




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

APPROVAL OF

**KICKAPOO TRADITIONAL TRIBE OF TEXAS
BUSINESS LEASING CODE**

The attached Business Leasing Code, submitted by the Kickapoo Traditional Tribe of Texas listed in the Federal Register, Vol. 85, No. 20 FR 5463 (January 6, 2020) as the Kickapoo Traditional Tribe of Texas, 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 Kickapoo Traditional Council of the Kickapoo Traditional Tribe of Texas on March 11, 2020, is hereby approved.

Dated: SEP - 4 2020



Assistant Secretary – Indian Affairs
United States Department of the Interior

Pursuant to the authority delegated by 209 DM 8

Kickapoo Traditional Tribe of Texas Leasing Code – Part 3 Business Leases

**Chapter 27 Leasing Code
Table of Contents**

<i>PART 1. PURPOSE.....</i>	<i>3</i>
Section 27.1.1 – Purpose	3
Section 27.1.2 – Definitions	3
Section 27.1.3 – Authority & Delegation.....	6
Section 27.1.4 – Scope	6
Section 27.1.5 – Purpose	6
Section 27.1.6 – Short Title.....	6
Section 27.1.7 – Application only to Tribal Trust Lands	7
Section 27.1.8 – No Application to Mineral Leases.....	7
<i>PART 2. AGRICULTURAL LEASES – Reserved.....</i>	<i>8</i>
<i>PART 3. BUSINESS LEASES.....</i>	<i>9</i>
Section 27.3.1 – Short Title.....	9
Section 27.3.2 – Application Only to Tribal Trust Lands	9
Section 27.3.3 – Terms & Conditions	9
Section 27.3.4 – Approval Process	9
Section 27.3.5 – Duration and Renewal	9
Section 27.3.6 – Obtaining a Business Site Lease.....	9
Section 27.3.7 – Space Leases.....	11
Section 27.3.8 – Land Descriptions.....	11
Section 27.3.9 – Appraisal; Local Studies.....	11
Section 27.3.10 – Fair Annual Lease Value	12
Section 27.3.11 – Environmental Review Process	13
Section 27.3.12 – Insurance	13
Section 27.3.13 – Performance Bond.....	13
Section 27.3.14 – Improvements	14
Section 27.3.15 – Subleases, Assignments, Amendments, and Leasehold Mortgages	15
Section 27.3.16 – Business Lease Management	16

Section 27.3.17 – Enforcement.....	16
Section 27.3.18 – Defaults.....	16
Section 27.3.19 – Remedies.....	17
Section 27.3.20 – Penalties.....	17
Section 27.3.21 – Harmful or Threatening Activities	18
Section 27.3.22 – Holdover	18
Section 27.3.23 – Trespass	18
Section 27.3.24 – Appeals	18
Section 27.3.25 – Environmental Review Process.....	18
Section 27.3.26 – Sovereign Immunity	21
Section 27.3.27 – Effective Date & Amendment.....	21
<i>PART 4. RESIDENTIAL LEASES – Reserved.....</i>	22
<i>PART. 5 SOLAR & WIND RESOURCES LEASES – Reserved.....</i>	23

PART 1. PURPOSE

Section 27.1.1 – Purpose

The Kickapoo Traditional Tribe of Texas has the inherent authority to manage its Tribal Trust Lands for the safety and benefit of its Members. Article VII Section (f) of the Kickapoo Traditional Tribe of Texas Constitution vests the Traditional Council with the authority to “lease and make assignments of tribal land in accordance with the law.” The Traditional Council enacts Chapter 27, the Kickapoo Traditional Tribe of Texas Leasing Code to effectively manage the leasing of Tribal Trust Lands for the benefit of the Tribe and its Members.

Section 27.1.2 – Definitions

Unless otherwise indicated, the following terms used in Chapter 27 of the Kickapoo Traditional Tribe of Texas Leasing Code shall be defined as below:

- (A) *Agricultural Lease* – The term “Agricultural Lease” means the same as “Lease,” except that Agricultural Lease shall be limited to leases for agricultural purposes, such as farming or livestock raising, under the authority of this code.
- (B) *Assignment* – The term “Assignment” means an agreement between a Lessee and an assignee whereby the assignee acquires all or some of the Lessee’s rights and assumes all or some of the Lessee’s obligations under a Lease.
- (C) *Best Interest of the Tribe* – The term “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 opportunities on Tribal Trust Land, and preserve the sovereignty of the Tribe.
- (D) *BIA* – The term “BIA” means the Bureau of Indian Affairs, United States Department of the Interior.
- (E) *Business* – The term “Business” means any activity intended for commerce. The business character of an activity shall be determined by reference to the nature of the course of conduct or particular transaction or act, rather than by reference to its purpose.
- (F) *Business Site Lease* – The term “Business Site Lease” means the same as “Lease,” except that Business Site Lease shall be limited to leases for business and/or commercial purposes under the authority of this code.
- (G) *Change in Land Use* – The term “Change in Land Use” means the change from one use to another that significantly differs from the former use.
- (H) *Commercial* – The term “Commercial” means any activity intended for commerce. The commercial character of an activity shall be determined by reference to the nature of the course of conduct or particular transaction or act, rather than by reference to its purpose.

- (I) *Development Period* – The term “Development Period” means the time period from when a Lease is approved to when improvements are expected to be substantially completed.
- (J) *Environmental Review Process* – The term “Environmental Review Process” means the process for conducting the tribal environmental review to assess whether a proposed development or project, as defined herein, will have a Significant Impact on the Environment.
- (K) *Environmental Reviewer* – The term “Environmental Reviewer” means an official of the Kickapoo Environmental Protection Agency or as otherwise designated by the Traditional Council, which is the entity that conducts, coordinates, and oversees the Environmental Review Process.
- (L) *Execute* – The term “Execute” means the act of giving legal validity to a lease through the signing of the lease by both parties.
- (M) *Executing Official* – The term “Executing Official” means the Traditional Council or its properly authorized designee, who shall execute all properly approved Leases and Leases of the Tribe and take all necessary and proper action on Leases and Subleases including amendments, modifications, assignments, and cancellations of Leases and Subleases.
- (N) *Fair Annual Lease Value* – The term “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.
- (O) *Holdover* – The term “Holdover” means circumstances in which a Lessee remains in possession of the leased premises after the lease term expires and/or is cancelled.
- (P) *KTTT* – The term “KTTT” means the Kickapoo Traditional Tribe of Texas and has the same meaning as “Tribe”.
- (Q) *Lease* – The term “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 duration and purpose. 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.
- (R) *Leasing Decision* – The term “Leasing Decision” means following types of lease transactions that will be acted on by the Tribe: lease insurance, lease amendment or modification, subleasing, lease assignment or transfer, and tenant lease renewal, or another action taken involving a lease under this Chapter 27 of the KTTT Code.
- (S) *Leasehold Mortgage* – The term “Leasehold Mortgage” means a mortgage, deed of trust, or other instrument that pledges a Lessee’s leasehold interest as security for a debt or other obligation owed by the Lessee to a lender or other mortgagee.

- (T) *Lessee* – The term “Lessee” means a person or entity who has acquired a legal right to possess Tribal Trust Land by a Lease pursuant to this code.
- (U) *Lessor* – The term “Lessor” means the Kickapoo Traditional Tribe of Texas.
- (V) *Project* – The term “Project” means any economic development activity occurring on Tribal Trust Land subject to or contemplated under a Lease.
- (W) *Public* – The term “Public” for the purpose of Environmental Review Process means all properly enrolled members of the Kickapoo Traditional Tribe of Texas, individuals who live on Tribal Trust Land, business entities or institutions that are engaged in programs or activities on Tribal Trust Land, and any person holding an interest in land contiguous to Tribal Trust Land which is the subject of a Lease that have a definable and concrete interest that will be directly affected by any Significant Impacts on the Environment caused by the proposed Lease.
- (X) *Residential Lease* -- The term “Residential Lease” means the same as “Lease,” except that Residential Lease shall be limited to leases to individuals for private homes under the authority of this code.
- (Y) *Significant Impact on the Environment* – The term “Significant Impact 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 or cultural aesthetic significance.
- (Z) *Solar Resources Lease* – The term “Solar Resources Lease” means the same as “Lease,” except that Solar Resources Lease shall be limited to leases for the development of solar energy resources under the authority of this code.
- (AA) *Space Lease* – The term “Space Lease” means a Lease of space within existing facilities on Tribal Trust Land that is not already leased, i.e. not subleases.
- (BB) *Sublease* – The term “Sublease” means a written agreement by which a Lessee grants to an individual or an entity a right to possession no greater than that held by the Lessee under a Lease.
- (CC) *Tribe* – The term “Tribe”, similarly to KTTT, means the Kickapoo Traditional Tribe of Texas.
- (DD) *Traditional Council* – The term “Traditional Council” means the duly elected governing body of the Kickapoo Traditional Tribe of Texas pursuant to the KTTT Constitution.
- (EE) *Tribal Environmental Impact Report or TEIR* – The term “Tribal Environmental Impact Report” or “TEIR” means the environmental analysis required under Section 27.3.27(D).

(FF) *Tribal Trust Land* – The term “Tribal Trust Land” means all lands owned by the Kickapoo Traditional Tribe of Texas over which the Tribe exercises governmental power and that are held in trust by the United States for the benefit of the Tribe.

(GG) *Trust Land* – The term “Trust Land” means land held in trust by the United States for the benefit of a tribe or individual Indian.

(HH) *Wind Resources Lease* – The term “Wind Resources Lease” means the same as “Lease,” except that Wind Resources Lease shall be limited to leases for the development of wind energy resources under the authority of this code.

Section 27.1.3 – Authority & Delegation

This Leasing Code is enacted by the Traditional Council pursuant to the powers vested in it pursuant to Article VII of the KTTT Constitution approved by the United States Secretary of the Interior on July 11, 1989, as may be amended from time to time. Article VII Section (f) of the KTTT Constitution provides the Traditional Council with the authority to “lease and make assignments of tribal land in accordance with the law.”

Section 27.1.4 – Scope

The scope of application of this Leasing Code shall be limited to Leases approved pursuant to 25 U.S.C. § 415 and the Helping Expedite and Advance Responsible Tribal Home Ownership Act (HEARTH Act), Pub. L. No. 112-151 (2012) governing leases on Indian trust lands. Nothing herein shall be construed to affect the terms and conditions of existing leases.

Section 27.1.5 – Purpose

(A) The purposes of this Leasing Code are to:

- (1) Recognize the authority of the Kickapoo Traditional Tribe of Texas to issue, review, approve, and enforce Leases and establish streamlined procedures for environmental review;
- (2) Promote self-determination, encourage economic self-sufficiency, and increase business activity and employment on lands of the Kickapoo Traditional Tribe of Texas;
- (3) Implement the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012 (HEARTH Act), Pub. L. No 112-151, 126 Stat. 1150 (2012), and this Leasing Code.

Section 27.1.6 – Short Title

Chapter 27 of the KTTT Code may be cited as the “Leasing Code.”

Section 27.1.7 – Application only to Tribal Trust Lands

The Leasing Code applies only to Tribal Trust Land. It does not apply to unrestricted fee lands owned by the Tribe or individually-owned land regardless of restricted status.

Section 27.1.8 – No Application to Mineral Leases

The Leasing Code does not apply to mineral leases.

PART 2. AGRICULTURAL LEASES – *Reserved*
(RESERVED)

(Page Intentionally Left Blank)

PART 3. BUSINESS LEASES

Section 27.3.1 – Short Title

This Part of Chapter 27 of the KTTT Code may be cited as the “Business Leasing Code.”

Section 27.3.2 – Application Only to Tribal Trust Lands

The Business Leasing Code applies only to Tribal Trust Land. It does not apply to unrestricted fee lands owned by the Tribe or individually-owned land regardless of restricted status.

Section 27.3.3 – Terms & Conditions

Leases shall be governed by this Code and the terms and conditions set forth in the Business Site Lease agreement. The terms and conditions may be modified by Lessor and or Lessee with the approval of the Traditional Council. The Lessee is responsible for understanding these terms and conditions.

Section 27.3.4 – Approval Process

After all the necessary requirements of this Business Leasing Code have been met, a proposed Business Site Lease shall be presented to the Traditional Council for approval. A Lease is approved by a majority vote of a quorum of the Traditional Council. The approved Lease shall be executed on behalf of the Tribe by the Executing Official. A Lease must be executed after its approval to be legally valid.

Section 27.3.5 – Duration and Renewal

No Business Site Lease shall be approved more than twelve (12) months prior to the commencement of the term of the Lease. The term shall not be more than twenty-five (25) years except that any such Business Site Lease may include an option to renew for up to two additional terms, each of which may not exceed twenty-five (25) years. The Lessee shall notify the Traditional Council and the Tribe’s Legal Department of the intent to renew, at least one year before such Lease is due to expire.

Section 27.3.6 – Obtaining a Business Site Lease

Information on obtaining a Business Site Lease shall be available from the KTTT Economic Development Department, unless otherwise directed by the Traditional Council.

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

- (1) Financial statement that is sufficient to determine the Lessee's ability to carry out the lease;
 - (2) Site survey and legal description, if applicable;
 - (3) Tribal environmental review as required by this Business Leasing Code; and
 - (4) Other documents as may be required by the Tribe pursuant to the Tribe's business leasing procedures.
- (B) All Business Site Leases shall contain, at minimum, the following provisions:
- (1) The legal description of the tract, location, or parcel of the land being leased, with a legal description sufficient to meet BIA Land Title and Record Office Requirements;
 - (2) The purpose of the Lease and authorized uses for the leased premises;
 - (3) The parties to the Lease and their contact information;
 - (4) The term and effective dates of the Lease;
 - (5) Identification of the responsible party for constructing, owning, operating, maintaining, and removing any improvements to the leased premises;
 - (6) Identification of the ownership of permanent improvements to the leased premises;
 - (7) Indemnification of the United States and Lessor;
 - (8) Payment requirements, including:
 - (a) Interest and additional late payment penalties;
 - (b) Acceptable form(s) of payment;
 - (c) The dates on which all payments are due;
 - (d) The Lessee shall make payments directly to the Tribe; and
 - (e) Unless otherwise provided in the Lease, payments may not be made or accepted more than one year in advance of the due date.
 - (9) Requirement for late payments, penalties, and interest, among others.
 - (10) Due diligence, insurance and bonding requirements as provided in this Business Leasing Code.

- (11) Irrigation District provision, if applicable.
- (12) Identification and treatment of historical/cultural sites, if applicable.
- (13) Enforcement provisions and remedies to aggrieved parties.
- (C) The Tribe shall file Business Site Leases, Space Leases, subleases, assignments, amendments, leasehold mortgages, renewals, modifications, and cancellations with the:
 - Land Title and Records Office
 - BIA Southern Plains Region
 - P.O. Box 368
 - Anadarko, OK 73005
- (D) The Tribe is responsible for maintaining all records of all Business Site Leases and for disseminating recorded lease documents to the Legal Department, Tribal Administrator, and the KTTT Environmental Protection Agency.
- (E) The Tribe shall send a copy of these leases and all amendments and renewals to the BIA Southern Plains Regional Director, P.O. Box 368, Anadarko, OK 73005.
- (F) Records of activities taken pursuant to this Business Leasing Code are the property of the Tribe. Records compiled, developed, or received by the Secretary of the Interior are the property of the United States.
- (G) 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.

Section 27.3.7 – Space Leases

Space leases shall be reviewed and approved pursuant to this Business Leasing Code.

Section 27.3.8 – Land Descriptions

Business Site Leases shall contain adequate site surveys and legal descriptions based on metes and bounds, rectangular or lot and block systems. 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. The descriptions shall be adequate for the purposes of filing the lease with the Bureau of Indian Affairs' Land Title and Records Office.

Section 27.3.9 – Appraisal; Local Studies

- (A) The Fair Annual Lease Value shall be determined by an appraisal or equivalent procedure performed by the Tribe 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 Tribe and deemed to be in the Best Interest of the Tribe. An appraisal log reporting the methods of appraisal and value of the Tribal 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 the Tribal Trust Land shall be attached to every Business Site Lease.

Section 27.3.10 – Fair Annual Lease Value

- (A) No Lease shall be approved for less than the present Fair Annual Lease Value as determined by an appraisal, except as follows:
 - (1) The Lease is in the Development Period;
 - (2) The Tribe is providing an incentive for a business to locate on Tribal Trust Land, and must provide lease concessions, lease improvement credits, and lease abatements to attract such business; or
 - (3) The Tribe determines such action is in the Best Interest of the Tribe.
- (B) Situations that lead to the presumption that a Lease is for a Fair Annual Lease Value occur when:
 - (1) Lessee and Lessor are typically motivated;
 - (2) Both parties are well-informed or well-advised, and acting in what they consider their best interests;
 - (3) A reasonable time is allowed for exposure in the open market; and
 - (4) The rent payment is made in terms of cash in United States dollars and is expressed as an amount per time period consistent with the payment schedule of the lease contract; and the rental amount represents the normal consideration for the property leased unaffected by special fees or concessions granted by anyone associated with the transaction.
- (C) A Lease may be structured at a flat lease rate.
- (D) A Lease may be structured at a flat lease rate plus a percentage of gross receipts, if the Lessee is a business located in a shopping center or mall, or the Lessee generates over \$1,000,000,000.00 annually in gross receipts.
- (E) A Lease may be structured based on a percentage of gross receipts or based on a market indicator.

- (F) The Lease must specify that payments be made to the Tribe, the dates on which all payments are due, and the manner in which payments are to be made to the Tribe.
- (G) 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.
- (H) Leases may be structured to allow for lease rate adjustments. The lease shall specify how adjustments will be made, who will make adjustments, when adjustments will go into effect, and how disputes shall be resolved.
- (I) Leases may be amended to allow for lease rate adjustments.
- (J) The Tribe shall keep written records of the basis used in determining the Fair Annual Lease Value, as well as the basis for any adjustments. These records shall be presented to the Lessee for its review and acceptance or non-acceptance and included in any lease file.

Section 27.3.11 – Environmental Review Process

Unless exempted from this requirement under this Business Leasing Code, the Traditional Council shall not approve a Business Site Lease until the proposed Lessee has completed the Environmental Review Process under Section 27.3.27. Leases approved or executed without complying with this Section shall be null and void.

Section 27.3.12 – 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 Tribe may waive this requirement, in writing, if the Tribe determines it 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.

Section 27.3.13 – Performance Bond

- (A) Unless waived in writing by the Tribe in accordance with the Business Leasing Code, 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 shall guarantee:

- (1) The annual lease payment;
 - (2) The estimated development cost of improvements; and
 - (3) Any additional amount necessary to ensure compliance with the Lease.
- (B) The Tribe may waive the bond requirement, or reduce the amount, if doing so is in the Best Interest of the Tribe. The Tribe 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.

Section 27.3.14 – 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 Lease.

- (A) Lessee, at Lessee's expense or as otherwise provided in the Business Site Lease, may construct improvements under a Business Site Lease if the Lease specifies, or provides for the development of:
 - (1) A plan that describes the type and location of any improvement to be built by the Lessee; and
 - (2) 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 towards 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 Section 27.3.21-22 of the Business Leasing Code.

- (E) Improvement to the premises shall become property of the Tribe unless otherwise provided for in the Business Site Lease. If improvements will be removed, the Business Site Lease shall specify the maximum time allowed for such removal and the Lessee's obligations to restore and reclaim the property to conditions acceptable to the Tribe.
- (F) A Lessee may develop equity value in improvements and sell its interest in the Business Site Lease based on the equity value. The Tribe has right of first refusal to purchase the interest.
- (G) The Business Site Lease may provide that at expiration, cancellation, or termination of the Lease, the Lessor shall purchase improvements to the premises at fair market value.
- (H) Improvements may be subject to taxation by the Tribe.

Section 27.3.15 – Subleases, Assignments, Amendments, and Leasehold Mortgages

- (A) Subleases, Assignments, amendments and Leasehold Mortgages of any Business Site Lease shall be by written consent of the Tribe and Lessee, unless otherwise provided herein.
- (B) The Business Site Lease may authorize Subleases and Assignments, in whole or in part, without approval from the Tribe 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:
 - (1) There is no event of default under the Business Site Lease or the Business Leasing Code;
 - (2) Any restrictions and use limitations on the use of the premises shall continue to apply to any subtenant or assignee;
 - (3) The proposed assignee or sublessee submits a current financial statement showing financial adequacy; and
 - (4) The Lessee shall not be relieved or released from any of its obligations under the Business Site Lease.
 - (a) Nothing in Section 27.3.18(B) 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 mortgages of the leasehold interest for the purpose of financing to develop and improve the premises subject to approval by the Tribe and execution from the Executing Official.
- (D) If a sale or foreclosure of the Lessee's business or assets occurs and the leasehold mortgagee is also the purchaser, the leasehold mortgagee may assign the lease without

approval of the Tribe 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 leasehold 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.

Section 27.3.16 – Business Lease Management

- (A) Except where required otherwise by agreement or applicable law, the Tribe shall manage all Business Site Leases pursuant to the Business Leasing Code.
- (B) The Tribe may institute a business site leasing management plan or policy that employs real estate management practices, addresses accounting, collections, monitoring, enforcement, relief, and remedies consistent with the provisions of the Business Leasing Code.
- (C) The Tribe may charge administrative fees for costs associated with issuing a Lease, Sublease, Assignment, amendment, Leasehold Mortgage, or other administrative transaction.

Section 27.3.17 – Enforcement

- (A) The Tribe shall have all powers necessary and proper to enforce the lease terms, laws, ordinances, regulations, rules, policies, and covenants consistent with the Business Leasing Code. This includes the power to enter the premises at a reasonable time, with or without notice, assess penalties, and assess late penalties.
- (B) Except where otherwise required by agreement or applicable law, the Tribe shall manage all Leases pursuant to the Business Leasing Code. The law that will apply to all leases authorized under the Business Leasing Code will be, in the following order: federal law and KTTT law (including but not limited to the Business Leasing Code).

Section 27.3.18 – Defaults

- (A) If the Tribe determines the Lessee is in default, the Tribe shall send the Lessee a notice of default within five (5) business days of the determination. The notice of default shall be provided by certified mail, return receipt requested.
- (B) Within ten (10) days of the receipt, the Lessee shall:
 - (1) Cure the default and notify the Tribe in writing that the default has been cured;
 - (2) Dispute the Tribe's determination that the Lease is in default and explain why the Lease should not be cancelled; or
 - (3) Request additional time to cure the default.

Section 27.3.19 – Remedies

- (A) If the Lessee fails to cure the default within the prescribed period, the Tribe may:
- (1) Cancel the Lease pursuant to the Business Leasing Code;
 - (2) Grant an extension of time to cure the default;
 - (3) Pursue other remedies, including execution of bonds, collection of insurance proceeds, or negotiated remedies;
 - (4) Any combination of remedies listed above; or
 - (5) Any other remedy that may be set forth in any business site lease management plan or policy.
- (B) If the Tribe cancels the Business Site Lease, the Tribe shall send the Lessee a cancellation letter within a reasonable time period. The cancellation letter shall be sent to the Lessee by certified mail, return receipt requested. The cancellation letter shall:
- (1) Explain the grounds for cancellation;
 - (2) Notify the Lessee of unpaid amounts, interest charges, assessed penalties, or late payment penalties due under the Lease;
 - (3) Notify the Lessee of rights to appeal; and
 - (4) Order the Lessee to vacate the premises within thirty (30) days of mailing of receipt of the cancellation letter, if an appeal is not filed by that time.
 - (5) A cancellation shall become effective thirty-one (31) days after receipt of mailing. 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.
 - (6) If the Tribe decides to grant an extension of time to cure default, the Lessee shall proceed diligently to perform and complete the corrective actions within a reasonable time period.

Section 27.3.20 – Penalties

Pursuant to Section 27.3.6(B)(9) of this Code, 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 Tribe, and failure to pay such amount shall be treated as a breach of the Lease.

Section 27.3.21 – 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 Tribe may take appropriate emergency action.

Section 27.3.22 – Holdover

If a Lessee remains in possession after the expiration or cancellation of a Lease, the Tribe shall treat such occupation as a trespass. The Tribe shall take all actions to recover possession and pursue additional remedies. Actions to recover possession shall be pursuant to KTTT law, or alternatively, the Tribe may make a written request sent by certified mail to the BIA for resolution under any applicable federal laws.

Section 27.3.23 – Trespass

If a person occupies the premises without the Tribe's approval, the Tribe may pursue appropriate remedies including, but not limited to, the filing of a trespass action to regain possession under KTTT law or sending a written request by certified mail to the BIA for assistance under any applicable federal laws.

Section 27.3.24 – Appeals

- (A) Unless an alternative appeals process is provided in the Lease, the Lessee or interested party may appeal a determination by the Tribe within ten (10) days of the determination. Appeals may be filed with the Traditional Council. 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.
- (B) The Traditional Council, or other hearing body as directed by the Traditional Council, shall review whether the determination was arbitrary, capricious, or an abuse of discretion; not supported by substantial evidence on the record; or otherwise not in accordance with the law. The decision of the Traditional Council, or hearing body, shall be final.

Section 27.3.25 – Environmental Review Process

- (A) Unless exempt under this Section, the Tribe shall not approve a Business Site Lease until the proposed Business Site Lease has completed the Environmental Review Process pursuant to this Section and applicable KTTT regulations. Leases approved and executed without compliance with this Section shall be null and void.
- (B) The following threshold determinations apply:

- (1) *Lessee Not Subject to Environmental Review Process*: If the Environmental Reviewer determines that the Leasing Decision by its nature would not have a Significant Impact on the Environment, the Leasing Decision is exempt from additional requirements of the Environmental Review Process, subject to the environmental record requirements of applicable KTTT environmental regulations.
 - (2) *Lessee Subject to Environmental Review Process*: If the Environmental Reviewer determines that the Leasing Decision might be expected to have a Significant Impact on the Environment, the Lessee must fulfill the requirements of the Environmental Review Process. Actions that might be expected to have a Significant Impact on the Environment should include a change in land use or physical disturbances to the land, water, or air, such as: land clearing, new building construction, or discharge of emission or effluent associated with the Project.
 - (3) *Statutory Exemption for Certain Leases* – Leasing decisions involving a Business Site Lease proposing the use of premises that are subject of a completed federal environmental review under applicable federal law shall be exempt from the Environmental Review Process and the Tribe shall not be required to prepare a TEIR under Section 27.3.27(D).
- (C) If the Environmental Reviewer determines that the Leasing Decision is subject to the Environmental Review Process, the Tribe may not consider the Leasing Decision until the Environmental Reviewer closes the Environmental Review Process in accordance with the Business Leasing Code and applicable KTTT environmental regulations.
- (D) *Environmental Review Process*: Unless an exemption applies or a Lease is otherwise not subject to the Environmental Review Process, then, before the approval of any Business Site Lease, the Tribe shall cause to be prepared a comprehensive and adequate Tribal Environmental Impact Report (“TEIR”), analyzing the potentially significant impacts of the proposed action on the environment; provided, however, that information or data which is relevant to such a TEIR that 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; provided further that such information or data shall be briefly described so that its relationship to the TEIR is indicated and that the source is reasonably available for inspection at a public place or public building. The TEIR shall provide detailed information about the Significant Impacts on the Environment which the Lease is likely to have and shall include a detailed statement setting forth all of the following:
 - (1) A description of the physical environmental conditions in the vicinity of the Project (the environmental setting and existing baseline conditions), as they exist at the time the notice of preparation is issued;
 - (2) All Significant Impacts on the Environment of the proposed Lease;
 - (3) In a separate section:

- (a) Any Significant Impact on the Environment that cannot be avoided if the Lease is executed;
 - (b) Any Significant Impact on the Environment that would be irreversible if the Lease is executed;
 - (c) Any mitigation measures proposed, recommended, or required.
- (4) In addition to the information required pursuant to Section 27.3.27(D)(1)-(3), the TEIR shall also contain a statement indicating the reasons for determining that various effects of the Lease on the off-reservation or off-Tribal Trust Land environment are not significant and consequently have not been discussed in detail in the TEIR. In the TEIR, the direct and indirect Significant Impacts on the Environment shall be clearly identified and described, giving due consideration to both the short-term and long-term effects.
- (E) Issuance of Notice of Completion of the Draft TEIR shall be according to the following protocol:
 - (1) Within no less than thirty (30) days following the completion of the draft TEIR, the KTTT Environmental Protection Agency, shall file a copy of the draft TEIR and a Notice of Completion with the Traditional Council or its designee. The Traditional Council, or its designee, shall publicly post the Notice of Completion and copy of the draft TEIR at the KTTT governmental offices. The Notice of Completion shall include the following information:
 - (a) A brief description of the Project;
 - (b) The proposed location of the Project;
 - (c) An address where copies of the draft TEIR are available; and
 - (d) Notice of a period of thirty (30) days during which the Tribe will receive comments from the Public on the draft TEIR.
 - (2) To satisfy the requirement for notice and opportunity for the Public to comment, the Tribe will provide the Public with notice by at least one of the procedures specified below:
 - (a) Publication of the Tribe's Notice of Completion 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 Impact on the Environment of the proposed action. The publication should also include details on where the Public may obtain a copy of the draft TEIR.

- (b) Posting of the Tribe's draft TEIR in the offices of the Tribe with notice to the Public of the opportunity to comment on any Significant Impact on the Environment of the proposed action.
- (F) The Tribe will review all comments received from the Public at the conclusion of the thirty (30) day comment period. Prior to the approval and execution of the Business Site Lease, the Tribe will provide written responses to relevant and substantive Public comments on any Significant Impact on the Environment arising as a result of the proposed Project and proposed recommended mitigation measures addressing any such impacts. The Tribe's written responses will be posted in the offices of the Tribe with notice to the Public. After the Tribe has posted its responses, the KTTT Environmental Protection Agency shall issue a Final TEIR. The Final TEIR is not subject to a Public comment period.

Section 27.3.26 – Sovereign Immunity

Nothing in this Business Leasing Code shall be deemed to waive the sovereign immunity of the Tribe or any of its enterprises, authorities, officers, agents, or employees.

Section 27.3.27 – Effective Date & Amendment

- (A) The Business Leasing Code shall take effect upon its adoption by the Traditional Council and approval by the Secretary of the Interior.
- (B) The Business Leasing Code may be amended by a majority vote of the Traditional Council at a duly called meeting at which a quorum is present. All substantive amendments to the Business Leasing Code must be submitted to and approved by the Secretary of the Interior.

PART 4. RESIDENTIAL LEASES – *Reserved*
(RESERVED)

(Page Intentionally Left Blank)

PART. 5 SOLAR & WIND RESOURCES LEASES – *Reserved*
(RESERVED)

(Page Intentionally Left Blank)