



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

APPROVAL OF

**COCOPA H TRIBE OF ARIZONA
BUSINESS SITE LEASING ORDINANCE**

The attached Business Site Leasing Ordinance, submitted by the Cocopah Tribe of Arizona (listed in the Federal Register, Vol. 88, No. 8 FR 2112 (January 12, 2023) as the Cocopah Tribe of Arizona), and prepared in accordance with the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012, consisting of 20 pages and adopted by the Cocopah Tribal Council on June 9, 2023, is hereby approved.

Dated: **JUL 26 2023**

A handwritten signature in blue ink, appearing to be "B. R. D.", written over a horizontal line.

Assistant Secretary – Indian Affairs
United States Department of the Interior

Pursuant to the authority delegated by 209 DM 8

**COCOPAH INDIAN TRIBE
BUSINESS SITE LEASING ORDINANCE
ORDINANCE NO. CTO-2023-02**

**CHAPTER ONE
INTRODUCTION**

SECTION:

1.1 Authority. This Ordinance is enacted by the Cocopah Indian Tribe in accordance with the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012, Pub. L. No. 112-151, 126 Stat. 1150 (2012); 25 U.S.C. § 415(h) (the “HEARTH Act”) and pursuant to Article VI, Sections 1(A)(2) and (6) and Article VI, Section 1(B)(1) of the Constitution of the Cocopah Indian Tribe.

1.2 Scope. The application of this Ordinance shall be limited to Business Site Leases (defined below) approved pursuant to this Ordinance, governing leases on Tribal Trust Land (defined below), and to all actions and decisions taken in connection with those Leases. Nothing herein shall be construed to affect the terms and conditions of existing leases, and this Ordinance shall not apply to individually owned land or to mineral leases or to leases of fee land or to leases of fractionated lands in which the Tribe has an interest.

1.3 Purpose. The purposes of this Ordinance are to:

- (a) Recognize the authority of the Tribe to issue, review, approve, and enforce Business Site Leases and establish streamlined procedures for environmental review;
- (b) Promote self-determination, encourage economic self-sufficiency, and increase business activity and employment on lands of the Tribe; and
- (c) Implement the HEARTH Act.

1.4 Applicable Law. The law that will apply to all Leases and activities conducted on any leased premises authorized under this Ordinance shall be: this Ordinance, tribal law and applicable Federal law.

1.5 Short Title. This Ordinance shall be known and cited as the “Cocopah Business Site Leasing Ordinance.”

**CHAPTER TWO
DEFINITIONS**

SECTION:

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

- (a) *“Agricultural Land”* means Tribal Trust Land suited or used for the production of crops, livestock or other agricultural products or a business that supports the surrounding agricultural community.
- (b) *“Amendment”* means an amendment to a Business Site Lease.
- (c) *“Approving Authority”* means the Tribal Council.
- (d) *“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 the Lessee’s obligations under a Business Site Lease.
- (e) *“Best Interest of the Tribe”* means the balancing of interests in order to attain the highest economic income, provide incentives to increase economic development, preserve and enhance the value of Tribal Trust Land, increase employment and jobs on the Tribal Trust Land, and preserve the sovereignty of the Tribe.
- (f) [Intentionally Omitted]
- (g) *“Business Site Lease(s)”* means the same as “Lease” but shall be limited to leases of Tribal Trust Land for business, commercial, public, religious, agricultural, educational or recreational purposes.
- (h) *“Constitution”* means the Constitution of the Cocopah Indian Tribe.
- (i) *“Development Period”* means the time period from when a Lease is executed to when improvements are expected to be substantially completed.
- (j) *“Environmental Review Process”* means the Tribe’s process for conducting an environmental review under Chapter 7 herein to assess the impacts of a proposed development activity undertaken pursuant to a Business Site Lease under this Ordinance.
- (k) *“Environmental Reviewer”* means an official or officials from, or a qualified consultant hired by, the Tribe’s Environmental Protection Office or as otherwise designated by the Tribal Council. The Environmental Reviewer shall use the Tribe’s Cultural Resources Department as necessary in the Environmental Review Process.
- (l) *“Executing Official”* means the Tribal Chairperson or, in the Tribal Chairperson’s absence, the Tribal Vice-Chair. The Executing Official shall execute all approved Business Site Leases, subleases, amendments, modifications, assignments, terminations and cancellations of Leases and subleases on behalf of the Tribe.
- (m) *“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, including term, rental adjustment and revaluation, permitted uses, use restrictions and expense

obligations, the Lessee and Lessor each acting prudently and knowledgeably and assuming consummation of a Lease as of a specified date and the passing of the leasehold from Lessor to Lessee under conditions whereby:

- (i) Lessee and Lessor are typically motivated;
- (ii) Both parties are well-informed or well-advised, and acting in what they consider their best interests;
- (iii) A reasonable time is allowed for exposure in the open market;
- (iv) The rent payment is made in terms of U.S. dollars and is expressed as an amount per time period consistent with the payment schedule of the Lease and/or as a percentage of revenue, 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.
- (n) *Intentionally Omitted.*
- (o) “*Holdover*” means circumstances in which a Lessee remains in possession of the leased premises after the Lease term expires, without the written consent of the Lessor.
- (p) “*Lease*” means a written agreement or contract between the Lessor and a Lessee whereby the Lessee is granted a right to use and occupy Tribal Trust Land for a specified purpose and duration, as provided in the Lease.
- (q) “*Lease Administrator*” means the Cocopah Planning Department and the Cocopah Business Development Department, collectively.
- (r) “*Leasing Decision*” means the following type of Lease transactions that will be acted on by the Tribe: Lease issuance, Lease amendment or modification, Lease renewal, subleasing, Lease assignment or transfer and Space Leases.
- (s) “*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*” means a person or entity that has acquired a legal right to possess Tribal Trust Land by a Lease pursuant to this Ordinance.
- (u) “*Lessor*” means the Tribe, acting through the Lease Administrator, the Approving Authority and the Executing Official.
- (v) “*LTRO*” means the Land Titles and Records Office of the BIA.
- (w) “*Project*” means any authorized activity proposed to occur on Tribal Trust Land pursuant to a Business Site Lease.

- (x) *“Public”* for purposes of the Environmental Review Process means the enrolled members of the Tribe, individuals who live or work on Tribal Trust Land, and/or business entities or other institutions that are engaged in programs or activities on Tribal Trust Land that have a definable, concrete interest that may reasonably be affected by a proposed Business Site Lease, and any other person or entity likely to be significantly affected by the Lease, as determined by the Tribe.
- (y) *“Secretary”* means the Secretary of the Interior.
- (z) *“Significant Effect on the Environment”* means a substantial, or potentially substantial, adverse change or alteration in the environment involving a physical disturbance to the environment, including land, air, water, minerals, flora, fauna, ambient noise, cultural areas and objects of historic, cultural or aesthetic significance.
- (aa) *“Space Lease”* means a Lease of space within an existing leased premises.
- (bb) *“Sublease”* means a written agreement by which the Lessee grants to an individual or entity a right to possession no greater than that held by the Lessee under a Business Site Lease.
- (cc) *“Tribe”* means the Cocopah Indian Tribe.
- (dd) *“Tribal Council”* means the Tribal Council of the Tribe as set forth in Article IV of the Constitution.
- (ee) *“Tribal Court”* means the Cocopah Tribal Court.
- (ff) *“Tribal Entity”* means an agency, instrumentality or corporation wholly owned by the Tribe or an agency or instrumentality of the Tribe or other subordinate entity of the Tribe that is wholly owned by the Tribe.
- (gg) *“Tribal Trust Land”* means all lands owned by the Tribe over which the Tribe exercises governmental power and that are held in trust or restricted status by the United States for the benefit of the Tribe.
- (hh) *“Trust or Restricted Land”* means any tract in which the United States holds title in trust or restricted status for the benefit of the Tribe.
- (ii) *“Trust or Restricted Status”* means (1) the United States holds title to a tract of land in trust for the benefit of the Tribe; or (2) the Tribe holds title to the tract of 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.

**CHAPTER THREE
BUSINESS SITE LEASE REQUIREMENTS**

SECTION:

3.1 Terms and Conditions. Leases shall be governed by the terms and conditions set forth in the Business Site Lease. Unless otherwise provided in the Lease, the terms and conditions of the Lease may be amended only with the prior written approval of all parties to the Lease. The Lessee is responsible for understanding these terms and conditions.

3.2 Approval Process.

- (a) In every case in which the Lease Administrator is considering or proposing to enter into a Business Site Lease under this Ordinance and a particular lease site has been identified, the Lease Administrator shall:
 - (i) notify the Tribal Council in writing of any such lease proposal;
 - (ii) obtain the written approval of the Tribal Council to proceed with Lease negotiations;
 - (iii) proceed to negotiate Lease terms and ensure that all requirements of this Ordinance are satisfied; and
 - (iv) present final form of Lease to Tribal Council and obtain written approval of Lease from Tribal Council.
- (b) After all the necessary requirements of this Ordinance have been met, an approved Business Site Lease shall be executed on behalf of the Tribe by the Executing Official.
- (c) The lease approval process shall be completed within sixty (60) days after Lessee has completed all requirements specified in this Ordinance and the Environmental Review Process is completed, provided, however, that the sixty (60) day period maybe extended by the Tribal Council if necessary to complete the process.

3.3 Duration and Renewal.

- (a) Unless otherwise provided in the Lease, no Lease shall be approved more than 12 months prior to the commencement of its term. A Lease term shall not be more than 25 years, except that any Lease may include an option to renew for up to two additional terms, each of which may not exceed 25 years. Unless otherwise provided in the Lease, the Lessee shall be required to notify the Lease Administrator of the intent to renew at least one year before such Lease or renewal term is due to expire.
- (b) If the Lease provides for an option to renew, the Lease must specify:
 - (i) the time and manner in which the option must be exercised or is automatically effective;

- (ii) that confirmation of the renewal will be submitted to the BIA, unless the Lease provides for automatic renewal;
- (iii) whether tribal consent to the renewal is required;
- (iv) that the Lessee must provide notice of the renewal to the Tribe and any sureties and mortgagees;
- (v) the additional consideration, if any, that will be due upon the exercise of the option to renew or the start of the renewal term; and
- (vi) any other conditions for renewal (e.g., that the Lessee not be in violation of the Lease at the time of renewal).

3.4 Obtaining a Business Site Lease. Information on obtaining a Business Site Lease shall be available from the Lease Administrator.

- (a) All applicants for a Business Site Lease shall submit the following documents to the Lease Administrator:
 - (i) financial statement with sufficient detail to demonstrate the Lessee's capability to complete the project;
 - (ii) site survey and legal description in the form and substance required by this Ordinance;
 - (iii) documents necessary to support the Environmental Review Process in the form and substance required by this Ordinance;
 - (iv) other documents as may be reasonably required by the Lease Administrator.
- (b) All Business Site Leases shall contain, at a minimum, the following provisions:
 - (i) The tract, location, or parcel of the land being leased, with a legal description in a form and substance that meets the BIA Land Title and Records Office requirements;
 - (ii) The purpose of the Lease and authorized uses of the leased premises;
 - (iii) The parties to the Lease;
 - (iv) The term and effective date of the Lease;
 - (v) Identification of the responsible party for constructing, owning, operating, maintaining and removing any improvements to the leased premises;
 - (vi) Unless the Lessee would be prohibited by law from doing so, the Lease must contain the following provisions:

- (1) The Lessee holds the United States and the Tribe harmless from any loss, liability or damages resulting from the Lessee's use or occupation of the leased premises; and
 - (2) The Lessee indemnifies the United States and the Tribe against all liabilities or costs relating to the use, handling, treatment, removal, storage, transportation, or disposal of hazardous material, or the release or discharge of any hazardous material from the leased premises that occurs during the Lease term, regardless of fault, with the exception that the Lessee is not required to indemnify the Tribe for liability or cost arising from the Tribe's negligence or willful misconduct.
- (vii) Rent payment provisions, including but not limited to provisions that:
- (1) specify:
 - (A) the amount of rent;
 - (B) interest and additional late payment penalties;
 - (C) acceptable form(s) of payment;
 - (D) the dates on which all payments are due; and
 - (2) require:
 - (A) the Lessee to make rental payments directly to the Tribe at the address specified in the Lease and provide proof of such payments to the BIA upon the BIA's request;
 - (B) unless otherwise provided in the Lease, payments may not be made or accepted more than one year in advance of the due date of the Lease; and
 - (C) such direct payments to the Tribe shall include documentation sufficient to enable the Secretary to discharge his or her trust responsibility to the Tribe under Federal law.
- (viii) Due diligence, insurance and bonding requirements as provided in this Section;
- (ix) A requirement that the leased premises may be used only for purposes authorized under the Lease;
- (x) A requirement that the Lessee must comply with all applicable laws, ordinances and other legal requirements;
- (xi) Default, breach of Lease and dispute resolution procedures, including negotiated remedies, if any;

- (xii) If the leased premises are within an Indian irrigation project or drainage district, the Lease shall state the following: “If the leased premises are within an Indian irrigation project or drainage district, except as provided by 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.”; and
 - (xiii) If historic properties, archeological resources, human remains, or other cultural items not previously reported are encountered during the course of any activity associated with the Lease, all activity in the immediate vicinity of the properties, resources, remains, or items will cease, no item will be removed from the site, and the Lessee will contact the Tribe to determine how to proceed and appropriate disposition.
 - (xiv) For Agricultural Leases, the Lease must state that if the Lessee is a corporation or other legal entity, it must provide organizational and financial documents to show the Lease will be enforceable against the Lessee and the Lessee can perform all its Lease obligations.
 - (xv) A requirement that the Lessee’s agricultural operations be conducted pursuant to the Tribe’s agricultural resource management plan and that Lessee provide Lessor with environmental and archaeological reports, surveys and site assessments as needed to document compliance with NEPA and other applicable federal and tribal laws.
- (c) The Lease Administrator shall ensure that Business Site Leases, subleases, assignments, amendments, leasehold mortgages, renewals, modifications, cancellations and terminations are recorded with the LTRO.
 - (d) The Lease Administrator is responsible for maintaining tribal records of all Business Site Leases and for disseminating recorded Lease documents to the Tribe’s Environmental Department.
 - (e) Records of activities taken pursuant to this Ordinance are the property of the Tribe. Records compiled, developed, or received by the Secretary of the Interior are the property of the United States.
 - (f) 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.
 - (g) Leases approved under this Ordinance shall comply with all applicable Federal laws.

3.5 Space Leases. Unless otherwise provided in the Lease, Space Leases shall be reviewed and approved pursuant to the terms of this Ordinance. 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 sufficient in detail to allow for recordation with the LTRO.

3.6 Land Descriptions. Business Site Leases shall contain adequate site surveys and legal descriptions based on metes and bounds, rectangular or lot and block systems in sufficient detail to meet the recording requirements of the LTRO.

3.7 Appraisal; Local Studies.

- (a) The Fair Annual Lease Value shall be determined by an appraisal or equivalent procedure performed by or on behalf of the Lease Administrator using the following data: improvement cost, replacement cost, earning capacity and sales and lease data of comparable sites, or by similar methodology as approved by the Lease Administrator and deemed by the Lease Administrator to be in the best interest of the Tribe. Except with respect to Leases subject to exemptions under Section 3.8 and Leases made under Section 3.14, 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. The costs of the licensed appraiser shall be paid by the Lessee, unless the Lease Administrator, at its discretion, agrees to bear a portion of such costs. An appraisal log describing the method of appraisal and value of the leasehold shall be attached to every Business Site Lease.

3.8 Fair Annual Lease Value.

- (a) No Lease shall be approved for less than the present Fair Annual Lease Value, except as follows:
 - (i) The Lease is in the Development Period;
 - (ii) The Lease Administrator has determined that in order to provide an incentive for business to locate on Tribal Trust Land, it will make Lease concessions, provide Lease improvement credits, or provide Lease abatements to attract businesses;
 - (iii) The Lease Administrator determines such action is in the Best Interest of the Tribe;
 - (iv) The Lease is made to a Tribal Entity; or
 - (v) The Lease Administrator determines the Lease is for public, religious, educational or recreational purposes.
- (b) A Lease may be structured as a flat rate Lease.

- (c) A Lease may be structured as a flat rate Lease plus a percentage of gross receipts.
- (d) A Lease may be structured based on a percentage of gross receipts, or based on a market indicator.
- (e) 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 Lease or the contribution value of such improvements.
- (f) Leases may be structured to allow for Lease rental rate adjustments and Leases with a term of more than five (5) years shall require periodic rental rate adjustments. The Lease shall specify how adjustments will be made, who will make such adjustments, when adjustments will go into effect, and how disputes over the adjustments shall be resolved.
- (g) The Lease Administrator shall keep written records of the basis used in determining the Fair Annual Lease Value and the basis for rate adjustments. These records shall be included in any Lease file.

3.9 Environmental Review Process. Unless exempted from this requirement under this Ordinance, the Lease Administrator shall not forward a Business Site Lease to the Approving Authority until the proposed Lessee has completed the Environmental Review Process under Chapter Seven of this Ordinance. Leases approved and executed without complying with this Section 3.9 shall be null and void.

3.10 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 leased premises from a nationally accredited insurance company authorized to do business in Arizona.
- (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 as Lessor and the United States must be identified as additional insured parties.

3.11 Performance Bond.

- (a) Unless waived by the Lease Administrator in accordance with this Ordinance, the Lessee shall obtain a satisfactory performance bond in an amount sufficient to secure the Lessee's contractual obligations under the Business Site Lease and shall guarantee:
 - (i) The annual Lease payments;
 - (ii) The estimated development cost of improvements;

- (iii) Any additional amount necessary to ensure compliance with the Lease;
 - (iv) That the obligations of the Lessee and its sureties to the Tribe are also enforceable by the United States, so long as the land remains in trust or restricted status; and
 - (v) That the performance bond or other security instrument requires the surety to provide notice to the Tribe at least sixty (60) days before cancelling a performance bond or other security.
- (b) The Lease Administrator may waive the bond requirement or reduce the amount if it finds that doing so is in the Best Interest of the Tribe. The Lease Administrator shall waive the bond requirement if the Lease is to a Tribal Entity. The Lease Administrator shall maintain written records of waivers and reductions.
- (c) 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 that shall remain effective during the Term of the Lease;
 - (iii) Negotiable U.S. Department of Treasury securities;
 - (iv) surety bond issued by a company approved by the U.S. Department of the Treasury; or
 - (v) such other form as may be approved by the Lease Administrator.

3.12 Improvements. All Business Site Leases shall require the Lessee to exercise due diligence and best efforts to complete construction of any improvements within the time 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;
 - (ii) a general schedule for construction of the improvements;
 - (iii) unless otherwise provided in the Lease, a time certain for commencement and completion of the improvements.
- (b) Lessee shall provide the Lease Administrator written justification as to the nature of any delay in progress, the anticipated date of construction of the

improvements and evidence of progress toward commencement of construction.

- (c) When requested by the Lease Administrator or otherwise required in the Business Site Lease, Lessee shall further provide the Lease Administrator, in writing, an updated schedule for construction.
- (d) Failure of the Lessee to comply with these requirements will be deemed a violation of the Business Site Lease and may lead to cancellation of the Business Site Lease pursuant to Chapter 5 of this Ordinance.
- (e) Improvements to the leased premises shall become the property of the Tribe at the end of the Lease term unless otherwise provided in the Business Site Lease. If improvements will be removed at the end or termination of the Lease term, the Business Site Lease shall specify, unless waived by the Lease Administrator, the maximum time allowed for such removal, the Lessee's responsibility 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 the improvements and, with the written consent of the Lease Administrator, sell its interest in the Business Site Lease based on the equity value. The Tribe has a right of first refusal to purchase the interest.
- (g) The Business Site Lease may provide that at its expiration, cancellation or termination, the Lessor shall purchase improvements to the premises at fair market value.
- (h) Improvements may be subject to taxation by the Tribe.

3.13 Subleases, Assignments, Amendments and Leasehold Mortgages.

- (a) Subleases, Assignments, Amendments or Leasehold Mortgages of any Business Site Lease shall require the written approval of the Executing Official and Lessee, unless otherwise provided in the Lease.
- (b) A Business Site Lease may authorize Space Leases, Subleases and Assignments, in whole or in part, without further approval of the Lease Administrator and execution by the Executing Official, provided that a form of the copy of the Space Lease, Sublease or Assignment is provided to the Lease Administrator, the following conditions, where applicable, are stated in the Business Site Lease and the following conditions are satisfied:
 - (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 leased premises shall continue to apply to any space lessee, subtenant or assignee;

- (iii) The proposed assignee or sublessee submits a current financial statement showing financial adequacy; and
- (iv) The Lessee shall not be relieved of or released from any of its obligations under the Business Site Lease.

This Section 3.13(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) A Lease may include provisions that permit the Lessee to mortgage the leasehold interest for the purposes of financing to develop and improve the premises, provided that the Lessee obtains the Lease Administrator's prior approval of the Leasehold Mortgage.
- (d) Notwithstanding subsection (c) above, the Lease Administrator's prior approval of a Leasehold Mortgage shall not be required when the Lease initially approved by the Lease Administrator (i) includes a form of Leasehold Mortgage that comports with this Ordinance; (ii) authorizes the issuance of the Leasehold Mortgage; and (iii) the Lease requires the Lessee to provide the Lease Administrator with notice and a final recorded copy of the Leasehold Mortgage.
- (e) If a sale or foreclosure of the Lessee's business or assets occurs and the leasehold mortgagee also is the purchaser, the leasehold mortgagee may assign the Lease without further approval of the Lease Administrator or Lessor, 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 leasehold mortgagee, approval of an assignment or other transfer by the Lease Administrator and execution from the Executing Official is required, provided further that the purchaser must agree in writing to be bound by all terms and conditions of the Lease and this Ordinance.

3.14 Leases to Tribal Entities. With respect to Leases of Tribal Trust Land to Tribal Entities, annual rental payments may be in a nominal amount.

CHAPTER FOUR BUSINESS LEASE MANAGEMENT

SECTION:

4.1 Management.

- (a) Except where otherwise provided in the Lease or by applicable law, the Lease Administrator shall manage all Business Site Leases pursuant to this Ordinance.
- (b) The Lease Administrator may develop and 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 this Ordinance.

4.2 Accounting.

- (a) The Lease Administrator shall implement an accounting system that generates invoices in advance of the due dates, accounts for payments, and establishes dates for when rate adjustments should be made.
- (b) The accounting system shall include the following information: name of Lessee, Business Site Lease number, due dates, amounts due, payments made, late charges, collection efforts, cancellation efforts, balance due, cumulative payments and cumulative balance due.
- (c) The Lease Administrator shall provide an annual accounting to the Tribal Council of all activities conducted under this Ordinance.

4.3 Administrative Fees. The Lease Administrator may impose and collect administrative fees for costs associated with issuing a Lease, Space Lease, Sublease, Assignment, Amendment, Leasehold Mortgage or other administrative transaction required by this Ordinance. The Lease Administrator shall waive any such fees for Leases to Tribal Entities.

4.4 Taxes. Notwithstanding any other provision of this Ordinance, (a) subject only to applicable Federal law, permanent improvements on the leased premises, without regard to ownership of those improvements, are not subject to any fee, tax, assessment, levy or other charges imposed by any State or political subdivision of a State (although such improvements may be subject to taxation by the Tribe); (b) subject only to applicable Federal law, activities under a Lease conducted on the leased premises are not subject to any fee, tax, assessment, levy or other charge (e.g., business use, privilege, public utility, excise, gross revenue taxes) imposed by any State or political subdivision of a State (although such activities may be subject to taxation by the Tribe); and (c) subject only to applicable Federal law, the leasehold or possessory interest of a Lease is not subject to any fee, tax, assessment, levy or other charge imposed by any State or political subdivision of a State (although leasehold or possessory interests may be subject to taxation by the Tribe).

CHAPTER FIVE ENFORCEMENT

SECTION:

5.1 Generally. The Tribe shall have all powers necessary and proper to enforce the Lease terms, laws, ordinances, regulations, rules, policies, and covenants, consistent with this Ordinance. This includes the power to enter the leased premises at a reasonable time, with or without notice, assess penalties and assess late payments.

5.2 Defaults.

- (a) Except as otherwise specified in the Lease for notices of default, if the Lease Administrator determines the Lessee is in default, the Lease Administrator shall send the Lessee a notice of default within ten (10) days of the determination or as soon thereafter as reasonably possible. The notice of

default shall be provided by certified U.S. mail, return receipt requested, by commercial overnight courier service or by personal delivery.

- (b) Within the timeframe specified in the Lease, or if no such timeframe is specified then within 10 days of the Lessee's receipt of the notice, the Lessee shall:
 - (i) Cure the default and notify the Lease Administrator in writing that the default has been cured;
 - (ii) Dispute in writing the Lease Administrator's determination that the Lease is in default and explain why the Lease should not be canceled or terminated; or
 - (iii) Request in writing additional time to cure the default.

5.3 Remedies.

- (a) If the Lessee fails to cure the default within the prescribed period, the Lease Administrator 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, collection of insurance proceeds, or negotiated remedies;
 - (iv) Act in any combination of remedies listed above; or
 - (v) Act pursuant to any other remedy that may be set forth in the Lease or available under applicable law.
- (b) If the Lease Administrator cancels a Business Site Lease, the Lease Administrator shall send the Lessee a cancellation letter within a reasonable time period. The cancellation letter shall be sent to the Lessee by certified U.S. mail, return receipt requested, by commercial overnight courier service or by personal delivery. 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 30 days from receipt of the cancellation letter, if an appeal is not filed by that time.
- (c) A cancellation shall become effective 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 Lease Administrator decides to grant an extension of time to cure a default, the Lessee shall proceed diligently to perform and complete the corrective actions within the designated time period.
- (e) A Business Site Lease may provide either party with negotiated remedies in the event of a lease violation, in addition to those set forth in Section 5.3(a) through 5.3(d) above, including but not limited to the power to terminate the Lease.
- (f) In the event of Lease cancellation, the Lease Administrator shall notify the BIA so that the cancellation may be recorded in the Land Titles and Records Office of the BIA.

5.4 Penalties. The Lease shall specify the rate of interest to be charged if the Lessee fails to make payments in a timely manner. The Lease may 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 Lease Administrator or the Tribe, and the failure to pay such amount shall be treated as a breach of the Lease.

5.5 Harmful or Threatening Activities. If a Lessee or other party causes or threatens to cause immediate and significant harm to the leased premises or undertakes illegal activity thereon, the Lease Administrator may recommend and the Tribe may take appropriate emergency action.

5.6 Holdover. If a Lessee remains in possession after the expiration, termination or cancellation of a Lease without the written consent of the Lessor, the Tribe shall treat such occupation as a trespass. The Lease Administrator or the Tribe shall take appropriate action to recover possession and pursue any other civil or criminal remedies under applicable law. Actions shall be taken pursuant to Tribal, Federal or state laws, or alternatively, the Tribe may make a written request sent by certified US. mail to the BIA for resolution under any applicable Federal laws.

5.7 Trespass. If any person or entity that is not a Lessee occupies the leased premises in violation of the Lease or without the Tribe's and Lessee's written consent, the Lease Administrator or the Tribe may take appropriate action against the person or entity, including without limitation action at law to eject, exclude or remove the person or entity and pursue any other civil or criminal remedies under applicable law.

5.8 BIA Notification. The Lease Administrator may at its discretion notify the Secretary of any Lease violation and request the Secretary initiate any remedies available to him or her. Upon such notice and request, the Secretary may, at his or her discretion, enter the leased premises and enforce the provisions of, or cancel, the Lease.

CHAPTER SIX APPEALS

SECTION:

6.1 Appeals. Unless an alternative appeals process is provided in the Lease, the Lessee may appeal a determination of the Lease Administrator taking any enforcement action under the Lease, within fifteen (15) days of receiving notice of the determination. Appeals may be filed with the Tribal Court or other hearing body designated in the Lease. Unless otherwise provided in the rules applicable to the Tribal Court or other hearing body designated in the Lease, such appeals shall be made by a written notice setting forth the basis for the appeal, a short statement indicating the nature and circumstances of the appeal, and a short statement indicating the remedy being sought.

6.2 Appeal Bond. If a stay of enforcement is sought, an appeal bond must be posted in an amount sufficient to protect the party whose remedy has been stayed from all financial losses that may occur as a result of the appeal. Appeal bond requirements shall not be separately appealed, but may be established and contested during the cancellation appeal.

6.3 Scope of Review. The Tribal Court or other hearing body designated in the Lease shall review whether the determination was arbitrary, capricious, or an abuse of discretion; not supported by substantial evidence in the record; or otherwise, not in accordance with the law. The decision of the Tribal Court or other hearing body designated in the Lease shall be final.

CHAPTER SEVEN ENVIRONMENTAL REVIEW PROCESS

SECTION:

7.1 Generally. Unless a Business Site Lease is exempt under this Chapter, the Lease Administrator shall not submit a Lease to the Approving Authority until the proposed Lessee has completed the Environmental Review Process set forth in this Chapter and any implementing regulations adopted by the Tribe. Leases approved and executed without compliance with this Chapter shall be null and void.

7.2 Threshold Determination.

- (a) **Lessee Subject to Environmental Review Process:** If the Environmental Reviewer determines that the Leasing Decision might be expected to have a Significant Effect on the Environment, the Lessee must fulfill the requirements of the Environmental Review Process.
- (b) **Statutory Exemption for Certain Leases:** Leasing decisions involving a Business Site Lease proposing the use of premises that are the subject of a completed Federal environmental review or a categorical exemption under the National Environmental Policy Act, 42 U.S.C. §§ 4321 et seq. ("NEPA") shall be exempt from the Environmental Review Process, and the Lessee shall not be required to prepare a TER (defined below) under Section 7.4 of this Chapter.

7.3 Action on Leasing Decision Subject to Completion of Environmental Review Process. If the Environmental Reviewer determines that the Leasing Decision is subject to the Environmental Review Process, the Approving Authority may not consider the Leasing Decision until the Environmental Reviewer completes the Environmental Review Process in accordance with this Ordinance.

7.4 Environmental Review Process.

- (a) Unless an exemption applies or a Lease is otherwise not subject to the environmental review requirements of Section 7.2 above, then, before the approval of any Business Site Lease, the Environmental Reviewer shall cause to be prepared a tribal environmental report (“TER”), analyzing the potentially significant effects of the proposed action on the environment; provided, however, that information or data which is relevant to such a TER and is a matter of public record or is generally available to the public need not be repeated in its entirety in the TER but may be specifically cited as the source for conclusions stated therein; and provided further that such information or data shall be briefly described, that its relationship to the TER shall be indicated, and that the source thereof shall be reasonably available for inspection at a public place. The TER shall provide detailed information about the Significant Effect(s) on the Environment which the Lease is likely to have, and shall include a detailed statement setting forth all of the following:
 - (i) A description of the physical environmental conditions in the vicinity of the Project (the environmental setting and existing baseline conditions), as they exist at the time the notice of preparation is issued;
 - (ii) All Significant Effects on the Environment of the proposed Lease;
 - (iii) In a separate section:
 - (1) Any Significant Effect on the Environment that cannot be avoided if the Lease is approved;
 - (2) Any Significant Effect on the Environment that would be irreversible if the Lease is approved;
 - (3) Any mitigation measures proposed, recommended, or required to lessen, reduce the impact of or eliminate any identified Significant Effect on the Environment.
- (b) In addition to the information required pursuant to subdivision (a) hereof, the TER shall also contain a statement, if applicable, indicating the reasons for determining that various effects of the Lease on the environment outside the exterior boundaries of the Cocopah Indian Reservation are not significant and consequently have not been discussed in detail in the TER. In the TER, the direct and indirect Significant Effects on the Environment shall be clearly

identified and described, giving due consideration to both the short-term and long-term effects.

- (c) The Environmental Reviewer, in consultation with the Project proponent, may select and engage an environmental consultant to prepare the TER or portions thereof. The Project proponent shall pay the reasonable and necessary costs of the environmental consultant.

7.5 Notice of Completion of Draft TER.

- (a) Within no less than thirty (30) days following the completion of the draft TER, the Tribe shall make available to the Public a Notice of Completion and a copy of the draft TER through one of the methods specified in Subsection 7.5(b). The Notice of Completion shall include all of the following information:
 - (i) A brief description of the Project;
 - (ii) The proposed location of the Project;
 - (iii) An address where copies of the draft TER are available for review; and
 - (iv) Notice of a period of at least thirty (30) days during which the Tribe will receive comments on the draft TER.
- (b) To satisfy the requirement for public notice and opportunity to comment under this Ordinance, the Tribe will provide public notice by at least one of the procedures specified below:
 - (i) Publication of notice of the Tribe's draft TER in a newspaper of general circulation in the area affected by the proposed Business Site Lease and containing notice to the Public of the opportunity to comment on the draft TER for 30 days; and
 - (ii) Posting of a copy of the Tribe's draft TER in the offices of the Tribe and a notice to the Public on the Tribe's publicly accessible website of the opportunity to comment on the draft TER for 30 days.

7.6 Response to Public Comments. After the thirty (30) day comment period has ended, the Environmental Reviewer will review all comments received from the Public. Prior to the approval and execution of the Business Site Lease, the Environmental Reviewer will provide written responses to relevant and substantive Public comments on any Significant Effect on the Environment arising as a result of the proposed project and proposed or recommended mitigation measures addressing any such impacts. The Environmental Reviewer's written responses will be made available to the Public by one of the methods specified in Subsection 7.5(b).

7.7 Decision to Proceed. Following the completion of the Environmental Review Process, the Leasing Decision of the Approving Authority shall be final and not subject to challenge or review in any forum.

**CHAPTER EIGHT
SOVEREIGN IMMUNITY**

SECTION:

8.1 Nothing in this Ordinance shall be deemed to waive the sovereign immunity of the Tribe or any of its enterprises, authorities, subordinate economic entities, officers, agents, agencies, departments, or employees.

**CHAPTER NINE
SEVERABILITY**

SECTION:

9.1 In the event any provision or part of this Ordinance is found to be invalid or unenforceable by a court of competent jurisdiction, the validity, legality and enforceability of the remaining provisions of this Ordinance shall not in any way be impaired or affected thereby and shall remain in full force and effect.

**CHAPTER TEN
EFFECTIVE DATE; AMENDMENT**


SECTION:

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


10.2 This Ordinance may be amended or repealed by the Tribal Council. All substantive amendments to this Ordinance must be submitted to and approved by the Secretary of the Interior.

* * * * * **CERTIFICATION** * * * * *

This is to certify that the foregoing Business Site Leasing Ordinance was adopted by the Cocopah Tribal Council at a duly called meeting on June 9, 2023, with a quorum present by a vote of 4 FOR, 0 AGAINST, and 0 ABSTAINED.



Sherry Cordova, Chairwoman
Cocopah Tribal Council



Rosa J. Long, Acting Secretary
Cocopah Tribal Council

