



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


**APPROVAL OF**

**TUNICA-BILOXI INDIAN TRIBE  
RESIDENTIAL LEASING ORDINANCE**

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The attached Residential Leasing Ordinance, submitted by the Tunica-Biloxi Indian Tribe (listed in the Federal Register, Vol. 89, No. 5 FR 946 (January 8, 2024) as the Tunica-Biloxi Indian Tribe), and prepared in accordance with the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012, consisting of 23 pages and adopted by the Tunica-Biloxi Tribal Council on March 11, 2024, is hereby approved.

Dated: May 21, 2024

  
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Assistant Secretary – Indian Affairs  
United States Department of the Interior

Pursuant to the authority delegated by 209 DM 8

**TUNICA-BILOXI TRIBE OF LOUISIANA  
HEARTH ACT  
RESIDENTIAL LEASING ORDINANCE**

**ARTICLE 1 - GENERAL PROVISIONS**

**Section 1.1. Authority**

**Enactment.** This Residential Leasing Ordinance is enacted by the Tribal Council of the Tunica-Biloxi Tribe of Louisiana ("the Tribe") pursuant to the inherent powers of the Tribe and the powers vested to the Tribal Council under Article VIII, Sections 1 and 2, of the Constitution of the Tribe ("Constitution").

**Section 1.2. Scope**

The scope of application of this Ordinance shall be limited to all Revocable Permits and Residential Leases on Tunica-Biloxi Land approved pursuant to this Ordinance, and to all actions and decisions taken in connection with those Residential Purposes. Nothing herein shall be construed to affect the terms and conditions of leases existing, in effect, or awaiting Secretarial approval on or prior to the Effective Ordinance Date. Nothing herein shall be construed to apply to leases for Business Purposes, or for the purpose of exploration, development, or extraction of mineral resources, grazing, agriculture, or to permits for the harvest of forest products, each of which shall continue to be governed by applicable tribal and federal law. The Residential Leasing Ordinance shall not apply to leases of unrestricted fee, allotted or individually owned land, or land subject to fractionated-interest ownership.

**Section 1.3. Purposes**

The purposes of the Residential Leasing Ordinance are to:

- A. Recognize the Tunica-Biloxi Tribe of Louisiana's authority to issue, review, approve, and enforce Leases for Residential Purposes and establish streamlined procedures for environmental review; and
- B. Promote self-determination, exercise of sovereignty over, and provide housing opportunities for members of the Tribe on Tunica-Biloxi Land; and
- C. Implement the Helping Expedite and Advance Responsible Tribal Home Ownership Act ("the HEARTH Act"), 25 U.S.C. § 415(h)(4)(A) (P.L. 112-151; 126 Stat. 1150), as the same may be amended, suspended, or replaced;
- D. Inform prospective Lessees of the nature, requirements, and process of leasing Tunica-Biloxi Lands for Residential Purposes.

#### **Section 1.4. Short Title**

This Tunica-Biloxi Tribe of Louisiana HEARTH Act Residential Leasing Ordinance shall be known and cited as the "Residential Leasing Ordinance."

#### **ARTICLE 2 - DEFINITIONS**

The below terms shall be defined as follows for the purpose of this Ordinance. Unless the context otherwise requires, the definitions set forth below shall apply equally to the singular and plural, as well as the active form of any particular term.

"Applicant" means a Person who has filed an Application for a Lease with the Land Use Coordinator.

"Application" means the form or forms as developed by the Tribe for the purposes of applying for a Lease as well as all materials this Ordinance requires to be submitted along with such a form or forms, including, but not limited to, environmental review materials.

"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.

"Best Interest of the Tribe" means the balancing of interests to attain the highest economic income, provide incentives to increase economic development, preserve and enhance the value of a Homesite, increase the availability of employment, provide governmental services for the Tribe's members, and preserve the Tribe's sovereignty as determined by the Tribal Council or such other Department properly delegated such decision-making authority.

"BIA" means the Bureau of Indian Affairs within the United States Department of the Interior.

"Business Purpose" means commercial or industrial purposes, including but not limited to retail, office, manufacturing, storage, bio-mass, waste-to-energy, hydrogen electrolysis, single purpose, or mixed-use projects designed for use by any number of Lessees; as well as for religious, educational, recreational, cultural, or other public purposes.

"Cancellation" means a BIA action or action of the Tribe to end a lease.

"Change in Land Use" means a change from one (1) use to another that significantly differs from the former use.

"Department" means a part of the Tribe's tribal government charged with administration of a particular function of the Tribe.

"Director of the LFD" means the Tribe's Director of Lands and Facilities, or any person acting in that capacity with the necessary approval.

"Effective Ordinance Date" means the date of approval of this Ordinance by the Secretary.

"Environmental Review Process" means the process provided in this Ordinance for reviewing environmental issues related to Leases.

"Environmental Review Record" or "ERR" shall have the meaning as subscribed to it in Section 7.4.

"Homesite" means any portion of a Housing Unit or Tunica-Biloxi Land that is subject to a lease for Residential Purposes pursuant to this Ordinance, including any common areas and grounds appurtenant thereto.

"Housing Unit" means all or any portion of any house, home, building or other structure which is located on Tunica-Biloxi Land subject to a Lease, to which this Ordinance applies. Each Housing Unit shall be a building with one to four dwelling units on a tract of land under a single Lease.

"Improvement" means any addition, upgrade, or other change that adds usefulness or value to a Homesite, including but not limited to Structures and Permanent Improvements.

"Land Use" means any active or passive use of land or activity, above, on, or below land or bodies of water, which touches upon, impacts, or otherwise affects Tunica-Biloxi Land.

"Land Use Coordinator" means the Chairman of the Tunica-Biloxi Tribe of Louisiana, or, in the absence of the Chairman, the Vice-Chairman of the Tunica-Biloxi Tribe of Louisiana, or, in the absence of both, another individual, properly delegated the responsibility by the Tribal Council to assume the responsibilities of the Land Use Coordinator, such as executing all Leases under this Ordinance and taking all necessary and proper action on Leases and Subleases, including negotiating and approving amendments, Assignments, and Cancellations of Leases and Subleases, as well as enforcing this Ordinance. As used in this definition, the "absence" of the Chairman or Vice-Chairman shall mean either: (1) when said officials are unable to fulfill their duties under this Ordinance, as the Land Use Coordinator, due to circumstances preventing them from doing so, including, but not limited to, travel, illness, or poor weather conditions; or (2) the vacancy of the Chairman's or Vice-Chairman's position.

"Lease" means a written agreement or contract between a Lessor and a Lessee whereby the Lessee is granted a right to possess a Homesite for a Residential Purpose and specified duration. The Lessee's right to possession will limit the Lessor's right to possess the Homesite only to the extent provided in the Lease and this Ordinance.

"Leasehold Mortgage" means a mortgage, deed of trust, or other instrument in which a Lessee pledges the Lessee's leasehold interest as security for a debt or other obligation owed by the Lessee to a lender or other mortgagee.

"Lessee" means a Person who has acquired a legal right to possess a Homesite by a Lease pursuant to this Ordinance.

"Lessor" means the Tribe when it grants a Lease.

"LFD" means the Tribe's Land and Facilities Department.

"LTRO" means the Land Titles and Records Office of the BIA.

"Ordinance" means the Tunica-Biloxi Tribe of Louisiana HEARTH Act Residential Leasing Ordinance.

"Performance Bond" means security for the performance of certain Lease obligations, as furnished by the Lessee, or a guaranty of such performance as furnished by a third-party Surety.

"Permanent Improvement" means buildings, other Structures, and associated infrastructure attached to a Homesite, described in the Lease, and that then forms an integral part of the Homesite.

"Permittee" means a Person with a legal right to use a Homesite under a Revocable Permit issued under this Ordinance.

"Person" includes any individual, corporation, partnership, limited liability company, joint venture, association, trust, unincorporated organization, government or agency or subdivision thereof, or any other entity.

"Preliminary Review Approval" means a certification from the Land Use Coordinator that an Application is complete and ready for further review by the Land Use Coordinator.

"Property" means the buildings, fixtures, and any other Permanent Improvements attached or affixed to Tunica-Biloxi Land unless the Lease provides otherwise.

"Public" for Environmental Review Purposes only means any Person or entity who can demonstrate they will be significantly affected by the Lease or the Lease activity.

"Residential Purpose" means the use of undeveloped or developed land for residential purposes, including the construction or use of the land for a single-family residence, housing for public purposes (which may include office space necessary to administer programs for housing and public purposes), and single or multi-family residential development. Residential Purpose is the sole allowable purpose of a Lease entered into under this Ordinance.

"Revocable Permit" means a written non-assignable, non-possessory right of access or a temporary privilege to enter on and use a Homesite for a specific purpose for a limited amount of

time not to exceed six (6) months and revocable at will in the discretion of the Tribe. A Revocable Permit does not include any agreement, easement, or right-of-way, which would grant a legal right to possession of a Homesite for any period of time.

"Secretary" means the Secretary of the United States Department of the Interior, or his or her authorized representative acting under delegated authority.

"Significant Environmental Impact" means a substantial, or potentially substantial, adverse change in the quality of the human environment, including land, air, water, minerals, flora, fauna, ambient noise, and areas of historic, cultural, or aesthetic significance. Applying this term requires consideration of both context and intensity. Context means the significance of an action on society as a whole, the affected region, any directly affected interests, and the locality. Intensity refers to the severity of impact.

"Structure" means anything constructed, installed, or portable, the use of which requires a location on Tunica-Biloxi Land.

"Sublease" means a written agreement by which the Lessee grants to a Person a possessory interest in the Homesite which is no greater than the Lessee's own interest in the Lease.

"Surety" means one who guarantees the performance of another.

"Termination" means an action by the Tribe to end a Lease.

"Tribal Council" means the governing body of the Tribe established pursuant the Tribe's Constitution.

"Tribe" means the federally recognized Tunica-Biloxi Tribe of Louisiana.

"Trust or Restricted Land" means land where: (i) the United States holds title to the land in trust for the benefit of the Tribe; or (ii) the Tribe holds title to the land in restricted status and 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.

"Tunica-Biloxi Land" means any tract of land in which the surface estate is owned by the Tribe in Trust or Restricted Status and over which the Tribe exercises governmental authority. This term also encompasses lands held by the United States in trust for an Indian corporation owned by the Tribe and chartered under section 17 of the Act of June 18, 1934, if any.

## **ARTICLE 3 – LEASE REQUIREMENTS**

### **Section 3.1. Obtaining a Lease**

Information on obtaining a Lease shall be available at the tribal administrative offices or through such Department and official(s) of the Tribe with properly delegated authority to act as part

of the Lease approval or management process including, but not limited to, the Tribal Recording Clerk, the LFD, and the Land Use Coordinator.

**Section 3.2. Initial Lease Application**

- A. Initiation. All Applications shall be filed with the Land Use Coordinator.
- B. Required Application Information. All Applications shall contain the following information:
  - 1. Legal name, address, phone number, facsimile number (if available), and e-mail address of the Applicant(s);
  - 2. Tribal enrollment number of the Applicant, showing the Applicant is a member of the Tribe;
  - 3. Names of the intended occupants of the Homesite;
  - 4. A description of the proposed Homesite;
  - 5. Statement of interests in, and location of, any other Homesites held by the Tribal member Applicant or spouse, if applicable;
  - 6. A description of the proposed Homesite location;
  - 7. Proposed term of the Lease;
  - 8. A written description of the type of Improvements contemplated, if any;
  - 9. Purpose of Application, such as a request for a Lease, a request to renew a Lease;
  - 10. Beneficiary designation, if applicable;
  - 11. Such other information as the Tribe may request;
  - 12. The signature and, if applicable, the representative capacity of the Applicant.
- C. Duty to Update. The Applicant must notify the Land Use Coordinator in writing if there are any changes to the Applicant's information prior to the Land Use Coordinator's consideration of a Lease.



### **Section 3.3. Terms and Conditions**

Leases shall be governed by the terms and conditions set forth in the Lease subject to the provisions of this Ordinance. Leases shall, at a minimum, contain each of the following provisions set forth in this Article. Leases shall also specify whether due diligence, performance bond, and insurance requirements apply, if any. The terms and conditions of a Lease may be modified only with approval of the Land Use Coordinator. The Lessee is responsible for understanding the terms and conditions within the Lease.

### **Section 3.4 Eligibility for a Residential Lease.**

All Applications for a Residential Lease shall be filed with the LFD or its designee on a form provided by the Tribe. To receive a Residential Lease, the following minimum requirements must be met:

- A. Minimum Age and Member of the Tribe. An Applicant for a Residential Lease must be a member of the Tribe and at least eighteen (18) years or older.
- B. One Homesite. A member of the Tribe is allowed to enter a Lease for only one (1) Homesite within Tunica-Biloxi Lands.

### **Section 3.5. Parties and Execution**

The Lease shall state the name and address of each party. All Leases must be executed by all the parties thereto. The name of each individual executing the Lease, along with their representative capacity, if applicable, shall be stated below each signature line in the Lease. The Lease shall acknowledge that the individual executing the Lease on behalf of each party has the authority to do so and bind that party to the Lease.

### **Section 3.6. Identification of Lease Site and Description of the Homesite**

- A. Database. The Tribal Recording Clerk, in coordination with any other Department or official of the Tribe with properly delegated authority, shall maintain a database of all Homesites available for lease. The Land Use Coordinator shall refer the Applicant to the Tribal Recording Clerk, in coordination with any other Department or official of the Tribe with properly delegated authority, to identify the location of an available site. In carrying out the responsibility to maintain all Lease records under this Ordinance, the Tribal Recording Clerk shall:
  - 1. Record each Lease in a log which shall contain, at a minimum, the following information:
    - i. The name(s) of the Lessee of each Lease, identified as such;
    - ii. The date and time of receipt;



- iii. The assigned filing number, which shall be unique for each Lease and accompanying document; and
    - iv. The name of the tribal staff member receiving the Lease.
  - 2. Endorse the following information from the log upon any Lease received for recording:
    - i. The date and time of receipt of the Lease;
    - ii. The assigned filing number;
    - iii. The name of the tribal staff member receiving the Lease.
  - 3. Make a true and correct copy of the Lease and certify its status as such.
  - 4. Maintain an index where copies of all certified Leases and their accompanying documents are located and may be retrieved by a search based on the legal description of the Homesite.
- B. Survey. The proposed Homesite must be surveyed. All surveys shall be prepared by duly licensed surveyors, contain the legal description of the proposed Homesite, meet the necessary requirements of tribal law and be approved by the Land Use Coordinator. The Applicant shall be responsible for payment of costs associated with the survey. A signed and sealed version of the tribally approved survey shall be provided to the Land Use Coordinator and made part of the Application.
- C. Description of Homesite. The Lease shall describe the Homesite with as much specificity as possible. Reference should be made to an official or certified survey approved by the appropriate Department. If the Homesite cannot be so described, then the Lease shall include one or more of the following: (i) a legal description; (ii) a survey-grade global positioning system description; or (iii) another description prepared by a registered land surveyor that is sufficient for the LTRO to identify the Homesite.

### **Section 3.7. Purpose and Permitted Uses**

The Lease shall state the purpose and the permitted uses which can take place on the Homesite, and the purpose shall strictly be limited to Residential Purposes.

### **Section 3.8. Terms of Leases**

- A. Lease Approval. Unless otherwise stated in the Lease, no Lease shall be approved more than twelve (12) months prior to the commencement of the term of the Lease.

- B. Residential Lease. A Residential Lease may have a maximum initial term of up to seventy-five (75) years, commencing on the date listed in the Lease as the "effective date," "commencement date," or other similar term, and expiring as provided for in the Lease. There shall be no option to renew the residential Lease.

### **Section 3.9. Payments Required Under a Lease**

- A. Rent. The Lease shall specify all rent and fee payment requirements.
- B. Other Fees and Payments Due. The Lease shall identify all other payments and fees which are due and required under the Lease, such as late fees and interest.
- C. When Due. The Lease shall state the dates upon which all payments are due and that the payments are due without demand or notice from the Tribe.
- D. Where and How Due. The Lease shall state the manner in which the required payments are to made, such as by wire, check, or account debit, and where the payments shall be sent, including who the payment must be made to—namely, the Tribe, or, if not the Tribe itself, the pertinent Department of the Tribe—and where the payment itself is to be made. For payments made directly to the Tribe, the Tribe shall maintain documentation of the Lease payments that are sufficient to enable the Secretary to discharge the U.S. trust responsibility.
- E. Rent Adjustments. A Lease which provides for rent adjustments shall state the dates upon which each adjustment shall take place, how each adjustment is to be calculated, who can make the adjustment and how any dispute related to an adjustment calculation is to be resolved. If rental adjustments are required, they must occur at least every fifth year, but can occur more frequently if so provided in the lease.
- F. Irrigation Districts. If the Homesite is within an Indian irrigation project or drainage district, except as otherwise provided for in 25 C.F.R. Part 171, as the same may be amended, replaced, or superseded, the Lessee must pay all the 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.

### **Section 3.10. Improvements**

- A. Timeliness. All Leases shall require the Lessee to exercise due diligence and best efforts to complete construction of any Improvements within the schedule specified in the Lease.
- B. Construction of Improvements. If the Lessee plans to construct Improvements, the Lease shall either:

1. Describe the type of Improvements to be made and the location of the same, and contain a schedule for the commencement and completion of construction, as well as a process for changing the schedule by mutual consent of the parties. The schedule shall take into account the nature of the project to be built and the location of the same and may allow for phased construction; or
  2. Require that a plan be specified within a date certain setting forth the requirements set forth in Section 3.10.B.1.
- C. Plans to be Approved. The Lease shall require all construction plans for Improvements be submitted to the Tribe for approval prior to any construction commencing on the Homesite. If the Lease provides that at expiration of the Lease any reclamation, restoration, or remediation is required due to the nature of the Improvements, a plan for such action shall be included with the construction plans that sets forth the obligations of the Lessor and the Lessee on those matters.
- D. Schedule of Construction Updates. Lessee shall provide the Land Use Coordinator, in writing, a regularly updated schedule for construction which shall include the nature of any delay (if any), the anticipated date of construction of the Improvements, and evidence of progress toward commencement or completion of construction, as applicable. The Land Use Coordinator may also request an updated schedule for construction at any time, which must be timely produced by the Lessee. The schedule for making any such improvements may be modified only by mutual consent of the parties.
- E. Cost of Maintenance. The Lease shall state who shall be responsible for the cost of constructing, operating, maintaining, managing and removing any Improvements constructed on the Homesite.
- F. Commencement of Operations. The Lease shall state the date or dates upon which the Lessee must commence business operations on the Homesite.
- G. Cancellation of Lease. Failure of the Lessee to comply with these requirements will be deemed a violation of the Lease and may lead to Cancellation of the Lease.
- H. Ownership of Improvements. All Improvements constructed on the Homesite by the Lessee shall be the leasehold property of the Lessee during the term of a Lease. Unless otherwise provided for in the Lease, the Improvements shall upon expiration, Termination, or Cancellation of the Lease, remain on the Homesite and become the property of the Tribe. If the Lease allows any specified Improvements to be removed, the Lease shall specify the maximum time allowed for such removal, that removal be at the Lessee's expense, and that the Homesite shall be restored as closely as possible to the condition before construction of the Improvements. If the Improvements are not removed within the stated time frame, they shall either become property of the Tribe, or the Tribe shall have the same removed from the Homesite

and disposed of at the cost of the Lessee.

**Section 3.11. Applicable Law**

The Lease shall state that it is governed by applicable tribal and federal law. The Lease shall further mandate compliance with all applicable laws, ordinances, rules, and regulations.

**Section 3.12. Unlawful Conduct**

Unlawful conduct, creation of a nuisance, illegal activity, negligent use of, or waste of the Homesite is prohibited, and shall be grounds for Termination or Cancellation of the Lease.

**Section 3.13. Historic Properties, Archeological and Cultural Resources**

In the event that historic properties, archeological resources, human remains, or other cultural items not previously reported are encountered during the course of any activity associated with a Lease, all activity in the immediate vicinity of the properties, resources, remains, or items must immediately cease and the Lessee will contact the Land Use Coordinator and BIA to determine how to proceed.

**Section 3.14. Entry and Inspection**

The Land Use Coordinator, and/or an appropriately delegated official of the Tribe, shall have the right, at any reasonable time during the term of the Lease, with reasonable notice, to enter upon the Homesite for inspection and to ensure compliance.

**Section 3.15. Obligations Enforceable by the United States at the Tribe's Request**

The Tribe has the right to request that the United States, acting through the BIA at its discretion, enforce the obligations of the Lessee and any Sureties so long as the Homesite constitutes Tunica-Biloxi Land. In such instances, the BIA shall have the discretionary authority to treat any failure by a Lessee to make appropriate records, reports, or information available for BIA inspection and duplication as a default and grounds for Cancellation or Termination of the Lease under this Ordinance.

**Section 3.16. Indemnification**

The Lessee shall indemnify and hold the Tribe and the United States harmless from any loss, liability, or damages, including costs and attorneys' fees, resulting from the Lessee's use or occupation of the Homesite. The indemnification shall include all liabilities or costs relating to the use, handling, treatment, removal, storage, transportation, or disposal of hazardous materials, or the release or discharge of any hazardous material from the Homesite that occurs during the Lease term, regardless of fault, with the exception that the Lease may contain a provision providing that the Lessee shall not be required to indemnify for liability or costs arising out of the Tribe's own negligence or willful misconduct.

### **Section 3.17. Dispute Resolution**

The Lease shall specifically set forth the method or methods for dispute resolution as well as the forum in which such disputes shall be resolved.

## **ARTICLE 4 – LEASE APPROVAL PROCESS**

### **Section 4.1. Preliminary Review by the Land Use Coordinator**

#### **A. Preliminary Review Considerations.**

1. The Land Use Coordinator shall refer the Application to such Department(s) of the Tribe as deemed necessary and appropriate so as to:
  - i. Identify any existing, future, or potential uses, plans, or projects that may impact or delay the use of the proposed Homesite, including any Land Use plan that may have been adopted by the Tribe;
  - ii. Identify and resolve any potential environmental, architectural, historical infrastructure, health, or site plan issues;
  - iii. Identify and resolve such other issues and matters as the Land Use Coordinator deems appropriate.
2. LFD review and approval recommendation, as provided in the Article 7 herein, shall be required for all Applications prior to the same receiving Preliminary Review Approval from the Land Use Coordinator.
3. All surveys must be reviewed and approved by the LFD.

- B. **Preliminary Review Approval.** The Land Use Coordinator, after completing the Preliminary Review Considerations set forth above, and receiving an approval from the Director of the LFD, shall determine whether any additional information is necessary in order to process the Application. If more information is necessary, the Land Use Coordinator shall request the same from the Applicant or such Departments. Once the Land Use Coordinator is in possession of all the information deemed necessary so as to allow the Application to proceed, the Land Use Coordinator shall issue a Preliminary Review Approval and schedule his or her final review of the Application.

### **Section 4.2. Final Lease Application Review by the Land Use Coordinator**

- A. **Complete Application for Review.** The Land Use Coordinator shall not consider an Application for final review unless it contains the following items:

1. Preliminary Review Approval;
  2. A completed Application form;
  3. A tribally approved survey or sketch; and
  4. LFD approval and the Environmental Review Record, with any accompanying findings.
- B. Review of Application. Every completed Application shall be subject to the Land Use Coordinator's review and the Land Use Coordinator shall either:
1. Issue an approval;
  2. Conditional approval, with such conditions being specified; or
  3. Disapproval as to the proposed Land Use for the Homesite.
- C. Criteria for Assessing an Application. In determining whether to approve, conditionally approve, or disapprove an Application, the Land Use Coordinator may consider:
1. The eligibility of the Applicant, including but not limited to his or her membership with the Tribe and being eighteen (18) years or older;
  2. The highest and best use of the proposed Homesite, the value of the proposed Improvements;
  3. The timing of start-up, construction, and completion of all proposed Improvements and the relationship of such to other Land Uses;
  4. Aesthetics, architectural concept, and design function;
  5. Such other issues as the Land Use Coordinator deems necessary and appropriate.
- D. Compliance with Current Land Use. The Land Use Coordinator may not approve an Application if the proposed Land Use is not, to the Land Use Coordinator's knowledge, in compliance with all applicable laws and any Land Use development plan adopted by the Tribe. However, if no such plan has been adopted, the Land Use Coordinator shall ensure that the Land Use proposed in the Application is compatible with the use of Tunica-Biloxi Land adjacent to and surrounding the proposed Homesite. The Land Use Coordinator may approve variances from any approved Land Use development plan if it is determined that the proposed Land Use otherwise complies with tribal law and is in the Best Interest of the Tribe.

- E. Notice of Decision. The Land Use Coordinator shall provide written notice of all final Land Use Coordinator decisions to the Applicant, by personal delivery, facsimile transmission (if available), e-mail, United States First Class mail, or an express delivery service, such as FedEx or UPS, to the address as set forth in the Application. Failure to give or receive such notice shall not affect the validity of any determination or action.

#### **Section 4.3. Tribal Council Notification**

The Land Use Coordinator shall provide the Tribal Council with a copy of the final Land Use Coordinator decision on an Application for a Lease under this Ordinance.

### **ARTICLE 5 – AMENDMENTS, ASSIGNMENTS, SUBLEASES AND LEASEHOLD MORTGAGES**

#### **Section 5.1. Amendments**

A Lease may be amended only with the approval of the Land Use Coordinator. All amendments must be executed by each party to the Lease. In the event there is a Leasehold Mortgage or guaranty which provides that the mortgagee's or the Surety's consent is required for an amendment, the Lessee shall provide the Land Use Coordinator with proof of such consent prior to the amendment becoming effective.

#### **Section 5.2. Assignment**

A Lease may be assigned only with the approval of the Land Use Coordinator and under such terms and conditions as the Land Use Coordinator deems appropriate. In the event there is a Leasehold Mortgage or guaranty which provides that the mortgagee's or the Surety's consent is required for any Assignment, the Lessee shall provide the Land Use Coordinator with proof of such consent prior to the Assignment becoming effective. Notwithstanding the above, the Land Use Coordinator may approve a Lease which contains a provision allowing for an Assignment without further approval by the Land Use Coordinator if (i) the assignee is the leasehold mortgagee, or its designee, and acquired the Lease through either foreclosure or conveyance; (ii) the assignee agrees in writing to assume all of the obligations and conditions of the Lease; (iii) the assignee agrees in writing that any transfer of the Lease will be in accordance with applicable laws; and (iv) the Leasehold Mortgage encumbering the leasehold had been approved by the Land Use Coordinator and contained the provisions as set forth in this Ordinance.

#### **Section 5.3. Sublease**

- A. Consent Required. A Lessee may enter into a Sublease only with the approval of the Land Use Coordinator, and under such terms and conditions as the Land Use Coordinator deems appropriate. In the event there is a Leasehold Mortgage or guaranty which provides that the mortgagee's or Surety's consent is required for a



Sublease, then the Lessee shall provide the Land Use Coordinator with proof of such consent prior to the Sublease becoming effective.

- B. Prior Consent. A Lease may expressly authorize the Lessee to enter into one or more Subleases without having to obtain subsequent Land Use Coordinator approval for such Subleases.

#### **Section 5.4. Leasehold Mortgages**

A Lessee may encumber a leasehold interest with a Leasehold Mortgage, so long as: (i) the Lease does not prohibit a Leasehold Mortgage; and (ii) the Land Use Coordinator approves the form of Leasehold Mortgage. The lien imposed by the Leasehold Mortgage shall be strictly limited to the leasehold interest and the mortgagee shall not gain any rights in Tunica-Biloxi Land.

### **ARTICLE 6 – ENFORCEMENT**

#### **Section 6.1. Generally**

The Land Use Coordinator shall have all powers necessary and proper to enforce this Ordinance and the business leasing management plan or policy and may call upon other Departments of the Tribe to assist in the same as necessary and appropriate.

#### **Section 6.2. Right of Entry**

The Tribe shall have the authority to enter a Homesite at any time when necessary to take the appropriate emergency action so as to prevent imminent, immediate, and/or significant harm to the Homesite or Persons, or where criminal or harmful activity is taking place thereon.

#### **Section 6.3. Defaults**

- A. Notice. If the Land Use Coordinator determines that the Lessee is in default of any provision of its Lease, the Land Use Coordinator shall send notice to the Lessee of such default in accordance with any notice provision contained in the Lease, demanding that the Lessee cure the default within any time frame specified in the Lease for such default. In the event the Lease does not set forth a method of notice, then the Land Use Coordinator shall provide the same by certified mail, return receipt requested, or an express delivery service, such as FedEx or UPS, to the address of the Lessee as set forth in the Application and the notice shall be deemed given when mailed.
- B. Cure Time. Unless otherwise provided for in the Lease, the Lessee shall have five (5) days to cure a payment default and ten (10) days to cure a non-payment default. The Land Use Coordinator may grant additional time for a Lessee to cure a default if the Lessee has diligently taken action to cure a default.

- C. Dispute of Default. Within five (5) days of receipt of a notice to cure a payment default and within ten (10) days of receipt of a notice to cure a non-payment default, the Lessee may dispute the notice of default and explain why the Lease should not be cancelled or request additional time to cure the default.

#### **Section 6.4. Remedies**

- A. If the Lessee fails to cure a default for which Lessee has received notice as set forth in Section 6.3.A. within the prescribed period, or if the Lessee engages in unlawful or criminal conduct on the Homesite, the Land Use Coordinator may:
1. Provide written Cancellation or Termination of the Lease to the Lessee (the right of Termination is in addition to any other rights and remedies as may be set forth in the Lease);
  2. Provide notice of a written Cancellation or Termination of the Lease due to default to any lenders of record;
  3. Grant an extension of time to cure the default;
  4. Pursue other negotiated remedies, including execution on bonds or collection of insurance proceeds, if any;
  5. Employ any combination of remedies listed above; or
  6. Employ any other remedy set forth under all applicable laws.
- B. If the Land Use Coordinator cancels a Lease, the Land Use Coordinator shall send the Lessee a Cancellation letter within three (3) business days of rendering its decision. The Cancellation letter may be sent to the Lessee by certified mail, return receipt requested, or an express delivery service, such as FedEx or UPS. The Cancellation letter shall:
1. Explain the grounds for Cancellation;
  2. Notify the Lessee of unpaid amounts, interest charges, or late penalties due under the Lease;
  3. Notify the Lessee of its right to appeal; and
  4. Order the Lessee to vacate the Homesite within thirty (30) days of receipt of mailing of the Cancellation letter, if an appeal is not filed by that time.
- C. A Cancellation shall become immediately effective thirty-one (31) business days after receipt of mailing of the order to vacate. The filing of an appeal shall not change the effective date of the cancellation. If the Lessee submits a request in writing to the

Land Use Coordinator and the request is received within seven (7) business days of the mailing date of the order to vacate, the Land Use Coordinator in his or her discretion may grant the Lessee permission to occupy the Homesite beyond the Cancellation effective date during the pendency of an appeal. If permission is granted, the Lessee shall be required to make Lease payments during the pendency of the appeal. Pending the outcome of an appeal, the Lessee shall comply with the terms of the Lease.

#### **Section 6.5. Penalties**

All Leases shall specify the rate of interest to be charged if the Lessee fails to make payments in a timely manner. Leases shall identify additional late payment penalties. Unless a Lease provides otherwise, interest charges and late payment penalties are not subject to notice and shall apply automatically, and the failure to pay such amount shall be treated as a breach of the Lease.

#### **Section 6.6. Trespass**

If a Lessee remains in possession of the Homesite after the expiration or Cancellation of a Lease, or if a Person occupies the Homesite without appropriate approval, the Land Use Coordinator shall treat such occupation as a trespass. The Land Use Coordinator shall take action to recover possession of the Homesite and may pursue any applicable additional remedies. Filing claims for trespass or any such remedies shall be made pursuant to applicable tribal laws or, alternatively, the Land Use Coordinator may make a written request sent by certified mail to the BIA for resolution under any applicable federal laws.

#### **Section 6.7. Secretary Assistance**

The Secretary may, upon reasonable notice from the Tribe, and at the Secretary's discretion, enforce the provisions of or cause a Cancellation of a Lease. The Secretary also may, upon his or her discretion, enter the leased Homesite to enforce any Lease executed by the Tribe.

#### **Section 6.8. Appeals**

- A. **Appeals.** Appeals made under this Ordinance may be filed with the Tribal Council. Such appeals shall be initiated by: (1) a written notice setting forth the basis for the appeal; (2) a short statement indicating the nature and circumstances of the appeal; and (3) a short statement indicating the remedy being sought. An appeal must be filed within ten (10) business days of a final determination made pursuant to this Ordinance.
- B. **Scope of Review.** The Tribal Council shall review whether the Land Use Coordinator's final 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 Council shall be final.

## **ARTICLE 7 – ENVIRONMENTAL REVIEW PROCESS**

### **Section 7.1. General Environmental Review for Proposed Leases**

- A. Unless exempted under this Article, the Land Use Coordinator shall not approve a Lease until the Environmental Review Process described in this Article 7 and applicable tribal regulations is completed. Any Lease approved and executed without complying with this Article shall be null and void.
- B. LFD shall conduct an Environmental Review Process upon receipt of an Application as set forth in this Article. This process is intended to comply with the requirements of the HEARTH Act ensuring that:
  - 1. Any Significant Environmental Impacts of the proposed action on the environment are identified and evaluated;
  - 2. The Public is informed of and has a reasonable opportunity to comment on, any Significant Environmental Impacts of the proposed action as identified by the Tribe; and
  - 3. The Tribe provides responses to relevant and substantive Public comments on any Significant Environmental Impacts before a Lease is given a Preliminary Review Approval by the Land Use Coordinator.
- C. The Applicant's responsibility to comply with all applicable tribal and federal environmental laws is in addition to and separate from its obligations under this Ordinance. As part of this process, the LFD will take all necessary steps to ensure that the Applicant's planned use and occupation of the Homesite complies with all applicable tribal and federal environmental laws.

### **Section 7.2. Threshold Environmental Compliance Determination on Proposed Lease Site**

- A. Upon receipt of an Application from the Land Use Coordinator, an ERR will be compiled and archived by the LFD for every Environmental Review Process conducted under this Ordinance.
- B. The LFD may request any other information deemed relevant.
- C. A threshold determination will be made by the LFD as to whether the Residential Purpose proposed on Tunica-Biloxi Land will result in a Significant Environmental Impact, as defined herein.
- D. In the discretion of the LFD an Environmental Review Process will not be required for a proposed Lease when:
  - 1. There is no significant Change in Land Use of the Homesite under the new Lease;

2. After review, the Land Use Coordinator determines that the Homesite was the subject of an Environmental Review Process not more than twenty-four (24) months earlier for a substantially identical leasing transaction;
  3. The Homesite is within the footprint of an existing Property for which an Environmental Review Process was already conducted, for example when considering a Space Lease; or
  4. The nature of and the actions under the Lease would not have a Significant Environmental Impact.
- E. If the LFD provides a determination to the Land Use Coordinator that the proposed Lease would not result in a Significant Environmental Impact, then:
1. The initial leasing decision will be exempt from any further Environmental Review Process under this Article, but remain subject to any other applicable tribal environmental regulations;
  2. The LFD will forward the finding of no Significant Environmental Impact, together with supporting documentation, and the ERR to the Land Use Coordinator; and
  3. The Preliminary Review Approval requirements for environmental issues shall be deemed satisfied.
- F. When the LFD has determined that the proposed Lease will not significantly impact the environment, the ERR which led to that determination will not be subject to the Public notice and comment process set forth herein. However, a copy of the written determination finding that there are no Significant Environmental Impacts will be available, upon request, for Public review at the office of the LFD.

### **Section 7.3. Action Upon Significant Environmental Impact Determination**

- A. If the LFD provides a determination to the Land Use Coordinator that the proposed Lease might be expected to (1) impact; (2) alter; (3) disturb; (4) cause physical disturbances to the biological or natural resources of the Tribe; or (5) otherwise create a Significant Environmental Impact, the Lessee shall be required to fulfill the requirements of the Environmental Review Process set forth in this Ordinance and comply with applicable tribal environmental regulations.
- B. Upon receipt of an LFD determination under Section 7.3.A., the Land Use Coordinator shall cause to be prepared a tribal environmental impact report (TEIR). The TEIR will provide an analysis of the potential Significant Environmental Impacts of the proposed Lease; provided, however, that information or data which is relevant to such a TEIR and is a matter of public record or is generally available to the Public need not be repeated in its entirety in the TEIR, but may be specifically

cited as the source for conclusions stated therein; and provided further, that such information or data shall be briefly described, that its relationship to the TEIR shall be indicated, and that the source thereof shall be reasonably available for inspection at a public place or public building. The TEIR shall contain:

1. A description of the physical environmental conditions in the vicinity of the proposed Homesite.
  2. An analysis and evaluation of the effects of the project or activities on the environment.
  3. A description of all significant impacts on the environment, including:
    - i. Significant impacts that cannot be avoided or would be irreversible if the proposed Homesite is utilized as proposed by the Applicant; and
    - ii. Any mitigation measures proposed, recommended, or required.
  4. Records documenting compliance with applicable law including verifiable source documents and supporting documents.
- C. When the LFD has determined that the proposed Lease will have Significant Environmental Impacts, the ERR which supports that determination will be subject to the public notice and comment process pursuant to Section 7.5.

#### **Section 7.4. Environmental Review Record**

- A. The ERR shall at a minimum contain the following documents for every proposed leasing decision that has been considered and/or determined to have Significant Environmental Impacts:
1. The Application;
  2. If applicable, a categorical exclusion checklist or a written explanation of the exemption;
  3. If applicable, a TEIR;
  4. A copy of the written determination of the LFD;
  5. Public notices, if applicable; and
  6. Public comments, if applicable.

### **Section 7.5. Public Notice and Comment**

- A. When the LFD determines that the proposed leasing activity will have Significant Environmental Impacts, notice and an opportunity for Public comment shall be provided within ten (10) days in the following manner: publication on the Tribe's publicly-accessible website or publicly-accessible website portal; publication in a local newspaper of general circulation; and posting at the Tribe's tribal administrative offices on the Reservation. The Notice shall contain the consent specified in Section 7.5B and state that the Land Use Coordinator is requesting Public comment on the proposed Lease activity before it makes a final approval determination.
- B. Notice Contents. The LFD will ensure that the Notice contains:
  - 1. A brief description of the proposed Lease;
  - 2. The proposed location of the Lease;
  - 3. The physical address of the LFD where the ERR and TEIR may be reviewed or copies may be obtained;
  - 4. Language explaining that a thirty (30) day Public comment period is open, and indicating that Public comments timely received will be considered; and
  - 5. Instructions advising the Public to identify which "Notice" they are responding to.
- C. The LFD has discretion to also provide such Notice directly to individuals and other government entities known to have an interest in the proposed Lease activity.
- D. After the thirty (30) day comment period has closed the LFD, or its designee, will provide a written response to all relevant and substantive comments on any Significant Environmental Impact within ten (10) days, which the Land Use Coordinator can extend up to an additional forty-five (45) days if such additional time is needed to respond adequately to the comments, arising as a result of the proposed Lease on the Homesite. The written response will include any proposed, recommended, or required mitigation measures addressing such Significant Environmental Impacts. The written response to relevant and substantive Public comments on any Significant Environmental Impacts shall be posted on the Tribe's website or website portal and a hard copy made available at the Tribe's tribal administration offices on the Reservation. Publication of the link to the Tribe's website or website portal whereon the full response is available and directions on how to access it shall be published on that website or portal, in a local newspaper of general circulation, and posted at the Tribe's tribal administration offices on the Reservation.
- E. The LFD shall consider all relevant and substantive comments and provide its responses and determination to the Land Use Coordinator for inclusion in the ERR,



which shall thereafter be made public and be used to complete the Preliminary Review Approval Process.

#### **Section 7.6. Re-Evaluation of Environmental Review Process**

- A. A re-evaluation of the initial Environmental Review Process determination will be required when:
  - 1. There are proposed substantial changes in the nature, magnitude, or extent of the Lease activity on the Homesite;
  - 2. There are new circumstances and environmental conditions which may affect the project or have a bearing on its impact, such as concealed or unexpected conditions discovered during the implementation of the project or activity which is proposed to be continued; or
  - 3. The Applicant does not adhere to the mitigation alternatives required by the original determination.
- B. If the LFD determines that the original findings are no longer valid and the re-evaluation indicates Significant Environmental Impacts are expected from the proposed Lease, then the LFD must notify the Land Use Coordinator and re-initiate the Environmental Review Process set forth in this Article 7.

### **ARTICLE 8 – MISCELLANEOUS**

#### **Section 8.1. Lease Management**

Except where required otherwise by agreement, delegation, or applicable law, the Land Use Coordinator shall manage all Leases pursuant to this Ordinance. The Land Use Coordinator shall institute a business leasing management plan or policy that employs real estate management practices, addresses accounting, collections, monitoring, enforcement, relief, and remedies.

#### **Section 8.2. Sovereign Immunity**

Nothing in this Ordinance shall be construed as a limitation, alteration, or as having any other effect whatsoever on the Tribe's sovereignty or the extension of the Tribe's sovereignty to any of its enterprises, authorities, officers, agents, or employees, or as a waiver of any aspect of the Tribe's sovereign immunity from suit, including, but not limited to, the extension of the Tribe's sovereign immunity to any arms and officials of the Tribe.

#### **Section 8.3. Taxes**

Unless required by applicable federal law, no fee, tax, assessment, levy, or charge imposed by a State or political subdivision shall apply to Permanent Improvements, activities under Leases, or the leasehold or possessory interest held under this Ordinance on Tunica-Biloxi Land. The Tribe

may impose its own taxes or other charges on the same.

#### **Section 8.4. Amendments**

This Ordinance may be amended by the Tribal Council in accordance with the Tribe's laws. All substantive amendments to this Ordinance must be submitted to and approved by the Secretary of the Interior.

#### **Section 8.5. Severance**

If any provision of this Ordinance, or the application of it to any Person or entity or circumstance, be deemed unlawful, invalid, or preempted by federal law for any reason by any court of competent jurisdiction, that provision shall be severed and the remainder of this Ordinance not deemed unlawful or preempted shall continue to be in full force and effect.

#### **Section 8.6. Recording**

The Tribal Recording Clerk, or other properly delegated tribal official, shall ensure that a copy of all Leases, Subleases, Assignments, amendments, and renewal notices related to Leases, Leasehold Mortgages, and Terminations shall be provided to the Secretary of the Interior, or such other office delegated authority by the Secretary, for purposes of recording with the LTRO. The Tribe shall endeavor to provide such notices within thirty (30) days of the effective date of the instrument or action. Additionally, proof of Lease payment(s) made directly to the Tribe shall also be provided to the Secretary).

#### **Section 8.7. Administrative Fees and Costs**

The Land Use Coordinator may establish a uniform schedule of fees and costs to be imposed upon Applicants and Lessees with respect to the administrative burdens imposed by this Ordinance.

#### **Section 8.8. Authority of the United States**

Pursuant to the authority of the Secretary to fulfill the trust obligations of the United States and the legal responsibilities set forth under the HEARTH Act under federal law, including its implementing regulations, the Secretary may, upon reasonable notice from the Tribe and at the discretion of the Secretary, enforce the provisions of or cancel any Lease executed by the Tribe. The United States shall not be liable for losses sustained by any party to a Lease executed pursuant to tribal regulations.