



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

**APPROVAL OF
PAWNEE NATION OF OKLAHOMA
LEASING ORDINANCE**

The attached Leasing Ordinance, submitted by the Pawnee Nation of Oklahoma (listed in the Federal Register, Vol. 87, No. 19 FR 4639 (January 28, 2022) as the Pawnee Nation of Oklahoma), and prepared in accordance with the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012, consisting of 26 pages and adopted by the Pawnee Business Council on October 20, 2022, is hereby approved.

Dated: NOV 22 2022

A handwritten signature in black ink, appearing to read "B. T. ...".

Assistant Secretary – Indian Affairs
United States Department of the Interior

Pursuant to the authority delegated by 209 DM 8

PAWNEE NATION OF OKLAHOMA

Law and Order Code



PAWNEE NATION LEASING ACT

PBC Approved October 20 by Statute #22-03

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Title XVI

REAL PROPERTY LEASING ACT

Part I-General. Provisions

Pawnee Nation Business Council ("Business Council") enacts the Pawnee Nation Real Property Leasing Act ("Act") pursuant to:

- (a) Article IV, Section 2 of the Pawnee Nation Constitution ("Constitution"), which grants the Business Council the power to make laws, including codes, ordinances, resolutions, and statutes,
- (b) The Pawnee Nation's inherent sovereign powers as a federally recognized Indian tribe enjoying a trust relationship with the federal government as evinced by the Pawnee Nation of Oklahoma ("Pawnee Nation") being listed in the Federal Register as one of the "Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs," and
- (c) As authorized by the Pawnee Nation in section 104(b) of said Act: "The Business Council shall represent the tribe and its members in the implementation of this subchapter and shall have full authority and capacity (1) to enter into contracts, grant agreements, and other arrangements with any Federal Division or agency, and (2) to administer or operate any program or activity under or in connection with any such contract, agreement, or arrangement, to enter into subcontracts or award grants to provide for the administration of any such program or activity, or to conduct any other activity under or in connection with any such contract, agreement, or arrangement."

Section 1. Short Title

The Pawnee Nation Leasing Act.

Section 2. Findings

The Business Council finds that:

- (a) Pawnee Nation Land is available for leasing for business, commercial, industrial, wind energy evaluation, wind solar resource, agricultural, public, religious, educational, recreational, cultural, residential, and other purposes
- (b) Congress amended the Indian Long-Term Leasing Act, 25 U.S.C § 415, "The Helping Expedite and Advance Responsible Tribal Housing Act (Hearth Act of 2012)" Pub. L. 112-151 (Jul.30, 2012), H.R. 205 to allow Indian tribes to assume the responsibility for reviewing and approving Leases of Tribal Lands. The Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012 ("HEARTH Act") creates a voluntary, alternative land leasing process available to tribes by amending the Indian Long-Term Leasing Act of 1955, 25 U.S.C. Sec. 415. Under the HEARTH Act, once their governing

tribal leasing laws or regulations, have been submitted to, and approved by, the Secretary of the Interior, tribes are authorized to negotiate and enter into leases without further approvals by the Secretary. The HEARTH Act authorizes tribes to execute agricultural and business leases of tribal trust lands for a primary term of 25 years and up to two (2) optional renewal terms of 25 years each, without BIA approval,

- (c) There is a need for a streamlined leasing and review process that responds to the demands of the Pawnee Nation and its community, and
- (d) It is in the best interest of the Pawnee Nation to undertake the responsibility for reviewing and approving Leases of Pawnee Nation Land.

Section 3. Purpose

The purpose of this Act is to:

- (a) Simplify and expedite the leasing process for Pawnee Nation land,
- (b) Promote self-determination, encourage economic self-sufficiency, and increase business activity and employment on lands of the Pawnee Nation,
- (c) Implement the *HEARTH Act of 2012*, and
- (d) Implement and exercise the sovereign authority of the Pawnee Nation to issue Leases pursuant to the Pawnee Nation Leasing Act.

Section 4. Definitions

For purposes of this Act, following terms shall mean:

- (a) "Agricultural Land" means Pawnee Nation Land that is land suited or used to produce crops, livestock or other agricultural products, or Pawnee Nation Land suited or used for a business that supports the surrounding agricultural community.
- (b) "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.
- (c) "Best Interest of the Pawnee Nation" means the balancing of interests to attain the highest economic income interests to achieve one or more of the following objectives: provide incentives to increase economic development preserve and enhance the value of Pawnee Nation Land increase employment and jobs on Tribal Trust Land and preserve the sovereignty of the Tribe.
- (d) "BIA" means the Bureau of Indian Affairs
- (e) "Department of Environmental Conservation and Safety" means the Pawnee Nation Department of Environmental Conservation and Safety, a department of the Division of Natural Resources and Safety.
- (f) "Division" means the Pawnee Nation Division of Property Management.
- (g) "Division of Natural Resources and Safety" means the Pawnee Nation Division of Natural Resources and Safety as established by the Pawnee Business Council.
- (h) "Environment" includes 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 Pawnee Nation on Pawnee Nation Land.

- (i) "Fair Market Value" means the amount in cash, or in terms reasonably equivalent to cash, for which in all probability the property would have leased on the effective date of the appraisal, after a reasonable exposure of time on the open competitive market.
- (j) "Lease" means a written contract agreement between the Pawnee Nation and a Lessee, whereby the Lessee is granted a right to possess Pawnee Nation Land, and use only the surface of Pawnee Nation Land, land held in trust or restricted status only, for a specified purpose and duration. The Lessee's right to possess will limit the Pawnee Nation's right to possess the Leased premises only to the extent provided in the Lease.
- (k) "Lessee" means any person or entity that possesses real or personal property under a Lease.
- (l) "Leasehold Mortgage" means a mortgage, a deed of Trust, or other instrument that pledges a Lessee's or Sub lessee's Leasehold interest as security for a debt or other obligation owed by the Lessee to a lender or other mortgagee.
- (m) "LTRO" means the Land Titles and Records Office of the BIA.
- (n) "Pawnee Business Council or Business Council" the supreme governing body of the Pawnee Nation of Oklahoma.
- (o) "Pawnee Nation" means Pawnee Nation of Oklahoma, a federally recognized Indian tribe.
- (p) "Pawnee Nation Land" means any Pawnee Nation land held in trust or restricted status
- (q) "Pawnee Nation Law" means the governing body of law of the Pawnee Nation, consisting of its Acts, regulations, and common law.
- (r) "Permit" means a written, non-assignable agreement between the Pawnee Nation and a Permittee, whereby the Pawnee Nation grants the Permittee a temporary, revocable privilege to use Pawnee Nation Land, as defined herein for a specific purpose.
- (s) "Permittee" means any person issued real or personal property under a Permit.
- (t) "Public" for the Purpose of Environmental Review, means any person or entity who can demonstrate they will be directly substantially affected by the Lease or the Lease activity.
- (u) "Secretary" means the Secretary of the U.S. Department of the Interior (DOI), or his or her authorized representative or designee, including the Bureau of Indian Affairs.
- (v) "Significant Effects on The Environment" means a material and demonstrable negative change, to include a substantial or potentially substantial adverse impact on the Environment.
- (w) "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.
- (x) "Tribal Historic Preservation Office" is to protect and conserve historically and culturally significant Tribal assets and sites by executing their historic preservation programs and activities pursuant to the National Historic Preservation Act, 54 U.S.C. 300101 et seq., and other relevant laws.
- (y) "Trust or Restricted Land" any tract held in Trust or Restricted Status by the U.S. for the benefit of the Pawnee Nation.
- (z) "Trust or Restricted Status" means that (1) the United States holds title to Pawnee Nation Land in Trust for the benefit of the Pawnee Nation; or (2) the Pawnee Nation holds title

to Pawnee Nation Land but can alienate or encumber it only with the approval of the United States because of limitations in the conveyance instrument under federal law or limitations in federal law.

- (aa) "Wind Energy Evaluation Lease or WEEL" means a short-term Lease (3 years) authorizing possession of Pawnee Nation Land for the purpose of installing, operating, and maintaining instrumentation and infrastructure to evaluate wind resources for electricity generation.
- (bb) "Wind Solar Resource or WSR" means a 25 Year term with one additional option to renew up to an additional 25-year Lease authorizing possession of Pawnee Nation Land for the purpose of installing, operating, and maintaining instrumentation and infrastructure related to wind or solar energy resource development.

Part 2-Leases and Permits Generally

Section 5. Scope

- (a) **Application.** Except as provided in subsection (b), this Act applies to Pawnee Nation Land
- (b) **Exception.** This Act does not apply to fee land, Individually Owned Land, Individual Trust Allotments, fractionated interests, and mineral Leases, including the exploration, development, or extraction of any mineral resources.
- (c) .

Section 6. Purposes

- (a) **Authorized Purposes.** The Business Council may, on behalf of the Pawnee Nation, approve a Lease for any purpose authorized by this Act and its implementing regulations.

Section 7. Applicable Law

- (a) **Leases and Permits.** Every Lease and Permit shall be subject to Pawnee Nation Law and applicable federal law.

Section 8. Duration

- (a) **Lease Term.** The Business Council may approve a Lease for:
 - 1. Business or agricultural purposes, including but not limited to crops, for a term of not more than 25 years, except that the Lease may include an option to renew of not more than two (2) additional terms of 25 years each,
 - 2. Public, religious, educational, cultural, recreational, or residential purposes for a term of not more than 75 years,
 - 3. WEEL purposes for a term of not more than 3 years with the option to renew for an additional term of 3 years, and

4. WSR purposes for a term of 25 years with the option renewal for up to additional 25 years.
- (b) **Permit Term.** The Division may approve a Permit for a term of not more than five (5) years for any purpose in subsection (a).
- (c) After each initial term, the parties shall consider and agree to fair market compensation for extended terms

Part 3-Leasing Process

Section 9. Obtaining a Lease

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

1. The prospective Lessee may request a Lease by submitting an application to the Division and a nonrefundable application fee set in an amount to be determined by **the Division**. The application shall, at a minimum, include:
 - A. The applicant's name, address, and contact information,
 - B. The location of the Pawnee Nation Land proposed for the Lease,
 - C. The proposed duration of the Lease,
 - D. The planned access to the Pawnee Nation Land proposed for the Lease,
 - E. The anticipated use of the Pawnee Nation Land proposed for the Lease, and
 - F. Any planned, or use of existing, improvements on the Pawnee Nation Land for the proposed Lease.
 2. The Division may, at its discretion, require additional information from the prospective lessee.
- (b) **Entry Permit.** Upon request of the prospective Lessee, the Division may issue an Entry Permit to allow the prospective Lessee access to the Pawnee Nation Land proposed for the Lease in the application to prepare the documentation required by subsection (c).
- (c) **Documentation; Additional Information.** The prospective Lessee shall provide to the Division the following documentation for the Pawnee Nation Land proposed for Lease, including:
 1. An appraisal,
 2. A land survey,
 3. The proposed type and location of any improvement,
 4. A cultural and archeological survey, and
 5. Environmental Assessments or reviews.
- (d) **Agricultural Leases: Additional Information Required.** If the Lessee is a corporation, partnership, or other legal entity, it shall provide organizational and financial documents, as

needed to show that the Lease will be enforceable against the tenant and the tenant will be able to perform all its obligations under the Lease. If a bond is required, the bond must be furnished before the Lease is approved.

Agricultural land under the jurisdiction of the Pawnee Nation shall be managed in accordance with the goals and objectives in the DOI approved Agricultural Resource Management Plan and/or other plan developed by the Pawnee Nation. The tenant must provide environmental and archaeological reports, surveys, and site assessments, as needed to document compliance with NEPA and other applicable federal and tribal land use regulations and requirements.

- (e) **Environmental Review Process.** Upon receipt of the application, documentation, and any additional information, the Division of Property Management shall request the Division of Natural Resources and Safety's Department of Environmental Conservation and Safety provide an environmental review process as stated in accordance with Section 9(c).
- (f) **Lease Negotiation.**
1. During or upon completion of the Environmental review process, the Division and the prospective Lessee may negotiate the terms and conditions of a proposed Lease.
 2. The Lease shall contain provisions that address the following:
 - A. a legal description of the Pawnee Nation Land,
 - B. the purpose of the Lease,
 - C. the authorized uses of the Pawnee Nation Land proposed for the Lease,
 - D. the names of the parties to the Lease,
 - E. the term of the Lease and any additional consideration or other conditions upon exercise of the option to renew:
 - (i) If the Lease provides for an option to renew, confirmation of the renewal will be submitted to the Secretary, unless the Lease provides for automatic renewal.
 - (ii) The Lease whether any additional consideration will be due upon the exercise of the option must specify: (1) The time and method in which the option must be exercised or is automatically effective, and (2) That the Lessee is not in violation of the Lease at the time of renewal.
 - (iii) Renewal of the lease will be recorded in the LTRO.
 - F. Effective date of the Lease,
 - G. the **Division** will develop the amount of rent, its due date, and any 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 through approval of the Pawnee Business Council, and
 - H. form of rental payment:
 - (i) Rental Payments shall be made directly to the Pawnee Nation's Division of Accounting. Rent payments may not be accepted more than one (1) year prior to the due date.
 - (ii) The Pawnee Nation shall provide the Secretary documentation of the Lease payments that are sufficient to enable the Secretary to discharge the trust

responsibility of the United States.

- I. any late payment charges, interest, or special fees,
- J. any due diligence requirements,
- K. any required bond or other form of financial security,
- L. any insurance requirements,
- M. for agricultural Leases, provisions requiring the Lessee to manage land in compliance with DOI approved Agricultural Resource Management Plan and/or other plan approved by the Pawnee Nation, and provisions requiring appropriate stipulations or conservation plans to be developed by the Lessee for incorporation into the Lease,
- N. ownership, construction, maintenance, removal, and management of any Permanent Improvement, and
- O. any other terms and conditions negotiated by the parties or required by this Act.

3. The following provisions must be included in every Lease:

- A. If the Leased premises are within an Indian irrigation project or drainage district, except as provided by 25 C.F.R. Part 171, the Lessee shall pay all operation and maintenance charges that accrue during the Lease term. The Lessee shall pay these amounts to the appropriate office in charge of the irrigation project or drainage district.
- B. The obligations of the Lessee and its sureties to the Pawnee Nation are also enforceable by the United States so long as the Leased premises remain in Trust or Restricted Status.
- C. The Lessee holds the United States and the Pawnee Nation harmless from any loss, liability, or damages arising out of the Lessee's use or occupation of the Leased premises; and
- D. The Lessee hereby indemnifies the Pawnee Nation and the United States 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 Pawnee Nation for liability or cost arising from the Pawnee Nation's negligence or willful misconduct.

(g) Approval of Lease.

- 1. At the conclusion of the leasing process under this part, the director of the Division shall recommend to the Business Council whether to approve or deny the Lease.
- 2. All Leases governed by this Act shall be subject to approval by the Business Council.
- 3. All Permits governed by this Act are subject to approval by the Department of Environmental Conservation and Safety, per authority in 11PNC, 12PNC, 13PNC,

14PNC, and any implementing Regulation thereof.

Part 4-Lease Requirements

Section 10. Land Survey

- (a) Except as provided in subsection (b), the Lease must describe the Leased premises by reference to a land survey prepared by a professional surveyor licensed by state board of licensure for professional engineers and professional surveyors.
- (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, each of which must be of sufficient detail to meet the recording requirements of the LTRO:
 - 1. A legal description.
 - 2. A survey-grade global positioning system description, or
 - 3. Other description.

Section 11. Compensation

- (a) **Rent Determination.** The Division shall determine the Fair Market Value rent for a Lease through a market analysis, appraisal, or other valuation method, or negotiation.
- (b) **Waiver; Nominal Rent.** The Division may waive the rent or charge nominal rent if it is the Best Interest of the Pawnee Nation.
 - 1. For a Lease for residential, educational, religious, or business purposes,
 - 2. For a Lease to use Pawnee Nation 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 Pawnee Nation, or,
 - 3. To provide an incentive to the prospective Lessee to locate on Pawnee Nation Land.
 - 4. Lessee may be subject to be required to pay additional fees, taxes, and assessments associated with the use of the leased premises.
- (c) **Payment.** All rent must be paid directly to the Division of Finance on behalf of the Pawnee Nation. Lessee may not pay rent in cash and will pay all rent by cashier's check, money order, personal check, or other means acceptable to the Division of Finance. The Division of Property Management shall account for all rent received for Pawnee Nation Land. Lease and Payment Terms will be entered into the Trust Assets Accounting Management System (TAAMS).

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 Division to ensure or guarantee:
 - 1. Rent payment for an amount to be negotiated or determined by the Division,
 - 2. Construction of any improvement,
 - 3. Compliance with the restoration and reclamation plan,
 - 4. Removal of any improvement,
 - 5. Performance of any other obligations under the Lease, or
 - 6. Damages to the property.
- (b) **Waiver.** The Division of Property Management may waive or reduce the amount of the bond if it is in the best interest of the Pawnee Nation.
- (c) **Notice of Cancellation.** The Lessee shall provide the Division of Property Management with thirty (30) business 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 State of applicable coverage as specified in subsection (b).
- (b) **Coverage.** The insurance must provide property and liability, crop and casualty coverage in amounts determined by the Division to be sufficient to cover any improvement, personal injury or death, or any other risk to which the Pawnee Nation and the United States may be exposed. The insurance shall expressly name the Pawnee Nation and the United States as additional named insured parties.
- (c) **Waiver.** The Division may waive the insurance requirements only for a Lessee of Pawnee Nation Land for residential purposes if it is in the Best Interest of the Pawnee Nation.

Section 14. Improvements

- (a) **Approval.**
 - 1. No improvement may be placed or constructed on Pawnee Nation Land or developed for the benefit of Pawnee Nation Land without the Business Council's prior written approval. The Business 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 Pawnee Nation Land and the restoration and reclamation of Pawnee Nation Land.
 - 2. The Lessee shall make a request in writing to the Division for approval of an

- improvement. The Division is not obligated to approve any improvement.
3. The Lease must identify any existing and proposed improvement approved by the Business Council. The lease improvements shall be approved in the same manner as the lease is approved according to Section 9 (g).
 4. With the approval of Business Council, the Lessee may construct permanent improvements under a Lease if the Lease specifies or provides for the development of: (a) A plan that describes the type and location of any permanent improvements to be constructed by the Lessee; and (b) A general schedule for construction of the permanent improvements, including dates for commencement and completion of construction.

(b) Removal.

1. Upon the termination of the Lease, the Lessee shall remove every improvement from the Pawnee Nation Land, unless otherwise provided for in the Lease or in writing by the Division.
2. No improvement may be removed without the Business Council's prior written 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 Business Council may require that a certain improvement be left in place on Pawnee Nation Land, in which case the improvement will become the property of the Pawnee Nation. Provisions for addressing value and compensation will be negotiated on a Lease per Lease basis.
4. Any improvement left on Pawnee Nation Land without the Business Council's approval remains the responsibility of the Lessee and constitutes a nuisance until removed by the Lessee. The Division may elect to either (1) to take any necessary action to abate the nuisance, with all costs and fees incurred in so doing to be deemed additional rent due from the Lessee under the Lease, or (2) to declare that the improvements are abandoned and have become the sole property of the Pawnee Nation.
5. In all cases where an improvement is removed from Pawnee Nation Land, the Lessee shall be solely liable for the restoration of Pawnee Nation Land to its condition prior to the placement of the improvement. The Lessee's obligation to remove the improvement and to restore the Pawnee Nation Land will survive the termination or cancellation of the Lease.
6. All expenses, costs, and fees incurred by the Division as a result of improvements left on Pawnee Nation Land without the Business Council's approval, and all expenses, costs, and fees incurred by the Division as a result of damage or waste to Pawnee Nation Land and the improvement during the term of the Lease, or arising out of the Lessee's use and occupancy of Pawnee Nation Land, remain the sole liability of the Lessee and are deemed additional rent due at the time incurred.

(c). WEEL.

All WEELs must address payment requirements and late payment charges, including interest. A WEEL must include due diligence requirements that require the Lessee to install testing and monitoring of facilities within 12 months after the effective date of the WEEL or other period designated in the WEEL, consistent with the plan of development. The WEEL must specify the ownership of any energy resource information the Lessee obtains during the WEEL term.

(d). WSR.

All WSR leases must identify the ownership of permanent improvements and the responsibility for constructing, operating, maintaining, and managing WSR equipment, roads, transmission lines and related facilities. All WSR Leases must also identify who is responsible for evaluating the leased premises for suitability; purchasing, installing, operating, and maintaining WSR equipment; negotiating power purchase agreements; and transmission as well as payment requirements and late payment charges, including interest. Lessee will commence installation of equipment within two (2) years after the effective date of the lease or another timeframe provided in the resource development plan. Lessee will repair, place into service, or remove any idle, improperly functioning or abandoned equipment.

Section 15. Sublease and Assignment

(a) **Approval Required.** An Assignment or Sublease is void without the Business Council's written approval. The Business Council may condition its approval upon any terms or conditions deemed to be in the Pawnee Nation's best interests. The Business 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 Pawnee Nation.

1. The Business Council shall not approve any Assignment or Sublease unless the Lessee is in compliance with the terms of the Lease. The Business 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, and
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 Division for any Sublease or Assignment and pay an administrative fee as set by the Division.
- (c) **No Extension of Lease; Notice.** No Assignment or Sublease will extend the term of the Lease, and the Lessee shall notify its Sub lessee or assignee of the terms and conditions of the Lease.
- (d) **Effect of Lease Termination.** Termination of a Lease, automatically and without notice, terminates any Sublease, unless otherwise agreed to in writing by the Division.

Section 16. Leasehold Mortgage

- (a) **Conditions.** Unless otherwise provided in the Lease, and subject to the Business 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 Leasehold Mortgage; provided that no Leasehold Mortgage shall give the 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 Business Council. An approved Mortgagee may place a lien on the Lessee's or Sublessee's interest in the Lease, Sublease, and any improvement covered by the Leasehold Mortgage, but may not place a lien on the Pawnee Nation's interest in the Lease, Sublease, or any improvement, or in the Pawnee Nation's reversionary interest in the real and personal property subject to the Lease or Sublease. Any attempt by the Lessee or Sublessee to Mortgage its interest in a Lease, Sublease, or in any improvement, without the Business Council's approval, is void and will not vest the purported 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 Division to Mortgage the Lessee's or Sublessee's interest in the Lease, Sublease, or any improvement in writing. Within five (5) business days of the closing, the Lessee shall provide to the Division a copy of the Leasehold Mortgage and pay any applicable fee set by the Division.
- (c) **Additional Terms and Conditions.** The Business Council may approve the Leasehold Mortgage subject to any terms and conditions deemed to be in the best interest of the Pawnee Nation.
- (d) **Notice of Breach of Lease; Cure.**
 - 1. If the Division gives written notice to a Lessee or Sublessee of a breach of the Lease or Sublease, the Division shall also give written notice of the breach to the approved Collateral Assignee or Mortgagee. The Division shall send the notice by certified mail to the most current name and address of the Collateral

Assignee or Mortgagee provided to the Division and no proof of receipt of the notice by the Collateral Assignee or Mortgagee is required.

2. The approved 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 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 Division 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 Division of all proceedings to enforce or foreclose the Collateral Assignment or Leasehold Mortgage, and
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 Business Council's approval. The Business 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, or Leasehold Mortgage, shall state its effective date.

Part 5-Permits

Section 18. Requirements

The Director of the Division of Natural Resources and Safety may issue a Permit to a Permittee upon the following conditions:

1. The Permittee agrees to indemnify and hold the Pawnee Nation, its Business Council, councilors, officers, agents, employees, and the United States harmless from liability arising out of the Permittee's use of Pawnee Nation Land,
2. The Permittee agrees to restore Pawnee Nation Land to its original condition upon termination or demand, and to remove any improvement made thereon or, at the Business Council's option, to relinquish to the Pawnee Nation any

- improvement,
3. The Permit is temporary in nature and contains provisions for termination without cause of not more than 90 business days upon notice by the Division of Natural Resources and Safety and may contain other provisions that the Division may require regarding the use of Pawnee Nation Land, and
 4. The Permittee agrees to pay: (i) an Administrative Fee determined by the Pawnee Nation to defray the costs in processing, considering and issuing the Permit, and (ii) a Permit fee determined by the Division.

Section 19. Bond

The Division may require the Permittee to file a bond or provide other financial security in accordance with this Act.

Section 20. Limitations

No Permit issued by the Division of Natural Resources and Safety may:

- (a) Grant the Permittee a legal interest in Pawnee Nation Land,
- (b) Exceed a term of five (5) years,
- (c) Grant the Permittee a right to possess Pawnee Nation Land, or the ability to limit or prohibit others to access Pawnee Nation Land, or
- (d) Result in any Significant Effects on the Environment.

Section 21. Enforcement

- (a) The Pawnee Nation is solely responsible for enforcing violations of any Permit.
- (b) If historic properties, archeological resources, human remains, or other cultural items not previously reported are encountered during any activity associated with a permit, all activity in the immediate vicinity of the properties, resources, remains, or items shall immediately cease, and the permittee shall immediately contact the BIA and the Pawnee Nation Division of Natural Resource to determine how to proceed and appropriate disposition.

Part 6-Pawnee Nation Environmental Review

Section 22. Preparation of Environmental Review Statement

(a) Requirement.

1. Except as provided in subsection (b), the Division of Property Management shall coordinate the preparation of an Environmental review statement with the Department of Environmental Conservation and Safety that identifies and evaluates any Significant Effects of the proposed Lease on the Environment, unless the

Division of Property Management in its discretion has determined that the Lessee, or other party will prepare the Environmental review statement for the Department of Environmental Conservation and Safety's review and action.

2. The Environmental review statement will evaluate elements including but not limited to air, water, cultural resources, socioeconomics, noise abatement/control, utilities, transportation, endangered species, airport hazards, floodplain management/ insurance, historic preservation, contamination and toxic substances, explosive and flammable hazards, farmlands protection, wetlands protection, and Environmental justice.

(b) Exceptions.

1. The Division of Property Management shall not prepare or require an Environmental review statement for any proposed Lease that:
 - A. will not result in any significant change in the use of Pawnee Nation Land,
 - B. will not by its nature have any Significant Effects on the Environment and complies with the documentation requirements of Section 31 that the Division has complied,
 - C. covers Pawnee Nation Land for which (i) the Division has prepared an earlier Environmental review in accordance with this Act, or another party 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.
2. The Division of Property Management 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 23. Public Participation

- (a) Public Notice.** The Division of Property Management 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 Pawnee Nation community,
2. Posting the notice at the tribal administration building, and the Pawnee Nation's website, and
3. Disseminating the notice in a manner reasonably calculated to reach the public.

- (b) Notice Contents.** The notice of Environmental review statement shall contain the following information, including:

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 Division's recommendation on the proposed Lease, and
6. An invitation to the Public to submit written comments to the Division regarding the Environmental review statement during a comment period not to exceed twenty (20) days from the date the notice is published.

- (c) **Public Comments; Response.** The Division of Property Management shall consider all written comments received from the Public and provide a written response to all relevant and substantive comments within twenty (20) business days of the closing of the comment period and before approving the proposed Lease. The Division's written response will identify any recommended mitigation or conditions of approval on the proposed Lease. The Division of Property Management 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 Division may revise the Environmental review statement, or impose restrictions as a condition of approval of the proposed Lease, as a mitigation measure.

Section 24. 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 on The Environment.
- (b) **Minimum Review Requirements.** The level of detail and depth of the analysis conducted by the Division of Property Management shall be made under consultation with the Department of Environmental Conservation and Safety and is limited to the minimum needed to determine whether there would be Significant Effects of the proposed Lease on the Environment. All environmental reviews must be submitted to the Department of Environmental Conservation and Safety for review and action.

Section 25. 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 26. Environmental Review Prepared by Another Entity Reliance on Federal Review

The Department of Environmental Conservation and Safety may rely on the Environmental review process of any federal agency rather than on the Tribal Environmental review process in Part 6 of this Act, if the Pawnee Nation carries out a project or activity funded by the federal agency.

Section 27. Conclusion of Environmental Review Statement Process

- (a) **Consideration Requirements.** The Business Council may approve or disapprove the proposed Lease only after the Division of Property Management, through consultation with the Department of Environmental Conservation and Safety:
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.
- (b) **Appeal.** The Public may appeal the Division's decision to the Pawnee Nation District Court ("Tribal Court") in accordance with Part 9 of this Act.

Part 7-Lease Administration

Section 28. Administration

- (a) **Administration under Act and Federal Law.** The Division of Property Management shall administer all Leases and Permits approved under this Act.
- (b) **Management Practices.** The Division of Property Management shall employ sound real estate management practices under this Act, including collections, monitoring, enforcement, relief, and remedies.

Section 29. Accounting

- (a) The Pawnee Nation's Division of Finance shall implement and maintain an accounting system to ensure proper accounting of rent payments of Leases in accordance with generally accepted accounting principles.
- (b) The Managing Entity shall provide an annual accounting to the Treasurer of the Pawnee Nation.

Section 30. Administrative Fees

The Division of Property Management 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 Act.

Section 31. Documentation

- (a) **Recordation with LTRO.** Except as provided in subsection (b), the Division of Property

Management shall provide copies of the following to the LTRO:

1. Leases, including any amendment or renewal thereof, approved under this Act, and
 2. Lease documents, including any amendment, Assignment, Sublease, Leasehold Mortgage, and other documents showing rental payments to the Pawnee Nation sufficient to enable the Secretary to discharge the Trust responsibility of the United States.
- (b) **Exception.** The Division shall not be required to provide to the Secretary a copy of any Permit.

Part 8. Enforcement

Section 32. Enforcement

- (a) The Lessee shall comply with all applicable laws, ordinances, rules, regulations, and other legal requirements, including Pawnee Nation laws, regulations, and leasing policies.
- (b) The Pawnee Nation, through the Office of Attorney General, Division of Property Management, Division of Natural Resources and Safety, and/or Division of Law Enforcement shall enforce the terms and conditions of any Lease or Permit approved in accordance with this Act.
- (c) Nothing in this Act prohibits the Division of Property Management from requesting the Secretary to enforce the terms and conditions of, or cancel, any Lease.
- (d) If historic properties, archeological resources, human remains, or other cultural items not previously reported are encountered during any activity associated with a lease, all activity in the immediate vicinity of the properties, resources, remains, or items shall immediately cease, and the lessee shall immediately contact the BIA and the Tribal Historic Preservation Office to determine how to proceed and appropriate disposition.

Section 33. 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 thirty (30) business days after the Division of Property Management 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 Division 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 Division of property Management may, in addition to any other negotiated remedies, cancel the Lease upon notice to the Lessee and any surety and mortgagee of the cancellation. The cancellation notice must:

- A. Explain the grounds for cancellation,
- B. If applicable, notify the Lessee of the amount of any unpaid compensation or late payment charges due under the Lease,
- C. Notify the Lessee of the Lessee's right to appeal under Part 9, including the possibility that the tribal court may require the Lessee to post an appeal bond,
- D. Order the Lessee to vacate the property within thirty-one (31) business days of the date of receipt of the cancellation letter, if an appeal is not filed by that time, and
- E. Order the Lessee to take any other action the Division deems necessary to protect the Pawnee Nation.

(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 Division may immediately commence eviction proceedings, bring an action in forcible entry and

detainer, or take any other action under Pawnee Nation Law or applicable federal law it deems appropriate to protect the Pawnee Nation's interests.

Section 34. 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 Division of Property Management, and the Lessee's failure to pay such amounts will be treated as a breach of the Lease.

Section 35. 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 illegal activity thereon, the Division of Property Management may take appropriate emergency action in accordance with Pawnee Nation Law, including but not limited to 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 36. Holdover and Trespass

If a Lessee remains in possession of the Leased premises after termination of the Lease, the Division may treat the continued possession as a holdover tenancy or as a trespass, and if Division treats the continued possession as a trespass, the Division of Property Management may pursue any remedy available under Pawnee Nation Law or federal law.

Part 9-Appellate Review

Section 37. Appeals

(a) Notice of Appeal; Contents; Service.

1. The Lessee or interested party may appeal the Division of Property Management's final determination to the Tribal court by filing a notice of appeal in the tribal court within fourteen (14) business days of the Division'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 mailing a copy to the

Director of the Division of Property Management and the President of the Pawnee Nation within five business days after the filing of the notice of appeal in the tribal court.

4. Failure to exhaust Tribal court remedies or not file an appeal with the Pawnee Nation Tribal court within the time prescribed shall bar the filing and consideration of any appeal.

(b) **Appeal Bond.** The pendency of an appeal shall not automatically stay the Division of Property Management's final determination. Upon the Division of Property Management'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 Division from financial losses.

(c) **Scope of Review.** The Tribal court shall uphold the Division of Property Management's final determination unless it finds that the Division's action:

1. was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with this Act and applicable Federal law,
2. Exceeded the Division's jurisdiction, authority, or limitations, or
3. Is unsupported by substantial evidence.

(d) The parties' consent to the jurisdiction of the tribal court by executing the lease or extending a mortgage interest.

Part 10-Miscellaneous

Section 38. Regulations

The Division of Property Management may issue internal guidance for administration and enforcement of this Act.

Section 39. Sovereign Immunity

Nothing in this Act may be construed as waiving the sovereign immunity of the Pawnee Nation or the Business Council.

Section 40. Severability

If court of competent jurisdiction determines any provision in Act 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 Act takes effect on the date of enactment by the Business Council and approval by the

Secretary of Interior.

Section 42. Amendments

- (a) **Substantive Amendments.** The Business Council may propose amendments to this Act subject to approval of the Secretary.
- (b) **Non-Substantive Technical Amendments.** The Business Council may approve all amendments to this Act not subject to subsection (a).
- (c) **Delegation of Authority.** A delegation of authority by Business Council to the Nation Division of Property Management shall constitute a Non-Substantive Technical Amendment.