



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

APPROVAL OF

**CATAWBA INDIAN NATION
BUSINESS LEASING ORDINANCE**

The attached Business Leasing Ordinance, submitted by the Catawba Indian Nation listed in the Federal Register, Vol. 85, No. 20 FR 5463 (January 6, 2020) as the Catawba Indian Nation, and prepared in accordance with the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012, consisting of 26 pages and adopted by the Executive Committee of the General Council of the Catawba Indian Nation on May 14, 2020, is hereby approved.

Dated: JUN 25 2020



Assistant Secretary – Indian Affairs
United States Department of the Interior

Pursuant to the authority delegated by 209 DM 8

**CATAWBA INDIAN NATION
HEARTH ACT
BUSINESS LEASING ORDINANCE**

ARTICLE 1 - GENERAL PROVISIONS

Section 1.1. Authority and Delegation

Enactment. This Business Leasing Ordinance is enacted by the General Council of the Catawba Indian Nation ("the Nation") pursuant to the powers vested to it under Article III, Section 1 and Article IV of the Nation's Constitution and By-Laws, ratified August 30, 1975, as may be amended from time to time ("Constitution").

Delegated Authority. As herein delegated by the General Council, the Executive Committee shall have the authority to approve a Lease or waive any requirement of this Ordinance. Such approval and/or waiver shall be set forth in a duly enacted resolution of the Executive Committee in accordance with the authorities vested in the Executive Committee under Article I, Section 3 and Article III, Section 5 of the Nation's Constitution.

Section 1.2. Scope

The scope of application of this Ordinance shall be limited to all Business Leases on Catawba Land approved pursuant to this Ordinance, and to all actions and decisions taken in connection with those Business Leases, including those entered into for cultural, recreational, educational, public, or religious 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 Date of this Ordinance. Nothing herein shall be construed to apply to leases for residential 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. This Ordinance shall not apply to leases of unrestricted fee, allotted or individually owned land.

Section 1.3. Purposes

The purposes of this Business Leasing Ordinance are to:

- A. Recognize the Catawba Indian Nation's authority to issue, review, approve, and enforce Business Leases and establish streamlined procedures for environmental review; and
- B. Promote self-determination, encourage economic self-sufficiency, and increase business activity and employment on Catawba Land; and

- C. Implement the Helping Expedite and Advance Responsible Tribal Home Ownership Act ("the HEARTH Act"), H.R. 205, 112th Con. (2012).

Section 1.4. Short Title

This Catawba Indian Nation HEARTH Act Business Leasing Ordinance shall be known and cited as the "Business 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 Executive Committee.

"Application" means the form or forms as developed by the Nation, with all required submissions by which a Person applies for a Lease.

"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 Nation" means the balancing of interests to attain the highest economic income, provide incentives to increase economic development, preserve and enhance the value of a Premise, increase the availability of employment, provide governmental services for Catawba members, and preserve the Nation's sovereignty as determined by the Executive Committee 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, 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.

"Business Lease" means any "Lease" for a Business Purpose issued upon Catawba Land under the authority of this Ordinance.

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

"Catawba Land" means any tract of land in which the surface estate is owned by the Nation in Trust or Restricted Status and over which the Nation exercises governmental authority.

"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 Nation's tribal government charged with administration of a particular function of the Nation.

"Director of the ESD" means the person authorized to direct the activities of the ESD and make Environmental Review Process determinations on behalf of the ESD, or any person acting in that capacity with the necessary approval.

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

"ESD" means the Catawba Indian Nation Environmental Services Department, which is the entity that conducts, coordinates, and oversees the Environmental Review Process.

"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.

"Executive Committee" means the Executive Committee of the General Council of the Catawba Indian Nation as such is vested with authority under the Nation's Constitution.

"Fair Market Value" means the amount of rental income that a Lease would most probably command in an open and competitive market utilizing a market analysis, appraisal, or other appropriate valuation methods, or as determined by competitive bidding.

"General Council" means the governing body of the Nation established pursuant the Nation's Constitution.

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

"Land Services Department" means the Catawba Indian Nation Land Services Department.

"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 Catawba Land.

"Land Use Coordinator" means the Chief of the Catawba Indian Nation, or such other official, properly delegated the responsibility by the General Council to execute all Leases under this Ordinance and to take all necessary and proper action on Leases and Subleases, including amendments, Assignments, and Cancellations of Leases and Subleases.

"Lease" means a written agreement or contract between a Lessor and a Lessee whereby the Lessee is granted a right to possess a Premise for a Business Purpose. The Lessee's right to possession will limit the Lessor's right to possess the Premises only to the extent provided in the Lease.

"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 Premise by a Lease pursuant to this Ordinance.

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

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

"Nation" means the federally recognized Catawba Indian Nation.

"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 Premise, described in the Lease, and that then forms an integral part of the Premise.

"Permittee" means a Person with a legal right to use a Premise 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.

"Planning Board" means the Tribal Planning Board of the Nation's Land Services Department.

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

"Premises" means Catawba Land that are subject to a Lease pursuant to this Ordinance, or that are being considered for Lease approval pursuant to the Ordinance.

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

"Public" for Environmental Review Purposes only means any Person or entity with the potential to be significantly affected by the Lease or the Lease activity.

"Revocable Permit" means a written non-assignable, non-possessory right of access or a temporary privilege to enter on and use a Premise 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 Nation. A Revocable Permit does not include any agreement, easement, or right-of-way, which would grant a legal right to possession of a Premise 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.

"Space Lease" means a lease of space within existing Improvements on Catawba Land.

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

"Sublease" means a written agreement by which the Lessee grants to a Person a possessory interest in the Premises 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 Nation to end a Lease.

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

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 with properly delegated authority to act as part of the Lease approval or management process including, but not limited to, the Land Services Department.

Section 3.2. Initial Lease Application

- A. **Initiation.** All Applications shall be filed with the Executive Committee whereupon they shall be forwarded to the Land Use Coordinator for initial review.
- 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. If the Applicant is not an individual, the nature of the business entity and State of organization;
 3. A description of the proposed Premises;
 4. Proposed use of the Premises and term of the Lease;
 5. A written business plan or proposal, which includes a description of the type of Improvements contemplated, and proposed investments;
 6. A financial statement that is sufficient to determine the Applicant's ability to carry out the terms and conditions of the Lease;
 7. Environmental review materials;
 8. Such other information as the Nation may request;
 9. 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 Executive Committee 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. The terms and conditions of a Lease may be modified only with approval of the Executive Committee. The Lessee is responsible for understanding the terms and conditions within the Lease.

Section 3.4. Parties and Execution

The Lease shall state the name and address of each party. If a Lessee is not an individual, the type of business entity shall be stated, as well as the place of organization. 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 3.5. Identification of Lease Site and Description of the Premises

- A. **Database.** Land Services Department shall maintain a database of all Premises available for lease. The Land Use Coordinator shall refer the Applicant to Land Services Department to identify the location of an available site. In carrying out the responsibility to maintain all Lease records under this Ordinance, Land Services Department 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 Premises.
- B. Survey. Unless a Space Lease is contemplated, the proposed Premises must be surveyed. All surveys shall be prepared by duly licensed surveyors, contain the legal description of the proposed Premises, 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 Premises. The Lease shall describe the Premises with as much specificity as possible. Reference should be made to an official or certified survey approved by the appropriate Department. If the Premises 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 to identify the Premises. If a Space Lease is contemplated, the Applicant shall provide the Land Use Coordinator with a sketch of the proposed Premises, which may consist of renderings, architectural drawings, or other schematics to illustrate the location and square footage. The sketch shall be made part of the Application.

Section 3.6. Purpose and Permitted Uses

The Lease shall state the purpose and the permitted uses which can take place on the Premises. The Lease may include a provision which provides for such other uses as are compatible with the stated purpose and permitted uses and which are otherwise consistent with the other terms of the Lease.

Section 3.7. Term

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. A Business Lease with a commercial or industrial Business Purpose may have an initial term of up to twenty five (25) 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. Where the stated Business Purpose is for cultural, recreational, religious, educational, or other public purposes, the initial Business Lease term may be up to seventy-five (75) years, subject to the approval of the Executive Committee, in its discretion.

Section 3.8. Renewals

A Business Lease may include up to two (2) options to renew, with each renewal option not exceeding twenty-five (25) years. Any renewal option contained in the Lease must specify: (i) the time and manner as to how the renewal option is to be exercised or whether it is automatically effective; (ii) that notice of the renewal must also be provided by the Lessee to any leasehold mortgagees or Sureties of the Lease; (iii) any additional consideration that may be due upon the exercise of any renewal option or the start of any renewal term; and (iv) any other conditions that are required for renewal. The Executive Committee will not make an approval determination regarding a Lease renewal, unless the Lessee notifies the Executive Committee of the intent to renew, no later than one (1) year before such Lease is due to expire.

Section 3.9. Payments Required Under a Lease

- A. **Rent.** Rent shall, unless otherwise determined to be in the Best Interest of the Nation, be based on Fair Market Value, and may include, but not be limited to, a fixed monthly fee, a percentage of the income generated from the use of the Premises, or a combination thereof. Leases may contain rental periods in which portions of the term are for below Fair Market Value, such as during development, construction, and ramp-up periods. The Executive Committee, in approving a Lease for less than Fair Market Value, shall state in the approving resolution the reason(s) why the same is in the Best Interest of the Nation. However, resolutions approving Leases for religious, educational, recreational, cultural, or other public purposes that are for less than Fair Market Value need only state the purpose of the Lease. Leases which contain a percentage rent shall include a provision as to how the same is to be reported and reconciled. An appraisal log reporting the methods of appraisal and value of the Premises shall be attached to every Lease.
- 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 Nation.
- D. **Where and How Due.** The Lease shall state the manner in which the required payments are to be made, such as by wire, check, or account debit, and where the payments shall be sent.
- 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 Premises are 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 Nation for approval prior to any construction commencing on the Premises. 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 Executive Committee, 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 Executive Committee may also request an updated schedule for construction at any time, which must be timely produced by the Lessee.
- 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 Premises.
- F. **Commencement of Operations.** The Lease shall state the date or dates upon which the Lessee must commence business operations on the Premises.

- 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 Premises 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 Premises and become the property of the Nation. 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 Premises 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 Nation, or the Nation shall have the same removed from the Premises and disposed of at the cost of the Lessee.

Section 3.11. Insurance Requirements

- A. The Lease shall state the minimum levels of insurance coverage that must be secured by the Lessee to protect the interests of the Lessor 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 insurance, or other insurance as specified in the Lease.

- C. The Nation and the United States must be identified as insured parties.

- D. The insurance shall be endorsed to require the insurer to provide written notice to the Executive Committee by certified mail, return receipt requested, thirty (30) days prior to any suspension, cancellation, or non-renewal of the required insurance.

- E. Leases shall require the Lessee to furnish the Executive Committee with a certificate of insurance evidencing the required coverage prior to the commencement of work at or occupancy of the Premises.

- F. The Executive Committee may waive the insurance requirements of this Section if the waiver is determined to be in the Best Interest of the Nation. Such waiver may be revoked at any time if the waiver ceases to be in the Best Interest of the Nation.

Section 3.12. Security Deposits, Performance Bonds and Sureties

- A. **Security.** The Lease shall, unless otherwise determined to be in the Best Interest of the Nation, require the Lessee to provide security in such amounts as the Nation determines necessary to secure the Lessee's obligations under the Lease. The security may take the form of cash, certificates of deposit issued by a federally insured financial institution authorized to do business in the United States, an irrevocable letter of credit issued by a federally insured financial institution authorized to do business in the United States, negotiable securities issued by the United States Department of Treasury, surety bonds issued by companies approved by the United States Department of the Treasury, or such other forms of security as may be determined by the Nation to provide adequate protection and security for the Nation.
- B. **Performance Bond.** A Lessee shall, unless waived in writing by the Executive Committee following a determination that such action would be in the Best Interest of the Nation, obtain a Performance Bond in an amount sufficient to secure the contractual obligations of the Lease. The Performance Bond shall guarantee completion of the work, and payment in full of all claims of all Persons for work performed in or materials furnished for construction of the Permanent Improvement, including professional services rendered. The Performance Bond shall be issued by companies approved by the United States Department of the Treasury and 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 U.S. Department of Treasury securities; or (4) surety bonds. The Executive Committee may impose additional requirements for Performance Bonds, waive the bond requirement, or reduce the required bond amount, if doing so is determined to be in the Best Interest of the Nation.
- C. **Tribal Remedies.** All forms of security shall, as applicable, indicate on its face that the approval of the Nation is required for redemption; be accompanied by a statement granting the Nation full authority to make an immediate claim upon or sell them if the Lessee violates the Lease; be irrevocable during the term of the bond or other security; and be automatically renewable during the term of the Lease.

Section 3.13. Employment Preference

All Leases shall provide that the Lessee must agree, subject to applicable law, to use reasonable efforts to facilitate the employment of Catawba members and other American Indians and Alaska Natives on the Premises and in the operation of enterprises conducted thereon.

Section 3.14. Applicable Law

The Lease shall state that it is governed by applicable tribal and federal law. The parties to the Lease may further provide, in writing, for the application of any other body of law, such as

the laws of a specified State, and the order of application. The Lease shall further mandate compliance with all applicable laws, ordinances, rules, and regulations.

Section 3.15. Unlawful Conduct

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

Section 3.16. 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 to determine how to proceed.

Section 3.17. Entry and Inspection

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

Section 3.18. Obligations Enforceable by the United States at the Nation's Request

The Nation 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 Premises constitute Catawba 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 3.19. Indemnification

The Lessee shall indemnify and hold the Nation 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 Premises. 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 Premises 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 Nation's own negligence or willful misconduct.

Section 3.20. 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 Nation 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 Premises, including any Land Use plan that may have been adopted by the Nation;
 - 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. ESD review and approval, 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 appropriate Department.

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 ESD, 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 place the Application on the agenda of the next scheduled meeting of the Executive Committee in which the Application can be considered.

Section 4.2. Final Lease Application Review by the Executive Committee

A. Complete Application for Review. The Executive Committee 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;
 4. ESD approval and the Environmental Review Record, with any accompanying findings;
 5. All other information that may have been requested by the Land Use Coordinator, unless the Executive Committee determines that such information is not necessary for its review.
- B. Review of Application. Every completed Application shall be subject to Executive Committee review and the Executive Committee shall issue an approval; conditional approval, with such conditions being specified; or disapproval as to the proposed Land Use for the Premises.
- C. Notice. The Land Use Coordinator shall provide written notice to the Applicant of the date, time, and location of any scheduled meeting of the Executive Committee at which the Application is to be reviewed. The Applicant may have the option to attend the Executive Committee meeting.
- D. Criteria for Assessing an Application. In determining whether to approve, conditionally approve, or disapprove an Application, the Executive Committee may consider:
1. The qualifications of the Applicant, including but not limited to land use or development experience and financial capabilities;
 2. The highest and best use of the proposed Premises, the value of the proposed Improvements; the requirements for governmental services and commitments; economic impact; and the creation of meaningful employment opportunities for Catawba members;
 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 Executive Committee deems necessary and appropriate.

- E. **Compliance with Current Land Use.** The Executive Committee may not approve an Application if the proposed Land Use is not, to the Executive Committee's knowledge, in compliance with all applicable laws and any Land Use development plan adopted by the Nation. However, if no such plan has been adopted, the Executive Committee shall ensure that the Land Use proposed in the Application is compatible with the use of Catawba Land adjacent to and surrounding the proposed Premises. The Executive Committee 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 Nation.
- F. **Notice of Decision.** The Land Use Coordinator shall provide written notice of all final Executive Committee decisions to the Applicant, by personal delivery, facsimile transmission (if available), e-mail, or United States First Class mail 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. General Council Notification

The Land Use Coordinator shall provide the General Council with a copy of the final Executive Committee 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 Executive Committee. 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 Executive Committee 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 Executive Committee and under such terms and conditions as the Executive Committee 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 Executive Committee with proof of such consent prior to the Assignment becoming effective. Notwithstanding the above, the Executive Committee may approve a Lease which contains a provision allowing for an Assignment without further Executive Committee approval 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 Executive Committee and contained the provisions as set forth above.

Section 5.3. Sublease

- A. **Consent Required.** A Lessee may enter into a Sublease only with the approval of the Executive Committee, and under such terms and conditions as the Executive Committee 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 Executive Committee 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 Executive Committee 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 Executive Committee 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 Catawba Land.

ARTICLE 6 – ENFORCEMENT

Section 6.1. Generally

The Executive Committee 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 Nation to assist in the same as necessary and appropriate.

Section 6.2. Right of Entry

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

Section 6.3. Defaults

- A. **Notice.** If the Executive Committee or Land Use Coordinator determines that the Lessee is in default of any provision of its Lease, the Executive Committee 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 Executive Committee shall provide the same

by certified mail, return receipt requested, 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 Executive Committee 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 Premises, the Executive Committee 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. Grant an extension of time to cure the default;
 - 3. Pursue other negotiated remedies, including execution on bonds or collection of insurance proceeds;
 - 4. Employ any combination of remedies listed above; or
 - 5. Employ any other remedy set forth in the business leasing plan or policy.
- B. If the Executive Committee cancels a Lease, the Executive Committee 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. 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 Premises 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 Executive Committee and the request is received within seven (7) business days of the mailing date of the order to vacate, the Executive Committee in its discretion may grant the Lessee permission to occupy the Premises 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 Premises after the expiration or Cancellation of a Lease, or if a Person occupies the Premises without appropriate approval, the Executive Committee shall treat such occupation as a trespass. The Executive Committee shall take action to recover possession of Premises and pursue additional remedies. Filing shall be pursuant to applicable tribal laws or, alternatively, the Executive Committee may make a written request sent by certified mail to the BIA for resolution under any applicable federal laws.

Section 6.7. BIA Assistance

The BIA may, upon reasonable notice from the Nation, and at the BIA's discretion, enforce the provisions of or cause a Cancellation of a Lease.

Section 6.8. Appeals

- A. **Appeals.** Appeals may be filed with the Planning Board, notice of which shall be concurrently filed with the Executive Committee. 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 Planning Board shall review whether the Executive Committee'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 Planning Board shall be final.

ARTICLE 7 – ENVIRONMENTAL REVIEW PROCESS

Section 7.1. General Environmental Review for Proposed Leases

- A. Unless exempted under this Article, the Executive Committee 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. ESD 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 Nation; and
 3. The Nation 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 ESD will take all necessary steps to ensure that the Applicant's planned use and occupation of the Premises 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 ESD for every Environmental Review Process conducted under this Ordinance.
- B. The ESD may request any other information deemed relevant.

- C. A threshold determination will be made by the ESD as to whether the Business Purpose proposed on Catawba Land will result in a Significant Environmental Impact, as defined herein.
- D. In the discretion of the ESD an Environmental Review Process will not be required for a proposed Lease when:
 - 1. There is no significant Change in Land Use of the Premises under the new Lease;
 - 2. After review, the Land Use Coordinator determines that the Premises were the subject of an Environmental Review Process not more than twenty-four (24) months earlier for a substantially identical leasing transaction;
 - 3. The Premises are located 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 ESD 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 ESD 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 ESD 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 ESD.

Section 7.3. Action Upon Significant Environmental Impact Determination

- A. If the ESD 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 Nation; 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 ESD 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 Premises.
 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 Premises are 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 ESD 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 an written explanation of the exemption;
3. If applicable, a TEIR;
4. A copy of the written determination of the ESD;
5. Public notices, if applicable; and
6. Public comments, if applicable.

Section 7.5. Public Notice and Comment

- A. When the ESD 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 in a regularly published tribal newsletter or newspaper; publication in a local newspaper of general circulation; and posting at the Nation's tribal administration offices on the Reservation. The Notice shall contain the content specified in Section 7.5B and state that the Executive Committee is requesting Public comment on the proposed Lease activity before it makes a final approval determination.
- B. Notice Contents. The ESD 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 ESD 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 ESD 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 ESD, 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 Executive Committee 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 Premises. 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 effect on the environment shall be posted on the Nation's website and a hard copy made available at the Nation's tribal administration offices on the Reservation. Publication of the link to the Nation's website whereon the full response is available and directions on how to access it shall be published in a regularly published tribal newsletter or newspaper, and in a local newspaper of general circulation, and posted at the Nation's tribal administration offices on the Reservation.

- E. The ESD 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 Premises;
 - 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 ESD 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 ESD 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 Executive Committee shall manage all Leases pursuant to this Ordinance. The Executive Committee 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 Nation's sovereignty or any of its enterprises, authorities, officers, agents, or employees, or as a waiver of any aspect of the Nation's sovereign immunity from suit.

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 Catawba Land. The Nation may impose its own taxes or other charges on the same.

Section 8.4. Amendments

This Ordinance may be amended by a majority vote of the General Council at a duly called General Council meeting at which a quorum is present. 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 in full force and effect.

Section 8.6. Recording

The Land Use Coordinator, 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 Nation 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 Nation shall also be provided to the Secretary).

Section 8.7. Administrative Fees and Costs

The Nation 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 Nation and at the discretion of the Secretary, enforce the provisions of or cancel any Lease executed by the Nation. The United States shall not be liable for losses sustained by any party to a Lease executed pursuant to tribal regulations.