represents the normal consideration for the property leased unaffected by special fees or concessions granted by anyone associated with the transaction.
- (k) *"Holdover"* means circumstances in which a lessee remains in possession of the leased premises after the lease term expires.
- (l) *"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.
- (m) *"Leasehold Mortgage"* means mortgage given by lessee on the security of lessee's leasehold interests in the land.
- (n) *"Leasing Decision"* means the following type of lease transactions that will be acted on by the Tribal Council: lease issuance, lease amendment or modification, subleasing, lease assignment or transfer and tenant leases.
- (o) *"Lessee"* means a person or entity who has acquired a legal right to possess Tribal Trust Land by a lease pursuant to this Ordinance.
- (p) *"Lessor"* means the Ramona Band of Cahuilla, who holds property title and conveys the right to use and occupy the property under a lease agreement.
- (q) *"Project"* means any economic development activity occurring on Tribal Trust Lands.
- (r) *"Public"* means members of the Tribe who are twenty one (21) years of age or older.
- (s) *"Significant Effect on the Environment"* means a substantial, or potentially substantial, adverse change in the environment, including land, air, water, minerals, flora, fauna, ambient noise, cultural areas and objects of historic, cultural or aesthetic significance.
- (t) *"Space Lease"* means a lease of space within an existing facility on tribal land that is not already leased, i.e. not subleases.
- (u) *"Sublease"* means a written agreement by which the Lessee grants to an individual or entity a right to possession no greater than that held by the Lessee under a Business Site Lease.

- (v) *"Tribe"* means the Ramona Band of Cahuilla.
 - (w) *"Tribal Council"* means the duly elected governing body of the Tribe which is the governmental entity that has the statutory authority to perform the duties and responsibilities of the Lessor on behalf of the Tribe, and to approve or disapprove leasing transactions, which include but are not limited to: lease issuance, bond, lease amendment, subleasing, lease assignment, tenant leases and lease terminations. The Tribal Council has the statutory authority to give final approval for all Business Site Leases and has the authority to take all necessary and proper action on leases and subleases including amendments, assignments and cancellations of leases and subleases.
- The Tribal Council also has authority to delegate some or all of its statutory authority to tribal agencies on behalf of the Tribe.
- (x) *"Tribal Trust Land"* means lands held in trust for the benefit of the Tribe.

CHAPTER THREE: BUSINESS SITE LEASE

- 3.1 Terms and Conditions.** Leases shall be governed by the terms and conditions set forth in the Business Site Lease agreement or equivalent document. The terms and conditions may be modified only with the approval of the Tribal Council. The Lessee is responsible for understanding these terms and conditions.
 - 3.2 Duration and Renewal.** No lease shall be approved more than 12 months prior to the commencement of the term of the Business Site Lease. The term shall not be more than 25 years except that any such lease may include an option to renew for up to two additional terms, each of which may not exceed 25 years. The Lessee shall notify the Tribal Council of the intent to renew, at least one year before such lease is due to expire.
 - 3.3 Obtaining a Business Site Lease.** Information on obtaining a Business Site Lease shall be available from the Tribal Council.
- (a) All applicants for a Business Site Lease shall submit the following documents to the Tribal Council:
 - (i) Financial statement
 - (ii) Site survey and legal description, if applicable
 - (iii) Tribal environmental review where required
 - (iv) Other documents as may be required by the Tribal Council and pursuant to regulations developed pursuant to this Chapter in respect to additional business site leasing procedures.
 - (b) All Business Site Leases shall contain, at a minimum, the following provisions:

- (i) The tract, location, or parcel of the land being leased;
 - (ii) The purpose of the lease and authorized uses of the leased premises; (iii) The parties to the lease;
 - (iv) The term of the lease;
 - (v) Identification of the responsible party for constructing, owning, operating, maintaining, and removing any improvements to the leased premises;
 - (vi) Indemnification of United States and Lessor;
 - (vii) Payment requirements and late payments, including penalties and interest; and
 - (viii) Due diligence, insurance and bonding requirements as provided in this section.
 - (ix) A lease shall state the due date for lease payments.
 - (x) A lease must specify that the Lessee shall make payments directly to the Tribe.
 - (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) The lease may provide for periodic review and such review may give consideration to the economic conditions, exclusive of improvement or development required by the contract or the contribution value of such improvements.
 - (xiv) 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.
 - (xv) Leases may be amended to allow for lease rate adjustments and shall follow the same process as other lease amendments.
- (c) The Tribal Council shall record Business Site Leases, subleases, assignments, amendments, leasehold mortgage, renewals, modifications and cancellations with:
- (i) Land Title and Records Office
Pacific Regional Office Bureau of
Indian Affairs
2800 Cottage Way
Sacramento, CA 95825
- or BIA Office having jurisdiction of the Tribe's leasing activities.

- (ii) The Tribal Council is responsible for maintaining all records of all Business Site Leases and for disseminating recorded lease documents to the Tribal Environmental Protection Agency, and, as required, to other Tribal agencies or departments.
- (iii) The Tribal Council shall send a copy of these leases and all amendments and renewals for information purposes only, to:

Superintendent
 Southern California Agency, Bureau of Indian Affairs
 1451 Research Park Drive, Suite 100
 Riverside, CA 92507

or BIA Office having jurisdiction of the Tribe's leasing activities.

- (iv) The Tribal Council shall send a copy of this Ordinance and any lease that allows for lease payments directly to the Tribe to:

Superintendent
 Southern California Agency, Bureau of Indian Affairs
 1451 Research Park Drive, Suite 100
 Riverside, CA 92507

or BIA Office having jurisdiction of 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 Tribe in the course of business with the Secretary are the property of the Tribe.
- (e) Unless the Business Site Lease states otherwise, a Lease may include, consistent with tribal law, a provision to give Indian preference in hiring for employment purposes.

3.4 Space Leases. 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 so as to provide the detail required by LTRO. A Base map of the Ramona Reservation shall be prepared from plats of official survey made by the General Land Office and the Bureau of Land Management. The base map, showing prominent physical features and section, township and range lines, shall be used to prepare land status maps. The land status maps shall reflect the individual tracts, tract numbers, and current status of the tract. Other special maps, such as plats and town site maps may also be prepared and maintained to meet the needs of the Tribe, the Land Titles and Records Offices, and BIA Agencies.

Space leases shall contain adequate descriptions of the location and square footage of the space being leased and may include renderings, architectural drawings or other schematics to illustrate the location of the space.

3.6 Appraisal.

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

3.7 Fair Annual Lease Value.

- (a) No lease shall be approved for less than the present Fair Annual Lease Value as set forth in the appraisal, except as follows:
 - (i) The lease is in the Development Period;
 - (ii) The Tribe 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 Tribal 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
- (d) A lease may be structured based on a percentage of gross receipts, or based on a market indicator.
- (e) A lease shall state the due date for lease payments.
- (f) A lease must specify that the Lessee shall make payments directly to the Tribe.
- (g) Unless otherwise provided in the lease, payments may not be made or accepted more than one year in advance of the due date.
- (h) The lease may provide for periodic review and such review may give consideration to the economic conditions, exclusive of improvement or development required by the contract or the contribution value of such

improvements.

- (i) Leases may be structured to allow for lease rate adjustments. The lease shall specify how adjustments will be made, who will make such adjustments, when adjustments will go into effect, and how disputes shall be resolved.
- (j) Leases may be amended to allow for lease rate adjustments.
- (k) Lease rate adjustments shall be processed in the same manner as lease rate amendments.
- (l) The Tribal 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.

3.8 Environmental Review Process. Unless exempted from this requirement under this Ordinance, the Tribal Council 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 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 Tribal 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.

3.10 Performance Bond.

- (a) Unless waived in writing by the Tribal 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:
 - (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 Tribal Council may waive the bond requirement, or reduce the amount, if doing so is in the Best Interest of the Tribe. The Tribal 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 Treasury securities; or
 - (4) Surety bond issued by a company approved by the U.S. Department of the Treasury.

3.11 Improvements. All Business Site Leases shall require the Lessee to exercise due 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 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 5 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 Tribe shall purchase improvements to the premises at fair market value.

- (h) Improvements may be subject to taxation by the Tribe.
- (i) The Business Site Lease may provide for the inclusion of restoration or reclamation plans to be implemented upon the expiration, cancellation or termination of the Business Site Lease.

3.12 Subleases, Assignments, Amendments and Leasehold Mortgages

- (a) Subleases, assignments, amendments or leasehold mortgage of any Business Site Lease shall be by written consent of the Tribal Council and Lessee, unless otherwise provided herein.
- (b) The Business Site Leases may authorize subleases and assignments, in whole or in part, without approval from the Tribal Council and execution from the Executing Official, provided a copy of the sublease or assignment is provided to the Tribe and the following conditions, where applicable, are met and stated in the Business Site Lease:
 - (i) There is no event of default under the Business Site Lease or this Ordinance;
 - (ii) Any restrictions and use limitations on the use of the premises shall continue to apply to any subtenant or assignee;
 - (iii) The proposed assignee or sub-lessee submits a current financial statement showing financial adequacy; and
 - (iv) In a sublease, the Lessee shall not be relieved or released from any of its obligations under the Business Site Lease.

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

- (c) The lease may authorize leasehold mortgage to the leasehold interest for the purpose of financing to develop and improve the premises subject to approval by the Tribal Council 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 Tribal Council 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 Tribe and execution from the Executing Official is required, provided the purchaser agrees in writing to be bound by all terms and conditions of the lease.

CHAPTER FOUR: BUSINESS LEASE MANAGEMENT

4.1 Management.

- (a) Except where required otherwise by agreement or applicable law, the Tribal Council shall manage all Business Site Leases pursuant to regulations promulgated by the Tribal Council pursuant to this Chapter to implement the Tribal Council's business site leasing management plan and policy.
- (b) The Tribal Council shall institute a business site leasing management plan and policy that employs real estate management practices, addresses accounting, collections, monitoring, enforcement, relief and remedies.
- (c) The regulations and management plan referenced in this Section will apply to the extent that they are consistent with this Ordinance.

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

CHAPTER FIVE: ENFORCEMENT

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

5.2 Defaults.

- (a) If the Tribal Council determines the Lessee is in default, the Tribal Council shall send the Lessee a notice of default within five (5) business days of the determination. The notice of default may be provided by certified mail, return receipt requested.
- (b) Within ten (10) days of the mailing of the notice of default, the Lessee shall:
 - (i) Cure the default and notify the Tribal Council in writing that the default has been cured.
 - (ii) Dispute the Tribal Council'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 Tribal Council may:
 - (i) Cancel the lease pursuant to this Chapter and any regulations developed to implement it;
 - (ii) Grant an extension of time to cure the default;
 - (iii) Pursue other remedies, including execution on bonds or collection of insurance proceeds;
 - (iv) Any combination of remedies listed above; or
 - (v) Any other remedy set forth in the business site lease management plan or policy.
- (b) If the Tribal Council cancels a Business Site Lease, the Tribal Council shall send the Lessee a cancellation letter within three (3) days of cancellation. 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 thirty (30) days of mailing of the cancellation letter, if an appeal is not filed by that time.
- (c) A cancellation shall become effective thirty-one (31) days after mailing of 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 Tribal 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.

- 5.4 Penalties.** The lease shall specify the rate of interest to be charged if the Lessee fails to make payments in a timely manner. The lease shall identify additional late payment penalties. Unless the lease provides otherwise, interest charges and late payment penalties shall apply in the absence of any specific notice to the Lessee from the Tribal Council, 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 Tribal Council may take appropriate emergency action.
- 5.6 Holdover.** If a Lessee remains in possession after the expiration or cancellation of a lease, the Tribal Council shall treat such occupation as a trespass. The Tribal Council shall take action to recover possession and pursue additional remedies. Filing shall be pursuant to Tribal laws, or alternatively, Tribal Council may make a written request sent by certified mail to the BIA for resolution under any applicable federal laws.
- Secretarial enforcement or cancellation of leases under this Ordinance is not only at the Secretary's discretion, but also requires reasonable notice from the Tribe.
- 5.7 Trespass.** If a person occupies the premises without the Tribal Council's approval, the Tribal Council may pursue appropriate remedies, including the filing of a trespass action to regain possession under Tribal law, or alternatively, Tribal Council may make a written request sent by certified mail to the BIA for resolution under any applicable federal laws.

CHAPTER SIX: APPEALS

- 6.1 Appeals.** The Lessee or interested party may appeal a determination of the Tribal Council within ten (10) days of receipt of a notice of the determination. A notice of determination will be sent via USPS Certified Mail to Lessee at address listed in the Lease. Appeals may be filed with the Tribal Council or other hearing body in a manner as set forth in the notice of determination. Such appeals shall be effectuated by: a written notice setting forth the basis for the appeal, a short statement indicating the nature and circumstances of the appeal, and a short statement indicating the remedy being sought.
- 6.2 Scope of Review.** The Tribal Council or other hearing body shall review whether the determination was arbitrary, capricious, or an abuse of discretion; not supported by substantial evidence in the record; or otherwise, not in accordance with the law. The decision of the Tribal Council or other hearing body shall be final.

- 6.3 No Creation of Individual Right to Use.** This Ordinance is not intended to create an individual right to appeal a Tribal Council decision resulting in the Tribe's declining to enter into a Business Site Lease with a person or entity seeking the use of Tribal lands. There shall be no individual right to the use of Tribal lands prior to the Tribe entering into an approved lease as provided by this Ordinance or Federal law.

CHAPTER SEVEN: ENVIRONMENTAL REVIEW PROCESS

- 7.1 Generally.** Unless exempt under this Chapter, the Tribal 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 regulations. Leases approved and executed without compliance with this Chapter shall be null and void.
- 7.2 Threshold Determination.**
- (a) **Lessee Not Subject to Environmental Review Process:** If the Environmental Reviewer determines that the Leasing Decision by its nature would not have a Significant Effect on the Environment of the Tribe, the Leasing Decision is exempt from additional requirements of the Section 7.4 of this Chapter ("Environmental Review Process"), subject to the environmental record requirements of applicable Tribal environmental regulations.
 - (b) **Lessee Subject to Environmental Review Process:** If the Environmental Reviewer determines that the Leasing Decision might be expected to have a Significant Effect on the Environment, the Lessee must fulfill the requirements of the Environmental Review Process.
 - (c) **Statutory Exemption for Leases in Gaming Facility:** Space leases within a gaming facility are considered exempt from the environmental review process.
- 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 Tribal Council 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 under this Ordinance, before the execution of any Business Site Lease, the Tribal 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; 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; and
 - (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 Lessee Responsible for Environmental Compliance

- (a) The lessee, as the entity that will occupy and operate a business on Tribal Trust Lands leased from the Tribe, is primarily responsible for compliance review, decision-making and action in accordance with all applicable environmental laws. The Tribe or the Environmental Reviewer will provide lessee with a list of applicable laws and ordinances, including copies of listed and applicable Tribal laws and ordinances.

- (b) The lessee's responsibility to comply with these laws and ordinances is in addition to and separate from its obligations under this Chapter, and lessee's compliance obligations under those laws are not extinguished upon complying with the Environmental Review Process.

7.6 Notice of Completion of Draft TEIR.

- (a) Within no less than thirty (30) days following the completion of the draft TEIR, the Tribal Council shall file a copy of the draft TEIR and a Notice of Completion with the Tribe. The Tribal Council shall also post the Notice of Completion and a copy of the draft TEIR on its website. The Notice of Completion shall include all of the following information:
 - (i) A brief description of the Project;
 - (ii) The proposed location of the Project;
 - (iii) An address where copies of the draft TEIR are available; and
 - (iv) Notice of a period of thirty (30) days during which the Tribe will receive comments on the draft TEIR.
- (b) To satisfy the requirement for public notice and opportunity to comment under this Ordinance, the Tribal Council 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 Tribe with notice to the public of the opportunity to comment on any Significant Effect on the Environment of the proposed action.

- 7.7 Response to Public Comments.** After the thirty (30) day comment period has ended, the Tribal Council will review all comments received from the public. Prior to the approval and execution of the Business Site Lease, the Tribal 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. Responses to the public will be posted at the Tribe's administrative offices and on the Tribe's official website.

**CHAPTER EIGHT:
CHOICE OF LAW; SOVEREIGN IMMUNITY**

- 8.1 All disputes over leases shall be governed in all respects and in order of preference by the applicable laws of the United States, or in the absence of applicable federal laws, by this Ordinance and the regulations promulgated by the Tribe under it, or in the absence of applicable federal or Tribal laws, by reference to the laws of the State of California as guidance.
- 8.2 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.

**CHAPTER NINE:
EFFECTIVE DATE; AMENDMENT**

- 9.1 This Ordinance shall take effect upon its adoption by the Tribal Council and approval by the Secretary of the Interior or his authorized designee.
- 9.2 This Ordinance may be amended by a majority vote of the Tribal Council at a duly called Tribal Council meeting at which a quorum is present. All substantive amendments to this Ordinance must be submitted to and approved by the Secretary of the Interior.

Approved by:


Joseph D. Hamilton, Chairman