



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

APPROVAL OF

**MISSISSIPPI BAND OF CHOCTAW INDIANS
HEARTH ACT LEASING REGULATIONS**

The attached HEARTH Act Leasing Regulations, submitted by the Mississippi Band of Choctaw Indians (listed in the Federal Register, 84 FR 1202 (February 1, 2019) as the Mississippi Band of Choctaw Indians), and prepared in accordance with the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012, consisting of 23 pages and adopted by the Mississippi Band of Choctaw Indians Tribal Council on January 8, 2019, is hereby approved.

Dated: _____

5 March 2019

Assistant Secretary – Indian Affairs
United States Department of the Interior

Pursuant to the authority delegated by 209 DM 8

MISSISSIPPI BAND OF CHOCTAW INDIANS

RESOLUTION CHO 19-039

A RESOLUTION TO APPROVE AMENDMENTS TO THE PREVIOUSLY
ADOPTED HEARTH ACT LEASING REGULATIONS

WHEREAS, the Mississippi Band of Choctaw Indians ("MBCI" or the "Tribe") is a federally-recognized Indian Tribe with authority under Article VIII, Section 1(b) the Tribal Constitution to adopt policies, rules, and procedures pertaining to the sale, disposition, lease or encumbrance of tribal lands, interests in land or other tribal assets, subject to Federal Law; and

WHEREAS, in 2012 Congress enacted the Helping Expedite and Advance Responsible Tribal Home Ownership Act ("HEARTH Act") which created an alternative land leasing process available to tribes by amending the Indian Long-Term Leasing Act of 1955, 25 U.S.C. Sec. 415; and

WHEREAS, the HEARTH Act allows tribes to prepare and submit tribal leasing regulations to the Secretary of Interior ("Secretary") that would authorize tribes to negotiate and enter into leases without further approvals required by the Secretary; and

WHEREAS, the Tribal Council with the adoption of Resolution CHO 17-038 on March 7, 2017, enacted HEARTH Act Leasing Regulations ("HEARTH Regulations"); and

WHEREAS, the HEARTH Regulations were forwarded to the Department of Interior for review and the Department has suggested several amendments to the language to improve the viability and compliance with the HEARTH Act, said amendments being outlined in the attached Exhibit "A"; and

WHEREAS, the Natural Resources Committee has reviewed the proposed amendments and believes it is in the best interest of the Tribe to forward this matter to the Tribal Council for approval; now therefore be it

RESOLVED, that the Tribal Council does hereby approve and adopt amendments to the Tribal HEARTH Regulations in the form attached hereto as Exhibit A; and be it further

RESOLVED, that the Tribal Council does hereby authorize the Tribal Chief to submit the amended Tribal Leasing Regulations to the Secretary of Interior for final approval; and be it further

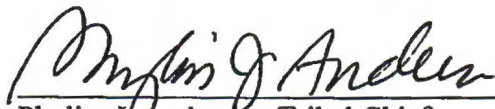
RESOLVED, that the Tribal Chief is authorized to accept and approve, with the written concurrence of the Office of the Attorney General and notification to the Tribal Council, any non-substantive changes to the Tribal Leasing Regulations that are requested by the Secretary of Interior after approval by the Tribal Council.

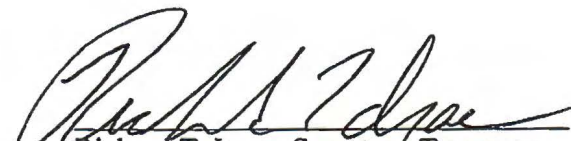
CERTIFICATION

I, the undersigned, as Secretary-Treasurer of the Mississippi Band of Choctaw Indians, certify that the Tribal Council of said Band is composed of 17 members, 16 of whom, constituting a quorum, were present at a Regular Call meeting duly called, noticed, convened, and held this the 8th day of January, 2019; and that the foregoing Resolution was duly Adopted by a vote of 16 members in favor, 0 opposed and 0 abstaining.

Dated this 8th day of January, 2019.

ATTEST:


Phyliss J. Anderson, Tribal Chief


Richard T. Isaac, Secretary-Treasurer

Mississippi Band of Choctaw Indians HEARTH Act Leasing Regulations

Part 1—General Provisions

Section 1. Short Title

These regulations may be cited as the Mississippi Band of Choctaw Indians (the “Tribe”) Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012, Pub. L. 112-151, 126 Stat. 1152 (“HEARTH Act”) Leasing Regulations adopted pursuant to 25 U.S.C. §415(h) (“HEARTH Act Leasing Regulations”).

Section 2. Findings

The Tribal Council finds that:

- (1) Tribal Land is available for leasing for business, commercial, industrial, wind and solar resource, agricultural, public, religious, educational, recreational, cultural, residential, and other purposes allowed by federal law;
- (2) Congress amended the Indian Long-Term Leasing Act, 25 U.S.C § 415, to allow Indian tribes to assume the responsibility for reviewing and approving leases held in trust for the benefit of federally recognized Indian Tribes or held by those Tribes in “Restricted Fee” title;
- (3) there is a need for a streamlined leasing and review process that responds to the demands of the Tribe and its community for a limited category of leases; and
- (4) it is in the best interest of the Tribe to undertake the responsibility for reviewing and approving leases of Tribal Land in the limited circumstances which are subject to these regulations.

Section 3. Purpose, Scope and Authority

- (1) Purpose: The purpose of this ordinance is to simplify and expedite the leasing process for Tribal Land for the limited category of leases covered by these regulations.
 - (a) generate revenue from Tribal Land; and
 - (b) increase economic development on Tribal Land.
 - (c) facilitate the Tribe’s long term self-determination goals.

(2) Scope:

(a) These regulations authorize approval of leases which are otherwise consistent with tribal law, including these regulations, and which are:

(i) commercial or business leases (including for wind and solar development) which would otherwise require Interior Department approval per 25 C.F.R. Part 162 for Parties who have not agreed to accept a Commercial Land Assignment in lieu of a lease;

(ii) a residential or agricultural leases to a Mississippi Choctaw tribal member which would otherwise require Interior Department approval per 25 C.F.R. Part 162.

(b) these regulations do not apply to leases of any individual tribal member-owned land or of trust allotments, to "commercial land assignments," to agricultural land assignments, to "residential land assignments" or to "mineral resource leases."

(3) Authority: The Choctaw Tribal Council has authority to promulgate these regulations by resolution pursuant to Article VIII, Sections 1(b), (i),(m), (p) and (q) of the Revised Constitution of the Mississippi Band of Choctaw Indians (2013)

Section 4. Definitions

When used in this ordinance, the term—

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

"Choctaw Shopping Center Enterprise" means that certain enterprise established and operated by the Tribe pursuant to the Tribe's Ordinance 56.

"Commercial Land Assignment" means a contract between the MBCI and an assignee for the use of existing tribal facilities for a period of less than seven (7) years approved by the Tribal Council per 25 U.S.C. § 81 and Tribal Ordinance 16-RRRR, as amended.

"Collateral Assignment" means the conditional assignment to a creditor as security for a debt of a Lessee's personal property interest in a Lease or improvement;

“Environment” means the land, air quality, water, minerals, flora, fauna, ambient noise, areas of critical habitat, and objects or areas of historic, religious, or cultural significance to the Tribe on Tribal Land.

“Environmental Program” means the Tribe’s Environmental Program administered within the Tribe’s Public Works Department.

“Lease” means a written agreement between the Tribe and a Lessee whereby the Lessee is granted a right to possess and use only the surface of Tribal Land for a specified purpose and duration, provided that for purposes of these regulations the term “lease” shall be construed to only include, and these regulations shall only apply to leases expressly made subject to these regulations.,

“Leasehold Mortgage” means a mortgage, deed of trust, or other instrument that pledges a Lessee’s or subLessee’s leasehold interest as security for a debt or other obligation owed by the Lessee to a lender or other mortgagee.

“LTRO” means the Land Titles and Records Office of the Bureau of Indian Affairs (“BIA”) having jurisdiction/responsibility for the Tribe’s trust lands.

“Mineral Resources” means oil, gas, uranium, coal, geothermal, or other energy or non-energy minerals on Indian lands regulated by federal law, but does not include sand and gravel.

“Parties” means any form of organization or entity or any natural person whether or not such person is a member of the Mississippi Band of Choctaw Indians.

“Permit” means a written, non-assignable agreement between the Tribe and a permittee whereby the Tribe grants the permittee a temporary, revocable privilege to use Tribal Land for a specific purpose.

“Permanent Improvement” means any facility or structure.”

“Public” for purposes of “Environmental Review,” means any person who: (A) is a tribal member; (B) resides on Tribal Land within a quarter-mile radius of the area covered by the proposed Lease; and (C) will be directly affected by any Significant Effects of a proposed Lease on the Environment.

“Realty Program” means the Tribe’s Realty Program administered within the Tribe’s Economic Development Department.

“Residential Land Assignment” means any kind of instrument approved by the Choctaw Tribal Council designating a certain described area of Tribal Land

for use for residential purposes by a Mississippi Choctaw Tribal member, which instruments shall constitute tribal land assignments pursuant to 25 C.F.R. Parts 162.005 and 006.

“Tribe” means the Mississippi Band of Choctaw Indians, a federally recognized Indian tribe.

“Tribal Land” means Mississippi Choctaw Reservation Trust lands per § 1(a)(1) of Pub. L. 106-228, Act of June 29, 2000, 114 Stat. 462.

“Tribal Law” means the body of law of the Tribe, consisting of its ordinances, regulations, and common law.

“Tribal Member” means an enrolled member of the Mississippi Band of Choctaw Indians.

“Secretary” means the Secretary of the Interior or his designee, including the Bureau of Indian Affairs.

“Significant Effects” means a material and demonstrable negative change or impact on the Environment.

“State Agency” means any agency of the States of Mississippi or Tennessee responsible for reviewing environmental impacts of projects within the state.

“Sublease” a written agreement by which the Lessee grants to an individual or entity a right to possession no greater than that held by the Lessee under the Lease.

“Tribal Council” means the governing body of the Mississippi Band of Choctaw Indians.

“Trust Land” means land held in trust for the Tribe by the United States

“Restricted Fee” means that the Tribe holds title to Tribal Land 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. The Mississippi Band of Choctaw Indians does not currently hold title to any land in “Restricted Fee” within the meaning of the HEARTH ACT.

Part 2—Leases and Permits Generally

Section 5. Scope

(a) **Application.** Except as provided in subsection (b), this ordinance applies to Tribal Land.

(b) **Exception.** This ordinance does not apply to Individually-Owned Land or to trust allotments or a Residential Land Assignment.

Section 6. Purposes

(a) **Authorized Purposes.** The Tribal Council may, on behalf of the Tribe, approve a Lease for any purpose authorized by 25 U.S.C. § 415 and its implementing regulations. If such leases are not otherwise subject to this Ordinance, they shall also require BIA approval per, and shall be subject to any restrictions imposed by, § 415 and 25 C.F.R. Part 162.

Section 7. Applicable Law

(a) **Leases and Permits.** Every Lease and Permit is subject to Tribal Law and applicable federal law, unless the Tribal Council determines that it is in the Tribe's best interests to include a provision stating that some parts of state law are being borrowed and referenced in the Lease.

(b) **Tribal Land.** Tribal Law applies to Tribal Land, except to the extent Tribal Law is inconsistent with applicable federal law.

Section 8. Duration

(a) **Lease Term.** The Tribal Council may approve leases entered into under these regulations for —any lease for any purpose authorized under these regulations for a term of not more than 25 years, except that the Lease may at the discretion of the Tribal Council include options to renew of not more than two additional terms of 25 years each, or for lesser option periods.

(b) **Permit Term.** The Program may approve a Permit for a term of not more than one year for any purpose in subsection (a).

Part 3—Leasing Process

Section 9. Obtaining a Lease

(a) **Application; Additional Information.**

(1) The prospective Lessee may request a Lease by submitting an application to the Realty Program or, for proposed leases of facilities falling under the jurisdiction of the Choctaw Shopping Center Enterprise ("CSCE"), to the CSCE. The application must, at a minimum, identify:

- (1) the applicant;
- (2) the location of the Tribal Land proposed for the Lease;
- (3) the proposed duration for the Lease;
- (4) the planned access to the Tribal Land proposed for the Lease;
- (5) the anticipated use of the Tribal Land proposed for the Lease; and
- (6) any planned, or use of existing, improvement on the Tribal Land proposed for the Lease.
- (7) the financial status of the applicant as shown in a financial statement acceptable to the Tribe.

(2) The Realty Program or CSCE may require additional information from the prospective Lessee.

(b) **Entry Permit.** Upon request of the prospective Lessee, the Realty Program or CSCE may issue a Permit to allow the prospective Lessee access to the Tribal Land proposed for the Lease to prepare the documentation required by subsection (c).

(c) **Documentation; Additional Information.** The prospective Lessee shall provide to the Realty Program or CSCE the following documentation for the Tribal Land proposed for Lease:

- (1) an appraisal, if requested by the Realty Program or CSCE;
- (2) except as provided in Part 4, § 10(a) a land survey;
- (3) the proposed type and location of any improvement;
- (4) if applicable, a development plan and construction schedule for the improvement;
- (5) if applicable, a proposed restoration and reclamation plan;
- (6) an environmental review, which may be prepared by the Lessee, the Realty Program or CSCE, State Agency, or federal agency under Part 6 in the discretion of the Realty Program or CSCE; and

(7) a cultural and archeological survey.

(d) **Environmental Review Process.** Upon receipt of the application, documentation, and any additional information, the Realty Program or CSCE shall undertake the environmental review process in accordance with part 6.

(e) **Lease Negotiation**

(1) Upon completing, or during, the environmental review process, the Realty Program or CSCE and the prospective Lessee may negotiate the terms and conditions of a proposed Lease.

(2) The Lease must contain the following provisions—

(A) a legal description (which may consist of a floor plan location and facility identification for space leased in existing tribal facilities), the purpose of the Lease, and the authorized uses of the Tribal Land proposed for the Lease;

(B) the names of the Parties to the Lease;

(C) the term of the Lease and any option to renew;

(D) the date of the Lease;

(E) the rent, its due date, adjustment, including how and when the adjustment will be done, when the adjustment will be effective, and how disputes regarding the adjustment or rental payment will be resolved, and form of payment;

(F) any late payment charges, interest, or special fees;

(G) any due diligence requirements;

(H) any required bond or other form of financial security;

(I) any insurance requirements;

(J) any other terms and conditions negotiated by the parties or required by this ordinance.

(3) The following provisions must be included in every Lease:

(A) The obligations of the Lessee and its sureties to the Tribe are also enforceable by the United States so long as the leased premises remain in Trust or Restricted Status.

(B) The Lessee holds the United States and the Tribe harmless from any loss, liability, or damages arising out of the Lessee's use or occupation of the leased premises; and

(C) The Lessee hereby indemnifies the United States and the Tribe against all liabilities or costs relating to use, handling, treatment, removal, storage, transportation, or disposal of hazardous materials, or release or discharge of any hazardous material from the leased premises that occurs during the Lease term, regardless of fault, except that the Lessee is not required to indemnify the Tribe for liability or cost arising from the Tribe's negligence or willful misconduct.

(D) The jurisdictional provision set out at Part 8(e) of these regulations.

(E) The Lessee shall be responsible for completing and paying all costs required to complete all evaluation, removal or remediation requirements associated with termination of the Lease or any adverse environmental impacts caused by Lessee's activities on-site.

(f) Approval of Leases or Permits.

(1) At the conclusion of the leasing process under this part, the director of the Realty Program or CSCE shall recommend to the Tribal Council whether or not to approve the Lease.

(2) All leases governed by this ordinance are subject to approval by the Realty Program or CSCE and by the Tribal Council.

Part 4—Lease Requirements

Section 10. Land Survey

(a) Except as provided in subsections (b)-(d), the Lease must describe the leased premises by reference to a land survey prepared by a professional surveyor licensed by the board of licensure for professional engineers and professional surveyors of the state in which the surveyed land is located.

(b) If the leased premises cannot be described by reference to a land survey, the professional surveyor shall describe the leased premises using one or more of the following methods:

(1) a legal description of sufficient detail to meet the recording requirements of the LTRO;

(2) a survey-grade global positioning system description; or

(3) other description, i.e., reference to an existing lot number from a prior survey or reference to a prior recorded survey plat.

(c) formal land surveys shall not be required for residential leases issued to tribal members, but one of the descriptions referenced in § 10(b) shall be required in lieu of a formal survey plat. Lenders for residential leases mortgage financing may independently require a formal survey.

(d) land surveys shall not be required for leases involving existing tribal facilities.

Section 11. Compensation

(a) **Rent Determination.** The Realty Program or CSCE (subject to Tribal Council approval) shall determine the appropriate rent for a Lease through a market analysis, appraisal, or other valuation method; or negotiation, and shall submit its Rental Amount recommendations to the Council through the Office of the Chief.

(b) **Waiver; Nominal Rent.** The Realty Program or CSCE may (subject to Tribal Council approval) waive the rent or charge nominal rent—

(1) for a Lease for educational, religious, or medical purposes;

(2) for a Lease to use Tribal Land by a federal, state, and local government, non-profit corporation, public project, or public utility, if the entity will provide an essential governmental service, benefit, or utility service to the Tribe; or

(3) to provide an incentive to the prospective Lessee to locate on Tribal Land.

(c) All such rental waiver recommendations shall be submitted for Council action through the Office of the Chief.

(d) **Payment.** All rent must be paid directly to the Realty Program or CSCE on behalf of the Tribe, except for leases involving tribal facilities falling under the jurisdiction of the CSCE, which shall be paid to the CSCE. The Program shall account for all rent received for Tribal Land through the Office of the Chief as

part of the tribal budget process. CSCE rental receipts shall be handled per Ordinance 56.

Section 12. Bond

(a) **Required.** The prospective Lessee shall file a bond or provide other security in a form and in an amount acceptable and payable to the Realty Program or the CSCE to ensure or guarantee, subject to approval by the Tribal Council:

(1) rent payment for an amount to be negotiated or determined by the Realty Program or CSCE, in an amount not less than one month's rent;

(2) construction of any improvement;

(3) compliance with the restoration and reclamation plan;

(4) removal of any improvement; or

(5) performance of any other obligations under the Lease.

(b) **Waiver.** If the Realty Program or CSCE determines that it is in the Tribe's best interests, the Realty Program or CSCE may waive or reduce the amount of the bond, subject to Tribal Council approval.

(c) **Notice of Cancellation.** The Lessee shall provide the Realty Program or CSCE with 30 days' written notice of cancellation of the bond.

Section 13. Insurance

(a) **Requirements.** Except as provided in subsection (c), the prospective Lessee shall secure and maintain insurance from a nationally accredited insurance company with a financial strength rating of "A" or equivalent and authorized to do business in the States of Mississippi or Tennessee as specified in subsection (b).

(b) **Coverage.** The insurance must provide property, liability, crop and casualty coverage in amounts determined by the Realty Program or CSCE to be sufficient to cover any improvement, personal injury or death, or any other risk to which the Tribe and the United States may be exposed. The insurance shall expressly name the Tribe and the United States as additional named insured Parties.

(c) **Waiver.** The Tribal Council may waive the insurance requirements only for tribal members as Lessees of Tribal Land for residential or agricultural purposes.

Section 14. Improvements

(a) Approval

(1) (a) No permanent improvements may be placed or constructed on Tribal Land, or developed for the benefit of Tribal Land without the Tribal Council's prior approval. The Tribal Council may condition its approval upon certain requirements, including the provision of a bond or other financial security to assure proper removal of the improvements from Tribal Land and the restoration and reclamation of Tribal Land.

(b) Internal renovations, repairs or improvements within pre-existing or authorized facilities or structures may be authorized without further Tribal Council action subject to compliance with such Tribal approvals as may be required in the lease.

(2) The Lessee shall make a request in writing to the Realty Program or CSCE for approval of an improvement. The Realty Program or CSCE is not obligated to approve any improvement.

(3) The Lease must identify any existing and proposed improvement approved by the Tribal Council.

(b) Removal

(1) Upon the termination of the Lease, the Lessee shall remove every improvement from the Tribal Land unless otherwise provided in the Lease or in writing by the Realty Program or CSCE.

(2) No improvement may be removed without the Tribal Council's approval, if a Lessee owes rent or any other sums under the Lease or is in breach of any material obligation or duty under the Lease.

(3) The Tribal Council may require that a certain improvement be left in place on Tribal Land in which case the improvement will become the property of the Tribe.

(4) Any improvement left on Tribal Land without the Tribal Council's approval remains the responsibility of the Lessee and constitutes a nuisance until removed by the Lessee. The Realty Program or CSCE may elect either (1) to take any necessary action to abate the nuisance, with all costs and fees incurred in so doing to be additional rent due from the Lessee under the Lease, or (2) to declare that the improvements are abandoned and have become the property of the Tribe.

(5) In all cases where an improvement is removed from Tribal Land, the Lessee shall be solely liable for the restoration of Tribal Land to its condition prior to the placement of the improvement. The Lessee's obligation to remove the improvement and to restore the Tribal Land will survive the termination or cancellation of the Lease.

(6) All expenses, costs, and fees incurred by the Realty Program or CSCE as a result of improvements left on Tribal Land without the Tribal Council's approval, and all expenses, costs, and fees incurred by the Realty Program or CSCE as a result of damage or waste to Tribal Land and the improvement during the term of the Lease, or arising out of with the Lessee's use and occupancy of Tribal Land, remain the sole liability of the Lessee and are deemed additional rent due at the time incurred.

Section 15. Sublease and Assignment

(a) **Approval Required.** An Assignment or Sublease is void without the Tribal Council's approval. The Tribal Council may condition its approval upon any terms or conditions deemed to be in the Tribe's best interests, or may delegate its approval authority for subleases or assignments to the Office of the Chief. The Tribal Council may pre-approve a provision in a Lease allowing Assignment or Sublease if that provision is deemed to be in the best interests of the Tribe.

(1) The Tribal Council shall not approve any Assignment or Sublease unless the Lessee is in compliance with the terms of the Lease. The Tribal Council's approval of a Sublease or Assignment does not relieve the Lessee from any liability that may have arisen before the Sublease or Assignment. The approval of a Sublease will not release the Lessee from its continuing and primary liability for performance of all terms, duties, and obligations under the Lease.

(2) The approval of a Sublease or Assignment does not constitute approval of any subsequent Sublease or Assignment.

(b) **Application and Fee.** The Lessee shall file an application with the Realty Program or CSCE for any Sublease or Assignment and pay an administrative fee as established by Tribal Council Resolution.

(c) **No Extension of Lease; Notice.** No Assignment or Sublease will extend the term of the Lease, and the Lessee shall notify its subLessee or assignee of the terms and conditions of the Lease.

(d) **Effect of Lease Termination.** The termination of the Lease automatically, and without notice, terminates any Sublease, unless otherwise agreed to in writing by the Realty Program or CSCE.

Section 16. Collateral Assignment and Leasehold Mortgage.

(a) **Conditions.** Unless otherwise provided in the Lease, and subject to the Tribal Council's prior approval, the Lessee's or subLessee's interest in the Lease, Sublease, or any improvement may be made the subject of a Collateral Assignment or Leasehold Mortgage; provided that no Assignment or Leasehold Mortgage shall give the assignee or mortgagee the right to enter on or occupy the premises that are the subject of the Lease or Sublease without the written consent of the Tribal Council. An approved collateral assignee or mortgagee may place a lien on the Lessee's or subLessee's interest in the Lease, Sublease, and any improvement covered by the Collateral Assignment or Leasehold Mortgage, but may not place a lien on the Tribe's interest in the Lease, Sublease or any improvement, or in the Tribe's reversionary interest in the real and personal property subject to the Lease or Sublease. Any attempt by the Lessee or subLessee to collaterally assign or mortgage its interest in a Lease, Sublease, or in any improvement, without the Tribal Council's approval, is void and will not vest the purported collateral assignee or mortgagee with any right, title, interest, claim or privilege with respect to the Lease, Sublease, or improvement.

(b) **Application.** A Lessee or subLessee shall apply to the Realty Program or CSCE to collaterally assign or mortgage the Lessee's or subLessee's interest in the Lease, Sublease, or any improvement in writing. Within five days of the closing, the Lessee shall provide to the Realty Program or CSCE a copy of the Collateral Assignment or Leasehold Mortgage and pay any applicable fee set by the Realty Program or CSCE.

(c) **Additional Terms and Conditions.** The Tribal Council may approve the Collateral Assignment or Leasehold Mortgage subject to any terms and conditions deemed to be in the Tribe's best interests.

(d) **Notice of Breach of Lease; Cure.**

(1) If the Realty Program or CSCE gives written notice to a Lessee or subLessee of a breach of the Lease or Sublease, the Realty Program or CSCE shall also give written notice of the breach to the approved collateral assignee or mortgagee. The Realty Program or CSCE shall send the notice by certified mail to the most current name and address of the collateral assignee or mortgagee provided to the Realty Program or CSCE and no proof of receipt of the notice by the collateral assignee or mortgagee is required.

(2) The approved collateral assignee or mortgagee may cure the Lessee's or subLessee's breach within the time periods provided to the Lessee or subLessee under the Lease or Sublease. The Lease or Sublease may provide that a collateral assignee or mortgagee may succeed to the rights and duties of the Lessee or subLessee under the conditions provided in the Lease or Sublease.

(e) **Applicable Terms and Conditions.** A collateral assignee or mortgagee takes its interest subject to the following terms and conditions:

(1) The Lessee or subLessee shall give notice to the Realty Program or CSCE of the terms and conditions to its collateral assignee or mortgagee upon making a Collateral Assignment or Leasehold Mortgage.

(2) The Lessee or subLessee shall give notice to the Realty Program or CSCE of all proceedings to enforce or foreclose the Collateral Assignment or Leasehold Mortgage.

(3) The successor in interest to the Lessee's or subLessee's interest in the Lease, Sublease, or in any improvement, as the result of the enforcement or foreclosure of a Collateral Assignment or Leasehold Mortgage, or an Assignment or conveyance in lieu of the enforcement or foreclosure, will be deemed to be an assignee under this section 16, subject to the Tribal Council's approval. The Tribal Council shall not approve any successor in interest unless the successor in interest, or the Lessee or subLessee has paid all sums due and discharged all other pending obligations and duties under the Lease or Sublease.

Section 17. Effective Date of Leases and Lease Documents. Every Lease and Lease document, including any amendment, Assignment, Sublease, Leasehold Mortgage, must state their effective date.

Section 18. Form of Lease. The form of lease attached hereto as Exhibit A has been preapproved by the Choctaw Tribal Council and the Choctaw Attorney General's Office. Any changes to this form of lease must be approved by the Choctaw Attorney General's Office and the Choctaw Tribal Council.

Part 5—Permits

Section 19. Requirements

The Director of the Realty Program or the General Manager of the CSCE (for tribal facilities falling under CSCE's jurisdiction) may issue a Permit to a permittee, with Tribal Council approval, upon the following conditions:

(1) the permittee agrees to indemnify and hold the Tribe, its Tribal Council, councilors, officers, agents, and employees harmless from liability arising out of the permittee's use of Tribal Land;

(2) the permittee agrees to restore Tribal Land or facilities to its original condition upon termination or demand, and to remove any improvement made

thereon or, at the Realty Program's (or CSCE's) option, to relinquish to the Tribe any improvement;

(3) the Permit is temporary in nature and contains provisions for termination without cause of not more than 90 days upon notice by the Realty Program (or CSCE) and may contain other provisions that the Realty Program or CSCE may require regarding the use of Tribal Land; and

(4) the permittee agrees to pay: (i) an administrative fee determined by the Realty Program or CSCE to defray the costs in processing, considering and issuing the Permit, and (ii) a Permit fee determined by the Realty Program or CSCE.

Section 20. Bond

The Realty Program or CSCE may require the permittee to file a bond or provide other financial security in accordance with this ordinance.

Section 21. Limitations

No Permit issued by the Realty Program or CSCE may:

- (1) grant the permittee a legal interest in Tribal Land;
- (2) exceed a term of one year;
- (3) grant the permittee a right to possess Tribal Land or the ability to limit or prohibit others to access tribal Land; or
- (4) result in any Significant Effects on the Environment.

Section 22. Enforcement. The Tribe is solely responsible for enforcing violations of any Permit.

Part 6—Tribal Environmental Review

Section 23. Preparation of Environmental Review Statement

(a) **Requirement.** (1) Except as provided in subsection (b), the Environmental Program shall prepare an environmental review statement that identifies and evaluates any Significant Effects of the proposed Lease on the Environment, unless the Realty Program or CSCE in its discretion has determined that the Lessee, State Agency, or federal agency will prepare the environmental review statement for the Realty Program or CSCE's review.

(2) The National Environmental Policy Act does not apply to any Lease or approval of any Lease under this ordinance.

(b) **Exceptions.** (1) The Environmental Program shall not prepare an environmental review statement for any proposed Lease that:

(A) will not result in any significant change in the use of Tribal Land;

(B) will not by its nature have any Significant Effects on the Environment, but the Environmental Program has complied with the documentation requirements of section 31;

(C) covers Tribal Land for which (i) the Environmental Program has prepared an earlier environmental review in accordance with this ordinance, or (ii) a State Agency, federal agency, or a non-tribal entity or person has prepared an environmental review in accordance with NEPA or other applicable law, and the date of that environmental review is within five years of the beginning of the Lease term;

(D) involves the lease of an existing tribal facility for uses that will be carried out wholly within the space allocated within such facility;

(E) involves a residential lease to a tribal member; or

(F) involves any form of lease of tribal land as to which a NEPA categorical exclusion has been recognized by the U.S. Department of the Interior regarding leases of tribal land or otherwise.

(2) The Environmental Program shall issue a written report documenting its decision not to prepare an environmental review statement based on any of the exceptions stated in subsection (b)(1).

Section 24. Public Participation

(a) **Public Notice.** The Environmental Program shall notify the public of the environmental review statement by any one of the following methods:

(1) publishing the notice in a newspaper or newsletter of general circulation in the Tribal community;

(2) posting the notice at the tribal administration building; or

(3) disseminating the notice in a manner reasonably calculated to reach the Public.

(b) **Notice Contents.** The notice of environmental review statement must contain the following information:

- (1) a summary of the proposed Lease;
- (2) a summary of the need for the proposed Lease;
- (3) a summary of the environmental review statement;
- (4) the location where the Public can without charge obtain a copy of the environmental review statement;
- (5) the Environmental Program recommendation on the proposed Lease; and
- (6) an invitation to the Public to submit written comments to the Environmental Program regarding the environmental review statement during a comment period not to exceed 20 days from the date the notice is published.

(c) **Public Comments; Response.** The Environmental Program shall consider all written comments received from the Public and provide a written response to all relevant and substantive comments within 20 days of the closing of the comment period and before approving the proposed Lease. The Environmental Program's written response will identify any recommended mitigation or conditions of approval on the proposed Lease. The Environmental Program shall notify the Public of its response to comments in accordance with section 23(a). Based on comments received and without need of initiating another comment period, the Environmental Program may revise the environmental review statement, or impose restrictions as a condition of approval of the proposed Lease.

Section 25. Environmental Review Statement

(a) **Contents.** The environmental review statement need only consider the substantive features of the proposed Lease and does not need to consider alternative actions or transactions, including a no-action alternative, but shall consider Significant Effects

(b) **Minimum Review Requirements.** The level of detail and depth of the analysis conducted by the Environmental Program is limited to the minimum needed to determine whether there would be Significant Effects of the proposed Lease on the Environment.

Section 26. Environmental Review Statement Documentation.

An environmental review statement may be prepared in any format to facilitate identification and evaluation of any Significant Effects of the proposed Lease on the Environment.

Section 27. Environmental Review Prepared by Another Entity

(a) **Reliance on State Review.** The Environmental Program may consider information generated in the environmental review process of any State Agency (if any) respecting a proposed lease, but the Tribe must in any event conduct its own environmental review where such review is required under these regulations rather than on the tribal environmental review process in this Part 6.

(b) **Reliance on Federal Review.** The Environmental Program may rely on the environmental review process of any federal agency rather than on the tribal environmental review process in this Part 6, if the Tribe carries out a project or activity funded by the federal agency.

(c) **Reliance on Other Review.** The Environmental Program may rely on the environmental review statement of any person or entity rather than on the environmental review process in this Part 6 on the conditions that the resulting environmental review meets the threshold requirements of the environmental review process of this Part 6 and the Environmental Program complies with the Public comment and response requirements stated in section 23(c).

Section 28. Conclusion of Environmental Review Statement Process.

(a) **Consideration Requirements.** The Tribal Council may approve or disapprove the proposed Lease only after the Environmental Program:

(1) identifies and evaluates any Significant Effects of a proposed Lease on the Environment;

(2) publishes notice of environmental review statement;

(3) receives and reviews Public comments; and

(4) provides written responses to any Public comments in a final environmental review document to be made available for public inspection.

(b) **Appeal.** The Public may appeal the Environmental Program's decision to the tribal court in accordance with Part 9.

Part 7— Lease Administration

Section 29. Administration

(a) **Administration under Ordinance and Federal Law.** The Realty Program or CSCE shall administer all any Lease or Permit approved under this ordinance.

(b) **Management Practices.** The Realty Program or CSCE shall employ sound real estate management practices under this ordinance, including collections, monitoring, enforcement, relief, and remedies.

Section 30. Accounting

The Tribe's Finance Realty Program or CSCE shall implement and maintain an accounting system to ensure proper accounting of rent payments of leases in accordance with generally accepted accounting principles.

Section 31. Administrative Fees

The Realty Program or CSCE may charge an administrative fee to cover the expense of processing a Lease, Sublease, Assignment, amendment, Collateral Assignment, Leasehold Mortgage, or other transaction under this ordinance.

Section 32. Documentation

(a) **Filing with LTRO.** Except as provided in subsection (b), the Realty Program or CSCE shall provide copies of the following to the Secretary for filing with the LTRO:

(1) Leases, including any amendment or renewal thereof, approved under this ordinance; and

(2) Lease documents, including any amendment, Assignment, Collateral Assignment, Sublease, Leasehold Mortgage, and other documents showing rental payments to the Tribe sufficient to enable the Secretary to discharge the trust responsibility of the United States under 25 U.S.C. § 415(h)(7).

(b) **Exception.** The Realty Program or CSCE is not required to provide to the Secretary a copy of any Permit.

Part 8. Enforcement

Section 33. Enforcement

(a) The Choctaw Attorney General's Office shall enforce the terms and conditions of any Lease or Permit approved in accordance with this ordinance.

(b) Nothing in this ordinance prohibits the Realty Program or CSCE from requesting the Secretary to enforce the terms and conditions of, or cancel, any Lease.

Section 34. Default, Cancellation, and Remedies

(a) **Default.** Unless otherwise stated in a Lease, the Lessee shall be in default under a Lease if a breach of the Lease is not cured within 30 days after the Realty Program or CSCE gives notice of the breach to the Lessee. A breach of the Lease, includes a failure to pay any rent or other monetary obligation due under the Lease, violation of any term, condition, or covenant of the Lease, or failure to perform or observe any other obligation under the Lease.

(b) **Notice.** (1) For a notice to be valid, it must be in writing and delivered (A) by hand, (B) by a national courier, with all fees prepaid, or (C) by registered or certified mail, return receipt requested and postage prepaid.

(2) A notice will be effective when received by the Lessee. The notice will be deemed to have been received as follows:

(A) if it is delivered by hand, delivered by a national courier, with all fees prepaid, or delivered by registered or certified mail, return receipt requested and postage prepaid, upon receipt as indicated by the date on the signed receipt; and

(B) if the Lessee rejects or otherwise refuses to accept it, or if it cannot be delivered because of a change in address for which no notice was given, then upon that rejection, refusal, or inability to deliver.

(c) **Remedies.** (1) On the default of a Lessee, the Tribe shall have all the remedies available at law or in equity and as provided in the Lease, including terminating or cancelling the Lease, and proceeding to recover any damages, including damages for any unpaid or unperformed obligations of the Lessee.

(2) If the Lessee does not cure a violation of a Lease within the required cure period, the Tribe may, in addition to any other remedies, cancel the Lease upon notice to the Lessee and any surety and mortgagee of the cancellation. The cancellation notice must (i) explain the grounds for cancellation; (ii) if applicable, notify the Lessee of the amount of any unpaid compensation or late payment charges due under the Lease; (iii) notify the Lessee of the Lessee's right to appeal under Part 9, including the possibility that the tribal court to whom the appeal is made may require the Lessee to post an appeal bond; (iv) order the Lessee to vacate the property within 31 days of the date of receipt of the cancellation letter,

if an appeal is not filed by that time; and (v) order the Lessee to take any other action the Tribe deems necessary to protect the Tribe.

(d) **Compliance with Lease.** Pending resolution of any dispute, the Lessee shall continue to pay all rent and comply with the terms of the Lease, including any requirements for environmental or hazardous waste remediation and reclamation of the leasehold premises. If the Lessee fails to make such payments pending the outcome of an appeal, the Tribe may immediately commence eviction proceedings, bring an action in forcible entry and detainer, or take any other action under Tribal Law or applicable federal law it deems appropriate to protect the Tribe's interests.

(e) **Tribal Court Jurisdiction.** Exclusive venue and jurisdiction shall be in the Tribal court of the Mississippi Band of Choctaw Indians as to any dispute or cause of action of any kind or nature whatsoever involving Lessee and Landlord or Lessee and any member of the Mississippi Band of Choctaw Indians arising from Lessee's store operations, or any of Lessee's actions or inactions on the Mississippi Choctaw Indian Reservation.

(f) All lease default, enforcement, remedy and litigation matters for which the Tribe is empowered to act under these regulations shall be handled by and through the Choctaw Attorney General's Office.

Section 35. Interest; Fees

A Lease shall specify the rate of interest to be charged if the Lessee fails to make payments on time, and identify additional late payment fees. Unless the Lease provides otherwise, interest charges and late payment fees will apply in the absence of any notice to the Lessee from the Realty Program or CSCE, and the Lessee's failure to pay such amounts will be treated as a breach of the Lease.

Section 36. Harmful or Threatening Activity

If a Lessee or other party causes or threatens to cause immediate and significant harm to the leased premises or engages in criminal activity thereon, the Tribe may take appropriate emergency action in accordance with Tribal Law, including cancelling the Lease, commencing eviction proceedings, bringing an action in forcible entry and detainer, or taking any other action deemed appropriate to protect the public interest, the leased premises, and the Environment.

Section 37. Holdover and Trespass

If a Lessee remains in possession of the leased premises after termination of the Lease, the Tribe may treat the continued possession as a holdover tenancy or as a

trespass, and if Tribe treats the continued possession as a trespass, the Tribe may pursue any remedy available under Tribal Law or federal law.

Part 9—Appellate Review

Section 38. Appeals

(a) Notice of Appeal; Contents; Service.

(1) The Lessee or interested party may appeal the Tribe's final determination to the tribal court by filing a notice of appeal in the tribal court within 14 days of the Tribe's final determination.

(2) The notice must state the following:

- (A) the Lessee's or interested party's interest;
- (B) the facts necessary to understand circumstances giving rise to the appeal;
- (C) the question to be resolved; and
- (D) the relief sought.

(3) The Lessee or interested party shall serve the notice by USPS mailing, Federal Express, UPS, courier, hand-delivery or e-mailing a copy to the director of the Realty Program or the CSCE, copy to the Choctaw Attorney General's Office and the Chief of the Tribe within five business days after the filing of the notice of appeal in the tribal court.

(b) **Appeal Bond.** Upon the Tribe's motion, the tribal court may require the Lessee or interested party to file a bond or provide other security in any form and amount necessary to protect the Tribe from financial losses.

(c) **Scope of Review.** The tribal court shall uphold the Tribe's final determination unless it finds that the Tribe's action:

- (1) was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with applicable law;
- (2) exceeded the Tribe's jurisdiction, authority, or limitations; or
- (3) is unsupported by substantial evidence.

Part 10—Miscellaneous

Section 39. Sovereign Immunity

Nothing in this ordinance may be construed as waiving the sovereign immunity of the Tribe, the Tribal Council, or the Tribe's officials or employees. However, leases approved per these regulations may contain a limited waiver of the Tribe's sovereign immunity, if determined by the Tribal Council to be in the Tribe's best interest

Section 40. Severability

If any court of competent jurisdiction determines any provision in ordinance is invalid, void, or unenforceable, the remaining provisions remain in full force and effect without regard to the invalid, void, or unenforceable provision.

Section 41. Effective Date

This ordinance takes effect upon approval by the Secretary.

Section 42. Amendments

(a) **Substantive Amendments.** The Tribal Council may propose amendments to this ordinance concerning matters specifically governed by 25 U.S.C. § 415 and its implementing regulations, subject to approval of the Secretary.

(b) **Non-Substantive Technical Amendments.** The Tribal Council may approve all amendments to this ordinance not subject to subsection (a).