

**HO-CHUNK NATION CODE (HCC)  
TITLE 8 – HOUSING, REAL ESTATE AND PROPERTY CODE  
SECTION 10 – BUSINESS SITE LEASING CODE**

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**CHAPTER I  
INTRODUCTION**

**1. Authority**

- a. Article V, Section 2(a) of the Ho-Chunk Nation Constitution (“Constitution”) grants the Legislature the power to make laws, including codes, ordinances, resolutions, and statutes.

b. Article V, Section 2(l) of the Constitution grants the Legislature the power to enact laws to manage, lease, permit, or otherwise deal with the Nation's lands, interests in lands or other assets.

c. Article V, Section 2(p) of the Constitution grants the Legislature the power to create and regulate a system of property including but not limited to use, title, deed, estate, inheritance, transfer, conveyance, and devise.

d. Article V, Section 2(r) of the Constitution grants the Legislature the power to protect and foster Ho-Chunk religious freedom, culture, language, and traditions.

e. Article V, Section 2(u) of the Constitution grants the Legislature the power to enact laws to regulate domestic relations of persons within the jurisdiction of the Nation.

## **2. Purpose**

The purpose of this Code is to enhance accountability and ensure that real property held in trust by United States for the Ho-Chunk Nation ("Nation") and leased by the Nation to its members or non-members for business or commercial purposes, renewable energy resources, including, but not limited to, wind, solar, and biomass, is used to promote self-determination, encourage economic self-sufficiency, and increase business activity and employment on the Nation's trust land.

The Nation has a critical role and responsibility to provide the Nation's communities and members with a sustainable, compatible method of leasing the Nation's lands that clarifies the expectations and responsibilities between the lessor and lessee. The Nation recognizes that the provision of land and buildings plays a vital role in the successful functional use of the Nation's lands in all communities.

The Code shall be liberally interpreted and construed to implement the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012 ("HEARTH Act"), amended 25 U.S.C. 415, by establishing a process under the Lease with the Nation which will not require the approval of the Secretary of the Interior ("Secretary") if the Lease is executed under this Code approved by the Secretary. Nothing in this Code is intended to expand the authority or responsibility of the Secretary beyond that provided for under applicable federal statutes or regulations.

## **3. Intent**

a. The Code covers all land held in trust by United States for the Nation. It also covers land and/or buildings that are leased by the Nation for governmental operations, enterprises, and other commercial business uses. The Nation's real property, consisting of land, buildings, air rights, mineral rights, cultural rights, and all other constitutional,

legal and Code rights, may only be used for a purpose that benefits the Nation and the Nation's members.

- b. Lease may relate to land or land and buildings.
- c. The Nation will not, under any circumstances, permit the unrestricted use of its property by individuals or groups. Use of the Nation's properties requires a written lease, license, or contract.
- d. The Lessee will agree to abide by all laws of the Nation.

#### **4. Applicability**

a. Except as excluded under Section 4(b) below, or as contrary to applicable federal statutes and regulations this Code shall apply to:

- 1. Leases for business purposes;
- 2. Leases for religious, educational, recreational, cultural, or other public purposes;
- 3. Commercial or industrial leases for retail, office, manufacturing, storage, biomass, waste-to-energy, or other business purposes; and
- 4. All future Leases for purposes or uses listed above.

b. This Code shall not apply to:

- 1. Agricultural leases;
- 2. Residential leases authorized under the Ho-Chunk Nation Residential Leasing Code; or
- 3. To any lease of individually owned Indian allotted land in accordance with 25 U.S.C. 415(h)(2).

#### **5. Controlling Law**

a. To the extent that this Code conflicts with any applicable federal statutes or regulations the federal statute or regulation shall control.

b. To the extent that any lease to which this Code applies conflicts with this Code, this Code shall control.

## **6. Amendment**

This Code may be amended by majority vote of the Ho-Chunk Nation Legislature (“Legislature”), provided that no major substantive amendment hereto shall be effective unless approved by the Secretary in accordance with applicable federal laws and regulations.

## **7. Effective Date**

This Code shall become effective as the Nation’s law, for all purposes, on the date of enactment by the Legislature and approval by the Secretary.

## **8. Severability**

If any provision or provisions of this Code shall in the future be declared invalid by the Ho-Chunk Nation Judiciary, the invalid provision or provisions shall be severed and the remaining provisions shall continue in full force and effect.

## **9. Definitions**

For the purpose of this Code the below terms are defined:

a. Assignment. An agreement between a Lessee and an Assignee, whereby the Assignee acquires all or some of the Lessee’s rights, and assumes all or some of the Lessee’s obligations, under a lease.

b. BIA. The Secretary of the Interior or the Bureau of Indian Affairs within the Department of the Interior and any tribe acting on behalf of the Secretary or Bureau of Indian Affairs under § 162.018.

c. Code. A guiding or governing principle that mandates or constrains actions, has Nation-wide application, will change infrequently and sets a course for the foreseeable future, helps to ensure compliance, enhances the Nation’s mission and reduces liability risk, and is approved by the authoritative decision-makers of the Nation.

d. Constructive notice means notice:

1. Posted at the tribal government office, tribal community building, and/or the United States Post Office; and
2. Published in the local newspaper(s) nearest to the affected land and/or announced on the local radio station(s).

e. Court of competent jurisdiction. A Federal, Tribal, or State court with jurisdiction.

- f. DNR. The Nation's Department of Natural Resources.
- g. Fair Annual Lease Value. The amount of rental income that a leased tract of the Nation's land would most probably command in an open and competitive market, or as determined by competitive bidding.
- h. Interested Party. An Indian or non-Indian individual or corporation, or tribal or non-tribal government whose interests could be adversely affected by a decision of the Nation to lease to a business or commercial site on the Nation's land.
- i. Land Development Team. The Nation's Land Development Team.
- j. Lease. A written contract between the Nation and a Lessee, whereby the Lessee is granted a right to possess the Nation's land, for a specified purpose and duration. The Lessee's right to possess will limit the Nation's right to possess the leased premises only to the extent provided in the lease.
- k. Lessee. A person or entity who has acquired a right to possess the Nation's land by executing a Lease.
- l. Leasehold Estate. The possessory interest in the Nation's land established pursuant to a Lease between a Lessor and a Lessee.
- m. Leasehold Mortgage. A mortgage, deed of trust, or other instrument that pledges a Lessee's leasehold interest as security for a debt or other obligation owed by the Lessee to a lender or other mortgagee.
- n. Legislature. The Ho-Chunk Nation Legislature.
- o. Lessor. The legal, beneficial, or equitable owner of the Nation's land subject to a Lease, including the Nation, and any heir, successor, executor, administrator, or assign of the Lessor.
- p. LTRO. The Land Titles and Records Office of the Bureau of Indian Affairs.
- q. Mortgage. A lien on a Leasehold Estate given to secure advances on a loan to purchase, construct, refinance, or renovate a business site or improvement, and may refer both to a security instrument creating a lien, whether called a mortgage, deed of trust, security deed, or other term, as well as the credit instrument, or note, secured thereby.
- r. Mortgagee. Any person, entity, or government agency which lends under a Leasehold Mortgage, and includes any assignee, or any heir, successor, executor, administrator, or assign thereof.

s. Mortgagor. The Nation or any person or entity who has executed a Leasehold Mortgage, including any heir, successor, executor, administrator, or assign thereof.

t. Nation's land. Any tract, in which the surface estate is owned by the Nation in trust or restricted status, and includes such lands reserved for BIA administrative purposes. The term also includes the surface estate of lands held by the United States in trust for an Indian corporation chartered under Section 17 of the Act of June 18, 1934 (48 Stat. 988; 25 U.S.C. 477).

u. NEPA. The National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*

v. Permanent Improvements. Buildings, other structures, and associated infrastructure attached to the Nation's land.

w. Public. Includes enrolled members of the Ho-Chunk Nation, and other persons as authorized by the Legislature, Executive Branch, Judiciary, or General Council to attend a meeting.

x. Real Property. The Nation's property that is land or land and building.

y. Leasing Office. The Nation's Leasing Office.

z. Secretary. The Secretary of the Interior.

aa. Significant Effect on the Environment. A substantial, or potentially substantial, adverse change on the environment.

bb. Sublease. A written agreement by which the Lessee grants to an individual or entity a right to possession no greater than that held by the Lessee under the lease.

cc. Trespass. Any unauthorized occupancy, use of, or action on the Nation's land.

dd. Trust or restricted land. Any tract, held in trust or restricted status.

ee. Trust or restricted status.

1. That the United States holds title to the tract in trust for the benefit of the Nation; or

2. That the Nation holds title to the tract or interest, 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.

ff. Violation. A failure to take an action, including payment of compensation, when required by the lease, or to otherwise not comply with a term of the lease. This definition applies for purposes of our enforcement of a lease under this part no matter how “violation” or “default” is defined in the lease.

**CHAPTER II**  
**APPROVAL OF LEASE, REQUIREMENTS, PROCESS,**  
**PAYMENT, EXTENSIONS, TERMINATION,**  
**FORFEITURE, CONTINUATION, AND RECORDING**

**10. Approval of Leases**

- a. All leases shall be subject to the approval of the Legislature.
- b. All leases shall be signed by the Vice-President of the Ho-Chunk Nation.
- c. After the Secretary approves this Code, all leases which are approved and executed under this Section shall be effective without federal approval under 25 U.S.C. 415, unless the Secretary rescinds approval of this Code and reassumes responsibility for such approval.
- d. Any lease which is approved and executed under this Section shall refer to this Code as authority for its execution on behalf of the Nation.

**11. Lease Requirements**

- a. All leases shall be in writing, and at a minimum, shall:
  1. Describe the tract or parcel of the Nation’s land or building that is being leased with reference to a public or private survey plan, if available, in terms sufficient to determine the location;
  2. State the purpose of the lease and authorized uses of the premises;
  3. Identify the parties to the lease;
  4. State the effective date and term of the lease, which shall not exceed seventy-five (75) years. The Lessee shall notify the Leasing Office of the intent to apply for a new lease at least ninety (90) days before such lease is due to expire;
  5. If a Lease authorizes the Lessee to make Permanent Improvements during the term of the Lease the Lease shall identify the general type of each improvement by providing a building plan, construction schedule, and the location of the improvement, and the responsibility for constructing, operating, maintaining, and managing the Permanent Improvements during

the Lease term. The Lessee shall be required to provide reasonable notice to Lessor of the construction of any Permanent Improvements not described in the lease.

6. Specify all rent and payment requirements, including payment due dates, payee, place of payment, and any interest;

7. State the due diligence, performance bond, and insurance requirements that apply, if any;

8. State the process for amendment, which shall be in writing, signed by both parties;

9. State the governing law, which may include the Nation's laws and applicable federal statutes and regulations; and

10. If the leased premises are within an Indian irrigation drainage project or drainage district the lease must state the following: If the leased premises are within an Indian irrigation drainage project or drainage district, except as provided in 25 CFR 171, the lessee must pay all operational 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.

11. Include or attach all other provisions required under any applicable federal statutes or regulations, including without limitation, each of the required terms for leases set forth in 25 C.F.R. 162.413 including the following:

i. Use of Premises. It is herein agreed that during the lease term that there must not be any unlawful conduct, creation of a nuisance, illegal activity, or negligent use of waste on Leased Premises.

ii. Violations of Lease. The Lessee must comply with all applicable laws, ordinances, rules and regulations.

iii. Historic Preservation. If historic properties, archeological resources, human remains, or other cultural items not previously reported are encountered during the course of any activity associated with this lease, all activity in the immediate vicinity of the properties, resources, remains, or items will cease and the Lessee will contact BIA and the Nation to determine how to proceed and appropriate disposition;

iv. Inspection of Premises. The Secretary, lender, applicable Federal Agency, and the Lessor and their authorized representative shall have the rights, at any reasonable times during the term of this lease, and with reasonable notice, to enter upon the Leased Premises, or any part thereof, to inspect the same and all buildings and other improvements erected and placed thereon.

v. Inspection of Records. The Lessor and the appropriate agencies may treat any failure by the Lessee to cooperate with a request to make appropriate records, reports, or information available for inspection and duplication as lease violation.

vi. Hold Harmless. The Lessee holds the Lessor and the United States harmless from any loss, liability, or damages resulting from the Lessee's use or occupation of the Leased Premises.

vii. Hazardous Materials. The Lessee indemnifies the Lessor and the United States against all liabilities or costs in relation to the use, handling, treatment, removal, storage, transportation, or disposal of hazardous materials, or release or discharge or 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 Lessor for liability or cost arising from the Lessor's negligence or willful misconduct.

viii. Improvements. All permanent improvements and responsibility for constructing, operating, maintaining, and managing permanent improvements are of the Lessee during the term of this Lease.

## **12. Lease Application Process**

a. Land Use and Site Planning: Business leases are issued only for properties identified appropriate for business development within the Nation's Land Use Plan and should be consistent with the Nation's official zoning map. Prior to approval of a business lease a certified survey map with a legal land description for the property must be approved and provided to the Leasing Office as a plan-of-record.

b. Site Availability: The Leasing Office will maintain grid maps for property which the Legislature has approved for business development. The maps will show all available sites for building.

c. Pre-application: Applicant requests assistance in acquiring a lease from the Leasing Office. After the applicant identifies a potential building site, the Leasing

Office confirms that the parcel is available for lease and appropriately zoned. The Division of Planning and Development (“Planning”) must be consulted to address potential plan amendments, re-zoning, or other land-use regulations. A preliminary site evaluation must be completed by the appropriate entities of the Nation.

d. **Application Submittal:** Applicant submits a completed application to the Leasing Office (see completed application requirements). The Leasing Office retains the original application. The application is stamped in with submitted time and date and expires three (3) months from the stamped date if no action is taken. A specific lease parcel is not chosen until the Application information is complete with proof of financing.

e. **Application Review:** The Leasing Office staff will review the application for completeness. Incomplete applications will be returned to the Applicant with a letter outlining information necessary to move the application forward. Completed applications are filed with the Leasing Office.

f. **Business Site Lease Approval:** Once the lease application is complete, the Leasing Office will draft a standard Business Site Lease per the requirements under Section 11 of this Code. The Leasing Office staff will send the proposed Business Site Lease to the Land Development Team (“LDT”) for review. The LDT will make an advisory recommendation to the Legislature. The Legislature will approve or deny the Business Site Lease. Formal ratification by the Legislature is required prior to moving forward with the Business Site Lease. The Legislature may table the Business Site Lease pending additional information, if needed. The Vice-President will sign two (2) original completed Business Site Leases and forward the approved lease to the Leasing Office with a copy of the Legislative resolution authorizing the Business Site Lease. Legislature shall provide both an original signed Legislative Resolution and original signed Business Site Lease to the Leasing Office. Leasing Office will record and retain the original documents in a lease file.

### **13. Appraisal**

a. The Fair Annual Lease Value shall be determined by an appraisal or equivalent procedure requested by the LDT utilizing the following data:

1. Improvement cost;
2. Replacement cost;
3. Earning capacity; and
4. Sales and lease data of comparable sites or by similar methodology

b. An appraisal log reporting the methods of appraisal and value of trust land shall be attached to every Business Site Lease.

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

#### **14. Fair Annual Lease Value**

a. No lease shall be approved for less than the present Fair Annual Lease Value set forth in the appraisal, except as follows:

1. The lease is in the development period;

2. The Legislature is providing an incentive for a business to locate on the Nation's land and must provide lease concessions, lease improvement credits, or lease abatements to attract such businesses; or

3. The Legislature determines such action is in the best interest of the Nation.

b. A lease may be structured at a flat lease rate.

c. A lease may be structured as a flat lease rate plus a percentage of gross receipts if the Lessee is a business located in a shopping center or mall or the Lessee generates over \$1,000,000 annually in 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 contract or the contribution value of such improvements.

f. Leases for terms of less than five (5) years may be structured to allow for lease 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 shall be resolved.

g. Leases may be amended to allow for lease rate adjustments.

h. The Leasing Office shall keep written records of the basis used in determining the Fair Annual Lease Value as well as the basis for adjustments. These records shall be presented to the Lessee for its review and acceptance or non-acceptance and included in the lease file. Leasing Office will further provide certified copies, including any amendments or renewals to the lease, to the Secretary, and the Lessee.

## **15. Payment**

a. For any Lease requiring payments to be made to the Nation the Nation shall provide the Secretary with such documentation of the lease payments that are sufficient to enable the Secretary to discharge the trust responsibility of the United States such that:

1. The United States shall not be liable for losses sustained by any party to a lease executed; or

2. Pursuant to the authority of the Secretary to fulfill the trust obligation of the United States to the Nation under Federal law (including regulations), the Secretary may, upon reasonable notice from the Nation and at the discretion of the Secretary, enforce the provisions of, or cancel, any lease executed by the Nation.

## **16. Insurance**

a. A Lessee shall provide insurance necessary to protect the interests of the Nation and in amounts sufficient to protect all insurable improvements on the premises.

b. The insurance may include, but is not limited to, property, liability or casualty, or other insurance as specified in the Business Site Lease.

c. The Nation and the United States must be identified as additional insured parties.

d. The Legislature may waive these requirements if the waiver is in the best interest of the Nation. The waiver may be revoked at any time if the waiver ceases to be in the Nation's best interest.

## **17. Performance Bond**

a. Unless waived in writing by the Legislature in accordance with this Code the Lessee shall obtain a satisfactory performance bond in an amount sufficient to secure the contractual obligations of the lease. Such bond shall be for the purpose of securing the Lessee's contractual obligations under the Business Site Lease and must guarantee:

1. The annual lease payment

2. The estimated development cost of improvements; and

3. Any additional amount necessary to ensure compliance with the lease.

b. The Legislature may waive the bond requirement, or reduce the amount, if in the best interest of the Nation. The Leasing Office shall maintain written records of waivers and reductions.

c. The performance bond may be in one of the following forms:

1. Certificates of deposit issued by a federally insured financial institution authorized to do business in the United States;

2. Irrevocable letters of credit issued by a federally insured financial institution authorized to do business in the United States;

3. Negotiable treasury securities; or

4. Surety bond issued by a company approved by the U.S. Department of Treasury.

## **18. Improvements**

a. All leases shall require the Lessee to exercise due diligence and best efforts to complete construction of any improvements within a reasonable schedule specified in the lease.

b. Lessee, at Lessee's expense or as otherwise provided in the lease, may construct improvements under a lease if the lease specifies or provides for the development of:

1. A plan that describes the type and location of any improvements to be built by the Lessee; and

2. A general schedule for construction of improvements.

c. Lessee shall provide the Legislature written justification as to the nature of any delay, the anticipated date of construction of the improvements, and evidence of progress toward commencement of construction.

d. When requested by the Legislature or otherwise required in the lease, Lessee shall further provide the Legislature, in writing, an updated schedule for construction

e. 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 pursuant to Section 19. Termination of Lease.

f. Improvements to the Premises shall become property of the Nation unless otherwise provided for in the lease. If improvements will be removed, the lease may specify the maximum time allowed for such removal.

## **19. Termination of Lease**

If utilization of business site has not commenced within one (1) year of the execution date of the lease, the lease may be terminated. The Leasing Office will notify the Lessee that they have thirty (30) days in which to show utilization of business site. If Lessee does not show utilization of business site within thirty (30) days, the Leasing Office will forward the lease to the LDT for review and make an appropriate recommendation to the Legislative for extension or termination.

## **20. Trespass**

If an individual or entity takes possession of, or uses, the Nation's land without a lease and a lease is required, the Nation may treat the unauthorized possession or use as a trespass. The Nation may take action to recover possession and pursue any additional remedies available under applicable law.

## **21. Forfeiture of Lease**

A Lessee may forfeit their lease by obtaining a Lease Cancellation Form from the Leasing Office. The Lessee must submit a signed, notarized original to the Leasing Office. The Leasing Office will forward the form along with a resolution rescinding the lease to the Legislature for action. Once the resolution is executed, it is filed with the Leasing Office. The property will then be offered in accordance with the Selection Review section of the lease process.

## **22. Lease Renewal**

The LDT will review requests for lease renewal on a case-by-case basis.

## **23. Recording**

a. The Leasing Office will administer the execution of the lease. Lessee shall be required to pay lease rent as is indicated by the lease prior to lease issuance. Following signing and payment of rent Leasing Office will record and provide a certified copy to the Lessee. Original documents will be maintained by Leasing Office with copies of the leases and related lease documents provided to the Bureau of Indian Affairs Land Titles and Records Office with jurisdiction over the Nation.

b. In the case(s) where, under the lease terms, the Lessee is required to pay an amount equal to the property taxes, Lessee shall be required to pay a security deposit equal to the amount of the taxes for the previous year plus agree to pay any increase that may occur. Further, Lessee shall complete a waiver form authorizing future payments to be escrowed or automatically deducted from their pre-capita payments, where applicable.

## **24. Ownership of Records**

Records of activities taken pursuant to this Code are the property of the Nation.

### **CHAPTER III PURPOSE OF REVIEW, REQUIREMENTS FOR APPROVAL, CATEGORICAL EXCLUSIONS, AND ENVIRONMENTAL REVIEW**

## **25. Purpose of Review**

The purpose of this Section is to establish an environmental review process that satisfies the requirements of 25 U.S.C. 415(h)(3)(B)(ii).

## **26. Requirements for Approval**

a. The Legislature shall not approve a lease under Section 10 of this Code unless:

1. The Ho-Chunk Nation Division of Natural Resources (“DNR”) has reviewed the lease and such other information as may be necessary to identify and evaluate any Significant Effect on the Environment of the intended use of the premises, and has:

i. Made a determination that the uses authorized by the lease are included within the categorical exclusion stated in Section 27 and provided that determination in writing to the LDT;

ii. Issued a final decision after following the procedure set forth in Section 28; or

2. The DNR has provided the LDT with notice that the Nation has carried out a project or activity funded by a federal agency and that it has relied on the Environmental Review Process of the applicable federal agency rather than the procedures set forth in Section 28.

## **27. Categorical Exclusions**

a. The Legislature hereby finds that the following action do not individually or cumulatively have a Significant Effect on the Environment, and therefore, except as otherwise provided in subsection 27(b), are categorically excluded from the procedures set forth in Section 28:

1. Approval of the lease for use of an existing business site, including any associated improvements, access roads, and utilities;

b. Notwithstanding subsection 27(a), the DNR shall follow the procedures set forth in Section 28 if it determines that extraordinary circumstances exist under which the use of the premises may, individually or collectively, have a Significant Effect on the Environment, including without limitation, as set forth below:

1. Substantial controversy on environmental grounds;
2. Presence of cultural resources; or
3. Presence of historic properties.

## **28. Environmental Review**

a. Unless a categorical exclusion applies the DNR shall cause the effects on the environment of the intended uses authorized by the proposed lease to be identified and evaluated as follows:

1. If the DNR determines that the uses authorized by the proposed lease will not have a Significant Effect on the Environment then it shall cause the following to occur in order set forth below:

i. A finding of no significant impact shall be issued and posted for a minimum of fifteen (15) calendar days in a prominent, noticeable place in the Nation's Executive Office Building.

ii. If there is a substantial interest in holding a public meeting it shall be held in accordance with 2 HHC § 2.5 to provide an opportunity for Nation members and non-members to comment, both written and verbal, on the finding of no significant impact.

iii. Comments shall be reviewed and analyzed and a report shall be issued by the DNR responding to relevant and substantive comments, if any, regarding the finding of no significant impact. The report shall be posted for a minimum of fifteen (15) calendar days in a prominent, noticeable place in the Nation's Executive Office Building.

iv. Unless subsection 28(a)(2) applies a final decision on confirming that the uses authorized by the proposed lease are expected to have no Significant Effect on the Environment shall be issued, sent to the Legislature for approval, and posted for fifteen (15) calendar days in a prominent, noticeable place in the Nation's Executive Office Building.

2. If the DNR determines that the proposed lease will have a Significant Effect on the Environment then it shall cause the following to occur in the order set forth below:

i. A draft environmental review which identifies and evaluates any Significant Effect of the Environment of uses authorized by the proposed lease shall be issued and posted for a minimum of thirty (30) calendar days in a prominent, noticeable place in the Nation's Executive Office Building;

ii. A meeting shall it shall be held in accordance with 2 HHC § 2.5 on the draft environmental review to provide an opportunity for Nation members and non-members to comment, both written and verbal, on any Significant Effect on the Environment of the uses authorized by the proposed Lease;

iii. Comments shall be reviewed and analyzed and a report by the DNR shall be issued responding to relevant and substantive comments, if any, on any Significant Effect on the Environment of the uses authorized by the proposed lease. The report shall be posted for a minimum of thirty (30) calendar days in a prominent, noticeable place in the Nation's Executive Office Building;

iv. A final environmental review describing the conclusions of the DNR report on the issues and evidence gathered under this Subsection shall be issued and posted for a minimum of thirty (30) calendar days in a prominent, noticeable place in the Nation's Executive Office Building; and

v. A final decision assessing the potential for any Significant Effect on the Environment associated with the uses authorized by the lease shall be issued, sent to the Legislature for approval, and posted for a minimum of thirty (30) calendar days in a prominent, noticeable place in the Nation's Executive Office Building.

## **CHAPTER IV**

### **APPROVAL OF SUBLEASE AND ASSIGNMENT, REQUIREMENTS AND RECORDING**

#### **29. Approval of Sublease and Assignment**

a. All Subleases and Assignments, other than to a Mortgagee, shall be subject to the approval of the Legislature in manner consistent with the Nation's Constitution and laws.

b. All Subleases and Assignments which are subject to the approval of the Legislature shall be signed on behalf of the Vice-President.

c. After the Secretary approves this Code, all Subleases and Assignments which are approved and executed under this Section shall be effective without federal approval under 25. U.S.C. 415, unless the Secretary rescinds approval of this Code and reassumes responsibility for such approval.

d. All Subleases and Assignments shall require the prior approval of any Mortgagee or Surety, if required by the Mortgagee or Surety Agreement.

### **30. Requirements**

a. A Lessee may sublease a lease in accordance with this Section.

b. A Lessee may assign a lease in accordance with this Section.

c. No Sublease shall relieve the Lessee or sublessor of any liability under the lease.

d. In any Assignment, other than to a Mortgagee of the Leasehold Estate, the assignee must agree in writing to assume all of the obligations and conditions of the lease, and that the lease is subject to all applicable laws.

### **31. Recording**

All Subleases and Assignments and amendments thereto shall be recorded and maintained by the Leasing Office with copies provided to the LTRO with jurisdiction over the Nation's land.

## **CHAPTER V**

### **APPROVAL OF LEASEHOLD MORTGAGE AND RECORDING**

### **32. Approval of Leasehold Mortgage**

a. All Leasehold Mortgages under a lease must be separately authorized by the Legislature, unless the lease authorizes a Leasehold Mortgage and states the law governing foreclosure.

b. After the Secretary approves this Code, all Leasehold Mortgages which are authorized under this Section shall be effective without federal approval under 25 U.S.C. 415 unless the Secretary rescinds approval of this Code and reassumes responsibility for such approval.

### **33. Recording**

All Leasehold Mortgage, assignments, amendments, and sales relating thereto shall be recorded at the Leasing Office and the Bureau of Indian Affairs Land Titles and Records Office with jurisdiction over the Nation's land, to the extent required by a Mortgagee. A Leasehold Mortgage shall also be recorded in the appropriate county register of deeds.

## **CHAPTER VI**

### **COMPLAINT, FORM OF COMPLAINT, INFORMAL RESOLUTION, DECISION, APPEAL, AND NO WAIVER OF SOVEREIGN IMMUNITY**

### **34. Complaint**

An Interested Party who has reasonable grounds to believe that the Nation has failed to comply with this Code has the right to file a Complaint under this Section.

### **35. Form of Complaint**

The Complaint shall be in writing, signed by the Interested Party, with a description of the alleged noncompliance with this Code which is the subject of the Complaint, state all relief requested and submitted to the Executive Director of Heritage Preservation.

### **36. Informal Resolution**

The Executive Director of Heritage Preservation shall make reasonable efforts to resolve the Complaint informally, including, but not limited to, scheduling a meeting with the Interested Party for such purpose. All Complaints which are resolved through such informal resolution shall be reduced to writing and signed by the Executive Director of Heritage Preservation and the Interested Party.

### **37. Decision**

If the Complaint is not resolved informally, the Executive Director of Heritage Preservation shall issue a decision on the Complaint, which shall be in writing and signed by the Executive Director of Heritage Preservation. The Executive Director of Heritage Preservation shall cause the decision to be delivered to the Interested Party no later than thirty (30) business days after receipt of the Complaint. The decision of the Executive Director of Heritage Preservation shall constitute a final decision.

### **38. Appeal**

In accordance with 25 U.S.C. 415(h)(8)(A) an Interested Party who has exhausted the Nation's remedies set forth in this Section may submit a petition to the Secretary,

at such time and in such form as the Secretary deems appropriate, to review the Nation's compliance with this Code.

### **39. No Waiver of Sovereign Immunity**

Nothing in this Code shall be deemed to waive the sovereign immunity of the Nation or any of its officials, employees, or representatives.

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#### Legislative History:

- 09.03.13 Legislature adopts resolution 09.03.13D placing the Business Site Leasing Code out for forty-five day public comment.
- 12.17.13 Legislature adopts resolution 12.17.13F Approving and Enacting the Business Site Leasing Policy Pursuant to the HEARTH Act.
- 11.18.14 Legislature rescinds and restates resolution 12.17.13F via resolution 11.18.14F.
- 02.04.15 Bureau of Indian Affairs approves the Business Site Leasing Code (8 HCC § 10).