



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

**APPROVAL OF**

**TABLE MOUNTAIN RANCHERIA  
BUSINESS LEASING ORDINANCE**

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The attached Business Leasing Ordinance, submitted by the Table Mountain Rancheria (listed in the Federal Register, Vol. 86, No. 18 FR 7557 (January 29, 2021) as the Table Mountain Rancheria), and prepared in accordance with the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012, consisting of 18 pages and adopted by the Table Mountain Rancheria Tribal Council on September 20, 2021, is hereby approved.

Dated: FEB 11 2022

A handwritten signature in blue 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

**Table Mountain Rancheria**  
**BUSINESS LEASING ORDINANCE**

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**ARTICLE 1 – GENERAL PROVISIONS**

**Section 1. Short Title**

This Ordinance shall be entitled “Table Mountain Rancheria Business Leasing Ordinance.”

**Section 2. Authority**

This Business Leasing Ordinance is enacted by the Tribal Council of Table Mountain Rancheria pursuant to the powers vested in the Tribal Council to promulgate and adopt legislation, regulations and ordinances under Article VII, Section 1 of Table Mountain Rancheria’s Constitution.

**Section 3. Applicable Law**

Except where otherwise required by agreement or applicable law, the Tribal Council shall manage all Leases pursuant to this Ordinance. The law that will apply to all Leases authorized under this Ordinance will be in the following order: Tribal Law (including, but not limited to, this Ordinance), and applicable Federal law.

**Section 4. Scope**

This Ordinance is limited to Businesses Leases as defined in this Ordinance, including Business Leases for Commercial Retail and other business purposes on Table Mountain Rancheria’s Tribal Trust Land and shall not include or apply to any leases of fee or non-trust land, individual tribal allotments, mineral right leases, agricultural, wind or solar leases, unless an ordinance is adopted by the Tribal Council and approved by the BIA as required by Federal Law and subject to BIA approval under Part 162 of Title 25 of the Code of Federal Regulations.

## Section 5. Purpose

The purpose of this Ordinance is to:

- A. Recognize the authority of Table Mountain Rancheria (“the Tribe”) to issue Business Site Leases, and establish streamlined procedures for environmental review, approval, management and enforcement of business Leases on the Tribe’s Trust Lands;
- B. Promote self – determination, encourage economic self-sufficiency, and increase business activity and employment on the Tribe’s Trust Lands; and
- C. Implement the voluntary, alternative leasing process available to the Tribe pursuant to 25 U.S.C. § 415(h), Helping Expedite and Advance Responsible Tribal Homeownership Act of 2012, H.R. 205, 112<sup>th</sup> Cong (2012) (“The Act”), for Business Leases on the Tribe’s Trust Lands.

## ARTICLE 2 – DEFINITIONS

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

- A. “**Assignment**” means an agreement between a Lessee and an Assignee whereby the Assignee acquires all or some of the Lessee’s rights and assumes all or some of the Lessee’s obligations under a Business Site Lease.
- B. “**Best Interests 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 the Tribe’s Trust Land, and preserve the sovereignty of the Tribe.
- C. “**BIA**” means the Bureau of Indian Affairs, United States Department of Interior.
- D. “**Business Site Lease(s)**” means any lease for a business purpose issued upon Tribal Trust Land under authority of this Ordinance.
- E. “**Cancellation**” means the Cancellation of a Business Lease under this Ordinance when the Lessee breaches any of the terms or provisions in the Business Lease and fails to cure the breach as required in this Ordinance.
- F. “**Development Period**” means the time period from when a Lease is executed to when improvements are expected to be substantially completed.
- G. “**Environmental Review Process**” means a process outlined in this Ordinance for determining whether the Lease Decision will have a Significant Effect on the Environment.

- H. “**Environmental Reviewer**” means the official of Table Mountain Rancheria’s Environmental Department designated by the Tribal Council to undertake the Environmental Review Process under this Ordinance.
- I. “**Executing Official**” means the Chairperson of Table Mountain Rancheria, or the designated Tribal Council Member of Table Mountain Rancheria, who shall execute the Business Site Leases of Tribal Trust Lands and take all necessary and proper action on Leases and Subleases including amendments, modifications, Assignments, Terminations and Cancellation of Leases and Subleases, after final ratification by the Tribal Council.
- J. “**Fair Market Lease Value**” means the amount of rental income the proposed leased property, space or site of Trust Land would most probably command in an open and competitive market reflecting all conditions and restrictions of the specified lease agreement, including term, duration, rental adjustments and reevaluation, permitted uses, use restrictions, and expense obligations or other considerations that drive commercial viability of a proposed Project or development of land where both the Lessor and Lessee are equally motivated to consummate the Lease under the particular market conditions applicable to the transaction.
- K. “**Holdover**” means circumstances in which a Lessee remains in possession of the leased premises after the expiration or Cancellation of a Lease.
- L. “**Lease**” means a written agreement or contract between the Lessor and a Lessee whereby the Lessee is granted a right to possess Tribal Trust Land for specific purpose and duration. The Lessee’s right to possess will limit the Lessor’s right to possess the leased premises only to the extent provided in the Lease.
- M. “**Leasehold Mortgage**” means 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.
- N. “**Leasing Decision**” means a decision of the Tribal Council based on the review and consideration of the proposed Lease and supporting leasing documents.
- O. “**Lease Premises**” means that portion of the Tribal Trust Land that is subject to a Lease approved by the Tribe pursuant to this Ordinance.
- P. “**Lessee**” means a person or entity who has acquired a legal right to possess Tribal Trust Land by a Lease pursuant to this Ordinance.
- Q. “**Lessor**” means Table Mountain Rancheria.
- R. “**LTRO**” means the Land Titles and Records Office of the BIA.

- S. **“Performance Bond”** means a bond issued by a bank or other financial institution, guaranteeing the fulfillment of a particular contract.
- T. **“Project”** means any activity occurring on Tribal Trust Land subject to a Lease under this Ordinance.
- U. **“Public for purposes of Environmental Review”** means the enrolled members of Table Mountain Rancheria and any person or entity who can demonstrate that they will be directly or substantially affected by the Lease or Lease activity.
- V. **“Secretary”** means the Secretary of the Interior.
- W. **“Significant Effect on the Environment”** means a substantial adverse change in the environment, including land, air, water, minerals, flora, fauna, ambient noise, cultural areas and objects of historic, cultural or aesthetic significance.
- X. **“Space Lease”** means a lease of space within an existing facility on Tribal Trust Land that is not already leased or Subleased.
- Y. **“Sublease”** means a written agreement by which the Lessee grants to an individual or entity a right of possession no greater than that held by the Lessee under the Lease.
- Z. **“Termination”** means the end of a Lease by any means.
- AA. **“Tribe”** means Table Mountain Rancheria.
- BB. **“Tribal Council”** means the duly elected governing body of the Tribe pursuant to the Tribe’s Constitution.
- CC. **“Tribal Trust Land”** means all lands of the Tribe within the boundaries of the Tribe’s Rancheria or land over which the Tribe exercises governmental power or control, and which is held in trust by the United States for the benefit of the Tribe.
- DD. **“Trust or Restricted Status”** means (1) a tract of land held in trust by the United States for the benefit of the Tribe; or (2) land that the Tribe holds title to the tract, but which can only alienate or encumber with the approval of the United States because of limitations in the conveyance instrument under Federal law or limitations in Federal Law
- EE. **“Violation”** Means any action (alone or with another or others) for, or towards causing, bringing about, participating in, counseling, or aiding or abetting a Violation.

## **ARTICLE 3 – OBTAINING THE BUSINESS SITE LEASE**

### **Section 1. Terms and Conditions.**

Leases shall be governed by the standard terms and conditions set forth in the Business Site Lease. The terms and conditions may be modified only with the approval of the Tribal Council. The Lessee is responsible for understanding these terms and conditions.

### **Section 2. Duration and Renewal.**

The term of the Lease shall not exceed 25 years except that any such Lease may include an option to renew for up to two additional terms, each of which may not exceed 25 years. The Lessee shall notify the Tribal Council in writing of its intent to renew, within one year before the Lease is due to expire, but not sooner. Any additional consideration set forth in the Lease that is required to be paid by the Lessee to exercise Lessee's option to renew must be paid at the time that Lessee notifies the Tribal Council in writing of its intent to exercise its option to renew the Lease.

### **Section 3. Information for Lessees.**

Information on obtaining a Business Site Lease shall be available from the Table Mountain Rancheria's Tribal Government Office.

### **Section 4. Supporting Documents.**

All applicants for a Business Site Lease Shall submit the following documents to the Tribal Council:

- A. Financial statements and related bank documents and references sufficient to enable the Tribe to be reasonably determine the prospective Lessee's credit history, financial stability and ability to perform under the Lease;
- B. Site survey and legal description, bearing sufficient detail for purposes of recording;
- C. Such documents necessary to conduct and complete a Tribal Environmental Review in connection with the proposed Lease as required under this Ordinance;
- D. Such other documents as may be required or requested by the Tribal Council.

### **Section 5. Minimum Provisions.**

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

- A. A description of the tract, location or parcel of the land being leased in a form and substances sufficient to meet the LTRO requirements;

- B. The purpose of the Lease and authorized uses of the leased premises;
- C. The parties to the Lease;
- D. The term of the Lease and its effective date;
- E. Identification of the responsible party for constructing, owning, operating, maintaining and removal of any improvements to the leased premises;
- F. A provision requiring the Lessee to indemnify and hold the United States and the Indian landowner harmless against any and all losses, liabilities or damages resulting from Lessee's use or occupation of the leased premises;
- G. Indemnification of the United States and Lessor against all liabilities or costs relating to the use, handling, treatment, removal, storage, transportation or release or discharge of any hazardous material from the leased premises that occurs during the Lease term;
- H. Payment requirements including, but not limited to the rent amount, rental due date, penalty charges, late payments and interest; as well as the requirement that all payments due under the Lease must be in a form acceptable to Lessor;
- I. Due diligence, insurance and bonding requirements as provided in this Ordinance.
- J. If the leased premises are within an Indian irrigation project or drainage district, except as otherwise provided in 25 CFR part 171, the Lessee must pay all operation and maintenance charges that accrue during the Lease term. The Lessee must pay these amounts to the appropriate office in charge of the irrigation project or drainage district. Failure to make these payments may be treated as a violation of the Lease.

**Section 6. Records.**

- A. The Tribal Council shall record Business Site Leases, Subleases, assignments, amendments, encumbrances, renewals, modifications and Cancellations by submitting to the BIA for recording in the LTRO.
- B. The Tribal Council is responsible for maintaining all records of all Business Site Leases and for disseminating recorded Lease documents to the Tribal Council Secretary, the Tribal Environmental Department, and to such other tribal department or entity designated by the Tribal Council to receive a copy of such records.
- C. The Tribal Council shall send a copy of Leases approved under this Ordinance and all amendments and renewals for information purposes only to the Superintendent Central California Agency, Bureau of Indian Affairs.

**Section 7. Ownership of Records.**

Records of activities taken pursuant to this Ordinance are the property of the Tribe. Records compiled, developed, or received by the Secretary in the course of business with the Tribe are the property of the United States.

**Section 8. Tribal Preference.**

Unless the Business Site Lease states otherwise, a Lease may include, consistent with the laws of the Tribe, a provision to give Indian preference in hiring for employment purposes.

**ARTICLE 4. SITE LEASE REQUIREMENTS.**

**Section 1. Terms and Conditions.**

Leases shall be governed by the standard terms and conditions set forth in the Lease agreement which shall be consistent with this Ordinance. The standard terms and conditions may be modified only with the approval of the Tribal Council, and consistent with this Ordinance. The Lessee is responsible for understanding the terms and conditions.

**Section 2. Space Leases.**

Space Leases shall be reviewed and approved pursuant to this Ordinance. Space Leases shall contain adequate description of the Tribal Tract, location and square footage of the space being leased and may include renderings, architectural drawings or other schematics to illustrate the location of the space.

**Section 3. Land Descriptions.**

Business Site Leases shall contain adequate site surveys and legal descriptions sufficient to meet the recording requirements of the LTRO. Space Leases, shall include corresponding site plan, and 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.

**Section 4. Appraisal; Local Studies.**

- A. The Fair Annual Lease Value shall be determined by an appraisal or equivalent procedure performed by the Tribal Council utilizing the following data: improvement cost, replacement cost, earning capacity, sales and lease data of comparable sites or by similar methodology as approved by the Tribal Council and deemed to be in the Best Interests of the Tribe. An appraisal log, reporting the methods of appraisal and value of trust land, shall be attached to every Business Site Lease.



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

**Section 5. Fair Annual Lease Value; Price.**

- A. No Lease shall be approved for less than the present Fair Annual Value Lease as set forth in the appraisal, except as follows:
  - (i) The Lease is in the Development Period;
  - (ii) The Tribal Council is providing an incentive for the business to locate on Tribal Trust Lands, and must provide lease concessions, lease improvement credits, and lease abatements to attract such businesses; or
  - (iii) The Tribal Council determines such action is in the Best Interest of the Tribe.
- B. A Lease may be structured at a flat lease rate.
- C. A Lease may be structured at a flat lease rate plus a percentage of the gross receipts.
- D. A Lease may be structured based on a percentage of the gross receipts, or based on a market indicator, such as the consumer price index, etc.
- E. A Lease must specify the dates on which all payments are due.
- F. The Lease must specify that the Lessee shall make payments directly to the Tribe. The Tribe shall document and maintain records of all business lease payments received under this Ordinance in manner sufficient to enable the Secretary to discharge the trust responsibility of the United States under the Hearth Act.
- G. Unless otherwise provided by the Lease, payments may not be made or accepted more than one year in advance of the due date.
- H. The Lease may provide for periodic review and such review may give consideration to the economic conditions, exclusive of improvement or development required by the contract or the contribution value of such improvements.
- I. Leases may be structured to allow for lease rate adjustments. The Lease shall specify how adjustments will be made, who will make the adjustments, what adjustments will go into effect, and how disputes shall be resolved.

- J. The Tribal Council shall keep written records of the basis used in determining the fair annual lease value, as well as basis for adjustments. These records shall be presented to the Lessee for its review and acceptance and included in any Lease file.

**Section 6. Environmental Review Process.**

Unless exempt from this requirement under this Ordinance, the Tribal Council shall not approve a Business Site Lease until the proposed Lessee has completed the Environmental Review Process under Article 8 of this Ordinance. Leases approved and executed without complying with this section shall be null and void.

**Section 7. Insurance.**

Subject to paragraph B of this Section 7, the Lessee shall obtain, and maintain throughout the term of the Lease, 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 California. Such insurance shall:

- A. Protect the interests of the Lessor and the United States, and be in amounts sufficient to protect all insurable improvements on the Lease Premises;
- B. Include, without limitation, property, liability and casualty insurance, including, personal injury or death, business interruption coverage when required by the Tribal Council, and such other insurance as specified in the Business Site Lease; and
- C. Especially identify the Lessor and the United States as additional insureds.

**Section 8. Performance Bond.**

- A. Unless waived in writing by the Tribal Council in accordance with this Ordinance, the Lessee shall obtain a satisfactory Performance Bond in an amount sufficient to secure the contractual obligations of the Lease. The obligations of the Lessee and its sureties to the Lessor shall also be enforceable by the United States, so long as the land remains in Trust or Restricted Status.
- B. All bonds and other security instruments required under this Ordinance shall require the issuer of the bond or surety to provide the Tribe with sixty (60) days advance written notice before a bond or other security may be cancelled, unless waived by the Tribal Council, if doing so would be in the Best Interest of the Tribe. All bonds and other security instruments shall be for the purpose of securing the Lessee’s contractual obligations under the Business Site Lease and may guarantee:
  - (i) The annual lease payment;
  - (ii) The estimated development costs of improvement; and

- (iii) Any additional amount necessary to ensure compliance with the Lease.
- C. The Tribal Council may waive the bond requirement or reduce the bond amount, if doing so is in the Best Interest of the Tribe. The Tribal Council shall maintain written records of all such waivers and reductions.
- D. The Performance Bond may be in one of the following forms:
  - (i) Certificates of deposit issued by a federally insured financial institution authorized to do business in the United States;
  - (ii) Irrevocable letters of credit issued by a federally insured financial institution authorized to do business in the United States;
  - (iii) Negotiable Treasury securities; or
  - (iv) Surety bond issued by a company approved by the U.S. Department of the Treasury.

### **Section 9. Improvements.**

All Business Site Leases shall require the Lessee to exercise due diligence and best efforts to complete construction of any improvements and, if applicable, the removal within the scheduled specified in the Business Site Lease.

- A. Lessee, at Lessee's expense or as otherwise provided in the Business Site Lease, may construct improvements under a Business Site Lease if the Lease specifies, or provides for the development of:
  - (i) a plan that describes the type and location of any improvements to be built by the Lessee; and
  - (ii) a general schedule for construction and removal, if applicable of the improvements.
- B. Lessee shall provide the Tribal Council written justification as to the nature of any delay, the anticipated date of construction of improvements, and evidence of progress towards commencement of construction.
- C. When requested by the Tribal Council or otherwise required in the Business Site Lease, Lessee shall further provide the Tribal Council, in writing, and 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 the Cancellation or Termination of the Business Site Lease pursuant to Article 6 of this Ordinance.

- E. Improvements to the premises shall become the property of the Tribe unless otherwise provided for in the Business Site Lease. If the improvements will be removed, the Business Site Lease shall specify the maximum time allowed for such removal and shall require that the premises be restored to its original pre-lease state.

**Section 10. Subleases, Assignments, Amendments, and Encumbrances.**

- A. Subleases, Assignments, amendments or encumbrances of any Business Site Lease shall be by written consent of the Tribal Council 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 Tribal Council, provided a copy of the Sublease or Assignment is provided to the Tribal Council and submitted for recording to the LTRO, provided that:
  - (i) There is no event of default under the Business Site Lease or this Ordinance;
  - (ii) Any restrictions and use limitations on the use of the premises shall continue to apply to any sublessee;
  - (iii) The proposed assignee or sublessee submits a current financial statement showing financial adequacy; and
  - (iv) The Lessee shall not be relieved or release of any of its obligations under the Business Site Lease.
  - (v) The proposed assignee or sublessee shall provide appropriate corporate or business documents and/or a corporate or business resolution identifying the responsible parties.

This Section 10(B) in no way relieves the parties from carrying out their duties under the Business Site Lease, which may contain additional restrictions and conditions.

- C. The Lease may authorize Leasehold Mortgage for the purpose of financing to develop and improve the premises subject to the approval by the Tribal Council.
- D. If a sale or foreclosure of the Lessee's business or assets occur and the Mortgagee is also the purchaser, the encumbrancer may assign the Lease without approval of the Tribal Council or Lessee, provided that 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 encumbrancer, approval by the Tribal Council is required, provided that the purchaser agrees in writing to be bound by all terms and conditions of the Lease.

**Section 11. Environmental Permitting.**

Lessee shall be responsible for complying with any applicable environmental permitting requirements including, but not limited to all Tribal and applicable federal permitting requirements.

**ARTICLE 5 – BUSINESS LEASE MANAGEMENT**

**Section 1. Management.**

- A. Except when required otherwise by agreement or applicable law, the Tribal Council shall manage all Business Site Leases pursuant to this Ordinance.
- B. The Tribal Council shall employ real estate management practices in addressing accounting, collections, monitoring, enforcement, relief and remedies as set forth in this Ordinance.

**Section 2. Administrative Fees.**

The Tribal Council may charge administrative fees for costs associated with issuing a Lease, Sublease, Assignment, amendment, mortgage or other administrative transaction in accordance with the Tribe’s fee schedule, in accordance with the Tribe’s fee schedule as provided to the Lessee. The Tribe reserves the right to amend and/or update its fee schedule to cover its costs and fees.

**ARTICLE 6 – ENFORCEMENT**

**Section 1. Generally.**

The Tribal Council shall have all powers necessary and proper to enforce the Lease terms, laws, ordinances, regulations, rules, policies and covenants consistent with their Business Site Leases and Tribal Laws. This includes the power to enter the premises at a reasonable time, with or without notice, assess penalties and assess late payments.

**Section 2. Defaults.**

- A. If the Tribal Council determines that the Lessee is in default, the Tribal Council shall send the Lessee a written notice of default within five (5) business days of the determination. The notice of default may be provided by certified mail, return receipt requested, or by personal delivery to the Lessee or to Lessee’s onsite representative, by a person over the age of 18 who shall thereafter execute a proof of service attesting to the date, time, and person to whom the notice of default was personally delivered.

- B. Within ten (10) business days of the service of notice of default, the Lessee shall:
  - (i) Cure the default and notify the Tribal Council in writing that the default has been cured.
  - (ii) Dispute the Tribal Council's determination that the Lease is in default and explain why the Lease should not be canceled; or
  - (iii) Request additional time to cure the default.

**Section 3. Remedies.**

- A. If the Lessee fails to cure the default within the prescribed period, the Tribal Council may:
  - (i) Cancel the Lease pursuant to this Ordinance;
  - (ii) Grant an extension of time to cure the default;
  - (iii) Pursue other remedies, including execution on bonds or collection of insurance proceeds;
  - (iv) Any combination of remedies listed above; or
  - (v) Any other remedy set forth in this Ordinance.
- B. If the Tribal Council cancels a Business Site Lease, the Tribal Council shall send or deliver to the Lessee a Cancellation letter within a reasonable time period. The Cancellation letter shall be sent to the Lessee either by certified mail, return receipt requested, or to the Lessee or the Lessee's onsite representative by a person over the age of 18 who shall thereafter execute a proof of service attesting to the date, time, and person to whom the Cancellation letter was personally delivered. The Cancellation letter shall:
  - (i) Explain the grounds for Cancellation;
  - (ii) Notify the Lessee of unpaid amounts, interest charges or late payment penalties due under the Lease;
  - (iii) Notify the Lessee of its right to appeal; and
  - (iv) Order the Lessee to vacate the premises within thirty (30) days after receipt of the Cancellation letter, if an appeal is not filed by that time.
- C. A Cancellation shall become effective thirty-one (31) days after receipt of the Cancellation letter. The filing of an appeal shall not change the effective date of the

Cancellation. Pending the outcome of an appeal, the Lessee shall make all requisite payments, as well as comply with the terms of the Lease.

- D. If the Tribal Council decides to grant an extension of time to cure default, the Lessee shall proceed diligently to perform and complete the corrective actions within a reasonable time period.

#### **Section 4. Penalties.**

The Lease shall specify the rate of interest to be charged if the Lessee fails to make payments in a timely manner. The Lease shall identify additional late payment penalties. Unless the Lease provides otherwise, interest charges and late payment penalties shall apply in the absence of any specific notice to the Lessee from the Tribal Council, and the failure to pay such amount shall be treated as a breach of the Lease.

#### **Section 5. Harmful or Threatening Activities.**

If a Lessee or other party causes or threatens to cause immediate and significant harm to the premises, or undertakes any unlawful or illegal activity thereon, the Tribal Council may take appropriate emergency action, including but not limited to the removal of persons or property of that party pursuant to a Tribal Council's directive or order.

#### **Section 6. Holdover.**

If a Lessee remains in possession after the expiration, Cancellation or Termination of a Lease, the Tribal Council shall treat such occupation as a trespass. The Tribal Council shall take action to recover possession of the Lease Premises or property and pursue additional remedies. Filings shall be pursuant to Tribal Laws, alternatively, the Tribal Council may make a written request sent by certified mail to the BIA for resolution under any applicable Federal Laws.

#### **Section 7. Trespass.**

If a person occupies the premises without the Tribal Council's approval, the Tribal Council may pursue appropriate remedies, including the removal of the person or property of the trespasser(s) or the filing of a trespass action to regain possession pursuant to Tribal and applicable Federal Law.

### **ARTICLE 7 – APPEALS**

#### **Section 1. Appeals.**

The Lessee or Sublessee or Assignee may appeal a determination of the Tribal Council, within ten (10) days of the determination. Appeals may be filed with the Tribal Council as set forth in this Ordinance. Such appeals shall be effectuated by: a written notice setting forth the basis for the appeal, short statement indicating the nature and circumstances of the appeal, and a short statement indicating the remedy being sought.

## **Section 2. Scope of Review.**

An Appellate panel designated by the Tribal Council shall review the appeal and determine whether the Tribal Council's determination was arbitrary, capricious, or an abuse of discretion; not supported by substantial evidence in the record; or otherwise, not in accordance with Tribal Law. The decision of the Appellate Panel designated by the Tribal Council shall be final.

## **ARTICLE 8 – ENVIRONMENTAL REVIEW PROCESS**

### **Section 1. Generally.**

Unless otherwise exempted under this Article, the Tribal Council shall not approve a Business Site Lease until the proposed Business Site Lease has completed the Environmental Review Process pursuant to this Article and Ordinance. Leases approved and executed without compliance with this Article shall be null and void.

### **Section 2. Threshold Determination.**

Lease Subject to Environmental Review Process: If the Environmental Reviewer determines that the Leasing Decision might be expected to i) impact, ii) alter, iii) disturb, iv) otherwise cause physical disturbance to the environment, the Lessee must fulfill the requirements of the Environmental Review Process. The physical disturbance must be direct, such as land clearing, new building construction, or discharge of emissions or effluent.

### **Section 3. Action on Leasing Decision Subject to Completion of Environmental Review Process.**

If the Environmental Reviewer determines that the Leasing Decision is subject to the Environmental Review Process, the Tribal Council may not complete the Leasing Decision and until the Environmental Reviewer closes the Environmental Review Process in accordance with applicable Tribal Environmental Regulations or Ordinances.

### **Section 4. Environmental Review Process.**

Unless an exemption applies or a Lease is otherwise not subject to the Environmental Review Process, then, before the execution of any Business Site Lease, the Tribal Council shall cause to be prepared a comprehensive and adequate Tribal Environmental Analysis ("TEA"), analyzing the potentially significant effects of the Project on the environment; provided, however, that the information or data which is relevant to such a TEA and is a matter of public record, or is generally available to the public; need not to repeated in its entirety in the TEA, but may be specifically cited as a source for conclusions stated therein; and provided further that such information or data shall be briefly described, that its relationship to the TEA shall be indicated, and that the source thereof shall be reasonably available for inspection at a public place or public building. The TEA shall



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

- A. The Environmental Analysis shall include, at a minimum:
  - (i) A description of the proposed Project;
  - (ii) A description of the environment of the area(s) that will or shall be affected by the proposed Project;
  - (iii) A discussion of the significant adverse environmental impact of the proposed Project, if any, and
  - (iv) An identification and discussion of proposed Mitigation measures to lessen or avoid significant adverse environmental impacts of the proposed Project.
- B. Appropriate mitigation and decision to proceed with the Lease review.
  - (i) Following completion of the process described above, the Environmental Reviewer shall determine whether and to what extent mitigation measures are necessary or appropriate with respect to significant adverse environmental impacts, if any.
  - (ii) In the event the Tribal Council determines that specific economic, social or other conditions make infeasible such mitigation measures, the proposed Lease may proceed at the Tribal Council's discretion.
- C. The environmental review shall also include information required by certain granting agencies, if applicable, including information which documents compliance with other rules and regulations.

#### **Section 5. Notice of Completion of Draft TEA.**

- A. Within no less than thirty (30) days following the completion of the draft TEA, the Tribal Council shall file a copy of the draft TEA and a Notice of Completion with the Tribe. The Tribal Council shall also prepare a Notice of Completion. The Notice of Completion shall include all of the following information.
  - (i) A brief description of the Project;
  - (ii) The proposed location of the Lease;
  - (iii) An address where copies of the draft TEA are available; and
  - (iv) Notice of a period of thirty (30) days during which the Tribe will receive comments to the draft TEA.

- B. During the public comment period, a copy of the draft TEA shall be available for public review at the offices of the Tribe and the Tribal Council or on a publicly accessible website.
- C. To satisfy the requirement for public notice and opportunity to comment, the Tribal Council will publish its Notice of Completion by at least one of the procedures specified below:
  - (i) Publication of the Notice of Completion in a newspaper of general circulation with notice to the public of the opportunity to comment on any Significant Effect on the Environment of the proposed action.
  - (ii) Posting of the Notice of Completion at the offices of the Tribal Government or on a publicly accessible website with notice to the public of the opportunity to comment on any Significant Effect on the Environment of the proposed action. If the public notice is limited to the Tribe's website and Tribal offices, the notice must be published on a portion of the website that is not restricted or password-protected or in a section of a Tribal Government Office that restricts public access.

**Section 6. Response to Public Comments.**

After the thirty (30) day comment period has ended, the Tribal Council will review all comments received from the public prior to the approval and execution of the Business Site Lease, the Tribal Council will provide responses to relevant and substantive public comments on any Significant Effect on the Environment arising as a result of the proposed Project and proposed recommended mitigation measures addressing any such impacts.

**ARTICLE 9 – SEVERABILITY**

**Section 1.**

If any provision or clause of this Ordinance is deemed or held to be invalid by a Court of Competent Jurisdiction, then such provision or clause shall be severed from this Ordinance and the remainder of this Ordinance shall remain in full force and effect.

## **ARTICLE 10 – SOVEREIGN IMMUNITY**

### **Section 1.**

Nothing in this Ordinance shall be deemed or construed as a waiver of Table Mountain Rancheria's Sovereign Immunity or the Sovereign Immunity of any of its officers, enterprises, agents or employees.

## **ARTICLE 11 – EFFECTIVE DATE; AMENDMENT**

### **Section 1.**

This Ordinance shall take effect upon its adoption by the Tribal Council and approval by the Secretary of Interior.

### **Section 2.**

This Ordinance may be amended by a majority vote of the Tribal Council at a duly called Tribal Council meeting at which a quorum is present. All substantive amendments to this Ordinance must be submitted to and approved by the Secretary of Interior.