

**TRIBAL COUNCIL RESOLUTION**  
**Resolution #20-38.3291**

**RESOLUTION APPROVING THE COMPLETED BUSINESS SITE LEASING  
ORDINANCE AND SUBMITTING THE BUSINESS SITE LEASING  
ORDINANCE TO THE OFFICE OF THE SECRETARY OF THE  
DEPARTMENT OF THE INTERIOR FOR PUBLICATION  
IN THE FEDERAL REGISTER**

**WHEREAS:** The Grand Traverse Band of Ottawa and Chippewa Indians (GTB) became a federally-recognized Indian Tribe having a government-to-government relationship with the United States effective May 27, 1980 (see 45 Fed. Reg. 18321-322 (March 25, 1980)) and GTB is organized under a Tribal Constitution approved by the Secretary of the Interior on March 29, 1988; and

**WHEREAS:** GTB has a full Tribal Council currently consisting of David M. Arroyo, Tribal Chairman; Mark L. Wilson, Vice Chair; Theresa M. Pelcher, Secretary; Donna M. Swallows, Treasurer; Robert Kewaygoshkum, Councilor; Tina A. Frankenberger, Councilor; and Brian S. Napont, Councilor; and

**WHEREAS:** Article IV, Section (1)(d) of the Tribal Constitution provides that a power of the Tribal Council is “[t]o purchase, lease, take by gift, take by devise or bequest, or otherwise acquire land, interests in land, or other assets which the Tribal Council may deem beneficial to the Grand Traverse Band”; and

**WHEREAS:** Article IV, Section (1)(h) of the Tribal Constitution provides that a power of the Tribal Council is “[t]o manage and control the economic affairs, enterprises, property, and all other interests of the Band;” and

**WHEREAS:** Article XI, Section (1)(a) of the Tribal Constitution provides that a power of the Tribal Council is “[t]ribal development of the land for residential, agricultural, commercial, or industrial purposes;” and

**WHEREAS:** Article XI, Section (1)(c) of the Tribal Constitution provides that a power of the Tribal Council is to provide “[l]eases for residential, agricultural, commercial, or industrial purposes;” and

**WHEREAS:** The Tribal Council has passed Resolution No. 16-34.2810 on October 27, 2016 submitting application “Parcel 88” to the Secretary of Interior requesting that the

land identified in application “Parcel 88” be taken into trust under the authority of 25 U.S.C. §465 (recodified as §5108) for the benefit of Grand Traverse Band; and

**WHEREAS:** Resolution #17-35.2882 was approved by Tribal Council on June 21, 2017, to submit to the United States Department of Interior for approval the GTB Business Site Leasing Ordinance, pursuant to the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012 (“HEARTH Act”) which authorizes federally recognized Indian tribes to pass tribal leasing statutes to approve the leasing of tribal lands provided those tribal statutes are approved by the Secretary of the Interior; and

**WHEREAS:** Tribal Council passed a business site lease ordinance on May 20, 2020, via Resolution #20-38.3231 for submission to the Office of the Secretary of the Department of Interior under the authority of the HEARTH Act; and

**WHEREAS:** Legal counsel representatives for GTB have conferred with representatives from the Office of the Secretary Department of the Interior to review in detail the May 20, 2020 business site leasing ordinance; and

**WHEREAS:** Counsel for the Tribe and counsel for the Department of the Interior have agreed that this revised business site leasing ordinance is consistent with federal law and federal regulations governing leasing; and

**WHEREAS:** The Business Site Leasing Ordinance requires Tribal Council enactment and Secretarial approval to be effective.

**NOW THEREFORE BE IT RESOLVED THAT** Resolution #20-38.3231 passed on May 20, 2020 is hereby repealed.

**BE IT FURTHER RESOLVED THAT** the Business Site Leasing Ordinance identified as Resolution #20-38.3291, and following this clause in its entirety, and approved on October 28, 2020, shall be submitted to the Office of the Secretary of the Department of the Interior for publication in the Federal Register.

## **Chapter 9 - BUSINESS SITE LEASING ORDINANCE**

### **CHAPTER ONE INTRODUCTION**

#### **SECTION:**

**1.1 Authority and Delegation.** This Ordinance is enacted by the Tribal Council pursuant to the powers vested to it under Article IV, Section 1 of the Constitution of the Grand Traverse Band of Ottawa and Chippewa Indians, adopted February 24, 1988, and Approved by the

Secretary of the Interior on March 29, 1988, as may be amended from time to time. Pursuant to Section 16 of the Indian Reorganization Act, (P.L. 73-383, 48 Stat. 984), the Tribal Council hereby expressly authorizes and delegates to the Grand Traverse Band Economic Development Corporation, a federally-chartered corporation authorized by Section 17 of the Indian Reorganization Act, wholly owned by the Tribe, and established October 23, 1998, and amended May 2, 2000, the power and authority to lease Tribal Land , in accordance with the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012, H.R. 205, 112th Cong. (2012), 25 U.S.C. §415(h) (HEARTH Act), and this Ordinance.

**1.2 Applicable Law.** The law applicable to leases approved pursuant to this Ordinance is tribal law and applicable Federal law.

**1.3 Scope.** The scope of application of this Ordinance shall be limited to all Business Site Leases on Tribal Land that would, in the absence of this Ordinance, require approval of the United States Secretary of the Interior pursuant to 25 U.S.C. §415(a), and to all actions and decisions taken in connection with those leases. Nothing herein shall be construed to affect the terms and conditions of existing leases. This Ordinance is not applicable to individually-owned Indian land, allotted land, or land held in fee. This Ordinance does not apply to mineral leases, prospecting permits, or mineral development agreements.

**1.3 Purpose.** The purposes of this Ordinance are to:

- (a) Recognize the authority of the Tribe by and through the Authority, to issue, review, approve, and enforce Business Site Leases and establish streamlined procedures for environmental review in accordance with and pursuant to the authority in the HEARTH Act; and
- (b) Promote self-determination, encourage economic self-sufficiency, and increase business activity and employment on Tribal Land.

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

## **CHAPTER TWO DEFINITIONS**

### **SECTION:**

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

- (a) “*Assignment*” means an agreement between a Lessee and an assignee whereby the Lessee transfers all his/her rights and obligations to the assignee under a Business Site Lease.

- (b) “*Authority*” means the Grand Traverse Band Economic Development Corporation, a federally-chartered corporation authorized by Section 17 of the Indian Reorganization Act and wholly owned by the Tribe, established October 23, 1998, and amended May 2, 2000, which the Tribe has authorized to perform the leasing duties and responsibilities of the Tribe as Lessor under this Ordinance. The Authority may delegate some of or all its leasing authority to tribal agencies on behalf of the Tribe.
- (c) “*Best Interest of the Tribe*” means the balancing of interests in order to attain the highest economic income, provide incentives to increase economic development, preserve and enhance the value of Tribal Land subject to a Business Site Lease, increase employment and jobs on Tribal Land subject to a Business Site Lease, and preserve the sovereignty of the Tribe.
- (d) “*BIA*” means the Bureau of Indian Affairs, United States Department of the Interior.
- (e) “*Business Site Lease or Lease*” means a written agreement or contract between the Lessor and a Lessee whereby the Lessee is granted a right to possess Tribal Land for a specified purpose and duration, including a lease of space within existing facilities on Tribal Land that is not already leased, consistent with this Ordinance. The Lessee’s right to possess will limit the Lessor’s right to possess the leased premises only to the extent provided in the lease.
- (f) “*Change in Land Use*” means the change from residential to non-residential, commercial to industrial, or one industrial use to another that significantly differs from the former use.
- (g) “*Constitution*” means the Constitution of the Grand Traverse Band of Ottawa and Chippewa Indians, adopted February 24, 1988, and Approved by the Secretary of the Interior on March 29, 1988, as may be amended from time to time.
- (h) “*Development Period*” means the time period from when a lease is executed to when improvements are expected to be substantially completed.
- (i) “*Environmental Review Process*” means the process for conducting tribal environmental review to assess whether a proposed development or project resulting from a Leasing Decision under this Ordinance will have a Significant Effect on the Environment.
- (j) “*Environmental Reviewer*” means an official from the Tribe’s Natural Resources Department or as otherwise designated by the Tribal Council who is responsible for conducting the Environmental Review Process.
- (k) “*Executing Official*” means the delegated official of the Authority who shall execute all Business Site Leases on behalf of the Tribe and take all necessary and

proper action on leases and subleases including amendments, modifications, assignments and cancellations of leases and subleases.

- (m) *“Fair Annual Lease Value”* means the most probable dollar amount a property should bring in a competitive and open market reflecting all conditions and restrictions of the specified lease agreement including term, rental adjustment and revaluation, permitted uses, use restrictions, and expense obligations.
- (n) *“Holdover”* means circumstances in which a Lessee remains in possession of the leased premises after the lease term expires.
- (o) *“Leasehold Mortgage”* means a mortgage, deed of trust or other instrument that pledges a lessee’s leasehold interest as security for a debt or other obligation owed by a Lessee under the lease.
- (p) *“Leasing Decision”* in the context of the Environmental Review Process means the following type of lease transactions that will be acted on by the Authority: lease issuance, lease amendment or modification, subleasing, lease assignment or transfer, and tenant leases.
- (q) *“Lessee”* means a person or entity who has acquired a legal right to possess Tribal Land by entering into a Business Site Lease pursuant to this Ordinance.
- (r) *“Lessor”* means the Tribe, and the Authority, acting pursuant to authority delegated by the Tribe, who conveys the right to use and occupy Tribal Land under a Business Site Lease.
- (s) *“LTRO”* means the Land Titles and Records Office of the Bureau of Indian Affairs.
- (t) *“Project”* means any economic development activity or project occurring or intended to occur on Tribal Land pursuant to a Business Site Lease.
- (u) *“Public”* means, for purposes of the Environmental Review Process, any person or entity with the potential to be significantly affected by the Business Site Lease or the lease activity.
- (v) *“Significant Effect on the Environment”* means a substantial, or potentially substantial, adverse change in the environment, including land, air, water, minerals, flora, fauna, ambient noise, cultural areas and objects of historic, cultural or aesthetic significance.
- (w) *“Sublease”* means a written agreement by which the Lessee grants to a Sublessee a right to possession no greater than that held by the Lessee under a Business Site Lease.

- (x) “*Sublessee*” is an individual or entity to whom the lessee grants a right to possession no greater than that held by the Lessee under a Business Site Lease.
- (y) “*Tribe*” means the Grand Traverse Band of Ottawa and Chippewa Indians.
- (z) “*Tribal Council*” means the duly elected governing body of the Tribe.
- (aa) “*Tribal Land*” means any tract in which the surface estate is owned by the Tribe in trust or restricted status.
- (bb) “*Trust or restricted status*” means that the United States holds title to the tract in trust for the benefit of the Tribe, or that the Tribe holds title to the tract, but can alienate or encumber it only with the approval of the United States because of limitations in the conveyance instrument under Federal law or limitations in Federal law.

### **CHAPTER THREE BUSINESS SITE LEASE REQUIREMENTS**

#### **SECTION:**

**3.1 Terms and Conditions.** Leases shall be governed by the terms and conditions set forth in the Business Site Lease agreement and this Ordinance. The Lessee is responsible for understanding these terms and conditions.

**3.2 Duration and Renewal.** The term of any Business Site Lease shall not be more than 25 years except that any such lease may include an option to renew for up to two additional terms, each of which may not exceed 25 years. A lease shall require that the Lessee notify the Authority of its intent to renew, in writing, at least 1 year before such lease is due to expire, unless a shorter period is set forth in the Business Site Lease. The lease shall include the amount of additional consideration that is due at the start of the renewal term. A lessee that is in violation of the lease terms may not exercise the option to renew, unless the lessee cures the violation to the satisfaction of the Authority at least three months before the start of the renewal term.

**3.3 Obtaining a Business Site Lease.** Information on obtaining a Business Site Lease shall be available from the Authority.

- (a) All applicants for a Business Site Lease shall submit the following documents to the Authority:
  - (i) Financial information requested by the Authority it deems necessary to determine whether the proposed Lessee can meet the obligations of the proposed Lease and/or the requirements of the Ordinance;

- (ii) site survey and legal description, if applicable;
  - (iii) tribal environmental review where required; and
  - (iv) other documents as may be required by the Authority and pursuant to the Authority's Business Site Leasing procedures.
- (b) All Business Site Leases shall contain, at a minimum, the following provisions:
- (i) The tract, location, or parcel of Tribal Land being leased;
  - (ii) a description of the Project, including the purpose of the Lease and authorized uses of the leased premises;
  - (iii) the parties to the Lease;
  - (iv) the term of the Lease;
  - (v) identification of the responsible party for constructing, owning, operating, and maintaining any improvements to the leased premises;
  - (vi) payment requirements and late payments, including interest and penalties at negotiated rates;
  - (vii) due diligence, insurance, and bonding requirements as provided in this Ordinance. If a performance bond is required pursuant to this Ordinance, the Lease must state that the Lessee must obtain the consent of the surety for any legal instrument that directly affects its obligations and liabilities;
  - (viii) removal and restoration plan requirements applicable to the leased premises at the expiration or cancellation of the Lease;
  - (ix) if the leased premises are within an Indian irrigation project or drainage district, except as otherwise provided in 25 C.F.R. Part 171, the Lessee must pay all operation and maintenance charges that accrue during the lease term, to the appropriate office in charge of the irrigation project or drainage district;
  - (x) if historic properties, archeological resources, human remains, or other cultural items not previously reported are encountered during the course of any activity associate with the Lease, all activity in the immediate vicinity of such properties, resources, remains or other cultural items shall cease and the Lessee shall contact the Authority to determine how to proceed;
  - (xi) there must not be any unlawful conduct, creation of a nuisance, illegal activity, or negligent use or waste of the leased premises, and the Lessee must

comply with this Ordinance and all Applicable Law covering both civil and criminal activity;

(xii) the obligations of the Lessee and its sureties to the Lessor are also enforceable by the United States, so long as the land remains in trust or restricted status;

(xiii) unless the Lessee would be prohibited by law from doing so, (A) the Lessee holds the United States and the Tribe harmless from any loss, liability, or damages resulting from the Lessee's use or occupation of the leased premises, and (B) the Lessee indemnifies the United States and the Tribe against all liabilities or costs relating to the use, handling, treatment, removal, storage, transportation, or disposal of hazardous materials, or the release or discharge of any hazardous materials from the leased premises that occurs during the lease term, regardless of fault, with the exception that the Lessee is not required to indemnify the Tribe for liability or cost arising from the Tribe's negligence or willful misconduct; and

(xiv) requirements for the Authority's approval of any amendments, assignments, subleases, or leasehold mortgages.

- (c) Upon receipt of a Business Site Lease and supporting documentation, including any required tribal environmental review, the Authority will review and inform the Lessee if the information is complete. If the information is not complete, the Authority will notify the Lessee in writing as to what additional information or documents are required. If the information is complete, the Authority will notify the Lessee in writing of the date of receipt, and within 60 days, will approve, disapprove, or inform the Lessee that it needs additional time. If additional time is needed, the Authority will inform the Lessee of the reasons, and will have another thirty days to approve or disapprove the Lease.
- (d) Unless the Business Site Lease states otherwise, a Lease may include, consistent with tribal law, a provision to give Indian preference in hiring for employment purposes.

**3.4 Records.** Records pertaining to Business Site Leases shall be maintained and recorded as follows:

- (a) The Authority is responsible for maintaining all records of all Business Site Leases, including all renewals and amendments thereto, and for disseminating recorded memorandum of lease documents to the Tribal Council Secretary, the Tribal Environmental Department, and if required by the Tribal Council, to the Housing Department. An original or certified copy of any Business Site Lease document, including the Lease, renewal, sublease or assignment, and any other



amendment entered pursuant to this Ordinance shall be sent to the BIA for recording in its LTRO or to be processed as required under applicable BIA regulations or policy.

- (b) Records compiled, developed, or received by the Authority in the course of review and approval of a Business Site Lease under this Ordinance are the property of the Authority and the Tribe.

**3.5 Land Descriptions.** Business Site Leases shall contain adequate site surveys and legal descriptions based on metes and bounds, rectangular or lot and block systems and/or be of sufficient detail to meet recording requirements for the BIA LTRO having jurisdiction over the Tribal Land subject to the Lease. To the extent that the lease includes a space lease, it shall contain adequate descriptions of the location and square footage of the space being leased and may include renderings, architectural drawings or other schematics to illustrate the location of the space to a specific location upon a tract of land subject to the Lease.

**3.6 Appraisal; Local Studies.**

- (a) The Fair Annual Lease Value shall be determined by an appraisal or equivalent procedure performed by the Authority utilizing the following data: improvement cost, replacement cost, earning capacity, sales and lease data of comparable sites or by similar methodology as approved by the Authority and deemed to be in the Best Interest of the Tribe. An appraisal log reporting the methods of appraisal and value of trust land shall be attached to every Business Site Lease, except as set forth in 3.6(c) below.
- (b) Alternatively, the Fair Annual Lease Value shall be determined by an appraisal performed by a licensed appraiser utilizing the Uniform Standards of Professional Appraisal Practice or commonly accepted method of appraisal. An appraisal log describing the method of appraisal and value of trust and shall be attached to every Business Site Lease.
- (c) The appraisal process as set forth in 3.6(a)-(b) above shall not be required if expressly waived in any Lease.

**3.7 Fair Annual Lease Value.**

(a) In determining the Fair Annual Lease Value for a Business Site Lease, the Authority, in addition to the criteria in Chapter 2.1(l), shall assume that the Lessee and Lessor each are acting prudently and knowledgeably, and that consummation of the lease contract as of a specified date and the passing of the leasehold from Lessor to Lessee shall occur under conditions whereby:

- (i) Lessee and Lessor are typically motivated;

- (ii) both parties are well-informed or well-advised, and acting in what they consider their best interests;
  - (iii) a reasonable time is allowed for exposure in the open market;
  - (iv) the rent payment is made in terms of cash in United States dollars and is expressed as all amount per time period consistent with the payment schedule of the lease contract; and
  - (v) the rental amount represents the normal consideration for the property leased unaffected by special fees or concessions granted by anyone associated with the transaction.
- (b) No Business Site Lease shall be approved for less than the present Fair Annual Lease Value as set forth in the appraisal, except as follows:
- (vi) The Lease is in the Development Period;
  - (vii) The Authority is providing an incentive for business to locate on Business Site Lease Land, and must provide lease concessions, lease improvement credits, and lease abatements to attract such businesses; or
  - (viii) The Authority, in its discretion, waives such requirement and stipulates less than the present Fair Annual Lease Value because such action is in the Best Interest of the Tribe or for any other reason, including, without limitation, because the Tribe has a substantial membership interest in the “tenant” or “Lessee” entity under a Lease or derives a substantial economic benefit from a sublease given pursuant to a Lease that is otherwise in conformity with this Ordinance.
- (c) A Business Site Lease may be structured at a flat lease rate.
- (d) A Business Site Lease may be structured at 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 \$1,000,000.00 annually in gross receipts.
- (e) A Business Site Lease may be structured based on a percentage of gross receipts or based on a market indicator.
- (f) A Business Site Lease must specify the dates on which all payments are due.
- (g) A Business Site Lease must specify that the Lessee shall make payments directly to the Authority.
- (h) Unless otherwise provided in the Business Site Lease, payments may not be made or accepted more than one year in advance of the due date.

- (i) A Business Site 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.
- (j) Business Site Leases for terms of less than five 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.
- (k) A Business Site Lease may be amended to allow for lease rate adjustments.
- (l) The Authority shall keep written records of the basis used in determining the fair annual lease value, as well as the basis for adjustments, as applicable. These records shall be presented to the Lessee for its review and acceptance or non-acceptance and included in any lease file.

**3.8 Environmental Review Process.** Unless exempted from this requirement under this Ordinance, the Authority shall not approve a Business Site Lease until the proposed Lessee has completed the Environmental Review Process under Chapter Six of this Ordinance. Leases approved and executed without complying with this section, unless exempted, shall be null and void.

**3.9 Insurance.**

- (a) A Lessee shall provide insurance necessary 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 Business Site Lease.
- (c) The Lessor and the United States may be identified as additional insured parties.
- (d) The Authority may waive the requirements of 3.9(a)-(c) in its discretion, and by entering into a Lease on different terms than as set forth in this 3.9, the Lease will control.

**3.10 Performance Bond.**

- (a) Unless waived in writing by the Authority in accordance with this Ordinance, the Lessee shall obtain a satisfactory performance bond in an amount sufficient to secure the contractual obligations of the Lease. Such bond shall be for the purpose of securing the Lessee's contractual obligations under the Business Site Lease, shall be made payable to the Tribe and shall be deposited with the Authority, and may

guarantee:

- (i) The annual lease payment;
  - (ii) the estimated development cost of improvements; and
  - (iii) any additional amount necessary to ensure compliance with the Lease.
- (b) The performance bond must require the surety to provide notice to the Tribe at least 60 days before cancellation of the bond. Failure to provide a substitute performance bond is a violation of the lease. The Authority may waive the bond requirement, or reduce the amount, in its discretion, because such action is in the Best Interest of the Tribe or for any other reason, including, without limitation, because the Tribe has a substantial membership interest in the “tenant” or “Lessee” entity under a Lease or derives a substantial economic benefit from a sublease given pursuant to a Lease that is otherwise in conformity with this Ordinance. The Authority shall maintain written records of waivers and reductions.
- (c) The performance bond may be in one of the following forms:
- (i) certificates of deposit issued by a federally insured financial institution authorized to do business in the United States;
  - (ii) irrevocable letters of credit issued by a federally insured financial institution authorized to do business in the United States;
  - (iii) negotiable Treasury securities; or
  - (iv) surety bond issued by a company approved by the U.S. Department of the Treasury.

**3.11 Improvements.** All Business Site Leases may require the Lessee to exercise due diligence and reasonable commercial efforts, subject to force majeure and Lessor interference, to complete construction of any improvements within the schedule specified in the Business Site Lease, if applicable.

- (a) Lessee, at Lessee’s expense or as otherwise provided in the Business Site Lease, may construct improvements under a Business Site Lease if the Lease specifies, or provides for the development of:
- (i) a plan that describes the type and location of any improvements to be built by the Lessee; and
  - (ii) a general schedule for construction of the improvements.

- (b) Lessee shall provide the Authority 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.
- (c) When requested by the Authority or otherwise required in the Business Site Lease, Lessee shall further provide the Authority, in writing, an updated schedule for construction.
- (d) Failure of the Lessee to comply with these requirements will be deemed a violation of the Business site Lease and may lead to cancellation of the Business Site Lease pursuant to Chapter 5 of this Ordinance, unless the requirements of this Section 3.11 are waived by the Authority as provided in 3.11(i) below.
- (e) Improvements to the premises shall become the property of the Authority unless otherwise provided for in the Business Site Lease. If improvements will be removed, the Business Site Lease may specify the maximum time allowed for such removal.
- (f) A Lessee may develop equity value in the improvements, and sell its interest in the Business Site Lease based on the equity value. The Lessor shall have a right of first refusal to purchase the Lessee's interest in the Lease unless the terms of the Lease provide otherwise.
- (g) The Business Site Lease may provide that at expiration, cancellation or termination of the Lease, the Lessor shall purchase improvements to the premises at fair market value.
- (h) Improvements may be subject to taxation by the Tribe, except as otherwise set forth in the Lease.
- (i) The Authority may waive the requirements set forth in Section 3.11(a)-(h), in its discretion, because such action is in the Best Interest of the Tribe or for any other reason, including, without limitation, because the Tribe has a substantial membership interest in the "tenant" or "Lessee" entity under a Business Site Lease or derives a substantial economic benefit from a sublease given pursuant to a Lease that is otherwise in conformity with this Ordinance, and such waiver shall not constitute a cancellation or nullity of the Lease.

### **3.12 Subleases, Assignments, Amendments and Encumbrances.**

- (a) Subleases, assignments, amendments or encumbrances of any Business Site Lease shall be by written consent of the Authority and Lessee, unless otherwise provided herein.
- (b) The Business Site Leases may authorize subleases and assignments, in whole or in part, without approval from the Authority, provided a copy of the sublease or

assignment is provided to the Authority and the following conditions, where applicable, are met and stated in the Business Site Lease:

- (i) There is no event of default under the Business Site Lease or this Ordinance;
- (ii) Any restrictions and use limitations on the use of the premises shall continue to apply to any subtenant or assignee;
- (iii) The proposed assignee or sublessee submits a current financial statement showing financial adequacy; and
- (iv) The Lessee shall not be relieved or released from any of its obligations under the Business Site Lease, unless a full assignment of the Lease is made and the Lease provides for a full release of Lessee from its obligations thereunder.

This Section 3.12(b) in no way relieves the parties from carrying out their duties under the Business Site Lease, which may contain additional restrictions and conditions.

- (c) The Business Site Lease may authorize encumbrances to the leasehold interest for the purpose of financing to develop and improve the premises subject to approval by the Authority.
- (d) If a sale or foreclosure of the Lessee's business or assets occurs and the encumbrancer is also the purchaser, the encumbrancer may assign the Lease without approval of the Authority or Lessee, provided the assignee agrees in writing to be bound by all the terms and conditions of the Lease. If the purchaser is a party other than the encumbrancer, approval by the Authority is required, provided the purchaser agrees in writing to be bound by all terms and conditions of the Lease.

## **CHAPTER FOUR BUSINESS LEASE MANAGEMENT**

### **SECTION:**

#### **4.1 Management.**

- (a) The Authority shall manage all Business Site Leases pursuant to this Ordinance and Applicable Law.
- (b) The Authority may enact a Business Lease management plan or policy that employs real estate management practices, addresses accounting, collections, monitoring, enforcement, relief, and remedies, provided such Business Lease management plan or policy is consistent with this Ordinance and the Act.

**4.2 Administrative Fees.** The Authority may charge administrative fees for costs associated with issuing a Lease, sublease, assignment, amendment, mortgage or other administrative transaction, provided that the Authority may waive such fees, in its discretion, because such waiver is in the Best Interest of the Tribe or for any other reason, including, without limitation, because the Tribe has a substantial membership interest in the “tenant” or “Lessee” entity under a Lease or derives a substantial economic benefit from a sublease given pursuant to a Lease that is otherwise in conformity with this Ordinance; provided that if such fees are not waived, they must be specifically and expressly provided in the Lease.

## **CHAPTER FIVE ENFORCEMENT**

### **SECTION:**

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

**5.2 Defaults.** Unless otherwise set forth in the Lease, defaults under a Lease shall be governed in accordance with the following:

- (a) If the Authority determines the Lessee is in default, the Authority shall provide the Lessee a written notice of default within five (5) business days of the determination. The notice of default may be provided by certified mail, return receipt requested, or by another nationally recognized mail carrier.
- (b) Within 10 days of delivery, the Lessee shall:
  - (i) Cure the default and notify the Authority in writing that the default has been cured.
  - (ii) Dispute the Authority’s determination that the Lease is in default and explain why the Lease should not be canceled; or
  - (iii) Request additional time to cure the default.

**5.3 Remedies.** Unless otherwise set forth in the Lease, Lessor shall have the following remedies upon default by Lessee:

- (a) If the Lessee fails to cure the default within the prescribed period, the Authority may:
  - (i) Cancel the Lease pursuant to these regulations;

- (ii) Grant an extension of time to cure the default;
  - (iii) Pursue other remedies, including execution on bonds or collection of insurance proceeds;
  - (iv) Any combination of remedies listed above; or
  - (v) Any other remedy set forth in the Business Site Lease, or available under Applicable Law.
- (b) If the Authority cancels a Business Site Lease, the Authority shall send the Lessee a cancellation letter within a reasonable time period. The cancellation letter may be sent to the Lessee by certified mail, return receipt requested or by another nationally recognized mail carrier. The cancellation letter shall:
- (i) Explain the grounds for cancellation;
  - (ii) Notify the Lessee of unpaid amounts, interest charges or late payment penalties due under the Lease;
  - (iii) Notify the Lessee of its legal recourse; and
  - (iv) Order the Lessee to vacate the premises within 30 days of mailing of receipt of the cancellation letter.
- (c) A cancellation shall become effective 31 days after mailing.
- (d) If the Authority decides to grant an extension of time to cure a default, the Lessee shall proceed diligently to perform and complete the corrective actions within a reasonable time period.

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

**5.5 Harmful or Threatening Activities.** If a Lessee or other party causes or threatens to cause immediate and significant harm to the premises, or undertakes criminal activity thereon, the Authority may take appropriate emergency action, in compliance with the laws of the jurisdiction in which the Tribal Land subject to the Business Site Lease is located.

**5.6 Holdover.** If a Lessee remains in possession after the expiration or cancellation of a Business Site Lease, the Authority shall treat such occupation as a trespass, except as provided in the Lease. The Authority shall take action to recover possession and pursue additional remedies under tribal law, except as provided in the Lease.



**5.7 Trespass.** If a person occupies the premises without the Authority's approval, the Authority may pursue appropriate remedies, including the filing of a trespass action to regain possession under Tribal law.

**5.8 BIA Enforcement.** In the event the Tribe requests BIA assistance in the enforcement of a Business Site Lease, BIA may take action to enforce the provisions of a Business Site Lease, including cancellation of the Lease, after consultation with the Tribe.

## **CHAPTER SIX APPEALS**

### **SECTION:**

**6.1 Appeals.** Unless an alternative appeals process is provided in the Lease, the Lessee may appeal a determination of the Authority within ten (10) days of the determination. Appeals may be filed in the Tribal Court or other hearing body. Such appeals shall be effectuated by a written notice setting forth the basis for the appeal, a short statement indicating the nature and circumstances of the appeal, and a short statement indicating the remedy being sought.

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

## **CHAPTER SEVEN ENVIRONMENTAL REVIEW PROCESS**

### **SECTION:**

**7.1 Generally.** The Authority shall not approve a Business Site Lease until the proposed Business Site Lease has completed the Environmental Review Process pursuant to this Chapter and applicable Tribal regulations, unless the Authority waives the Environmental Review Process, which it may do in its discretion or in accordance with Section 7.2(a) hereof. Business Site Leases approved and executed without compliance with this Chapter shall be null and void, provided that in no event shall a Lease which is exempted from the Environmental Review Process as provided above be deemed null and void for failure to comply with this Chapter.

**7.2 Threshold Determination.**

- (a) **Lessee Not Subject to Environmental Review Process:** If the Environmental Reviewer determines that the Leasing Decision by its nature would not have a Significant Effect on the Environment, the Leasing Decision is exempt from

additional requirements of the Environmental Review Process, subject to the environmental record requirements of applicable Tribal environmental regulations.

- (b) **Lessee Subject to Environmental Review Process:** If the Environmental Reviewer determines that the Leasing Decision may be expected to have a Significant Effect on the Environment, because it may i) impact, ii) alter, iii) disturb, or iv) otherwise cause physical disturbances to the biological or natural resources of the Tribe, the Lessee must fulfill the requirements of the Environmental Review Process. The physical disturbances must be direct, such as land clearing, new building construction, or discharge of emission or effluent associated with the project.
- (c) **Statutory Exemption for Certain Leases:** Leasing decisions involving a Business Site Lease proposing the use of premises that are the subject of a completed federal environmental review under federal law shall be exempt from the Environmental Review Process, and the Tribe shall not be required to prepare a TEIR under Section 7.4 of this Chapter.

**7.3 Action on Leasing Decision Subject to Completion of Environmental Review Process.** If the Environmental Reviewer determines that the Leasing Decision is subject to the Environmental Review Process, the Authority may not consider the Leasing Decision until the Environmental Reviewer closes the Environmental Review Process in accordance with this Ordinance and applicable Tribal environmental regulations.

**7.4 Environmental Review Process.**

- (a) Unless an exemption applies or a Business Site Lease is otherwise not subject to the Environmental Review Process, then, before the execution of any Business Site Lease, the Authority shall cause to be prepared a comprehensive and adequate tribal environmental impact report (“TEIR”), analyzing the potentially Significant Effects of the Project on the Environment; 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 Authority shall endeavor to have the TEIR completed within 6 months from the date of the Environmental Reviewer’s determination that the Leasing Decision is subject to the Environmental Review process, although the time may be extended as needed to ensure that the TEIR is sufficiently thorough and complete. The TEIR shall provide detailed information about the Significant Effect(s) on the Environment which the Project is likely to have, and shall include a detailed statement setting forth all of the

following:

- (i) A description of the physical environmental conditions in the vicinity of the Project (the environmental setting and existing baseline conditions), as they exist at the time the notice of preparation is issued;
- (ii) All Significant Effects on the Environment of the proposed Project;
- (iii) In a separate section:
  - (1) Any Significant Effect on the Environment that cannot be avoided if the Lease is executed; and
  - (2) Any Significant Effect on the Environment that would be irreversible if the Lease is executed.
  - (3) Any mitigation measures proposed, recommended, or required.
- (b) In addition to the information required pursuant to subdivision (a), the TEIR shall also contain a statement indicating the reasons for determining that various effects of the Project on the off-reservation environment are not significant and consequently have not been discussed in detail in the TEIR. In the TEIR, the direct and indirect Significant Effects on the Environment shall be clearly identified and described, giving due consideration to both the short-term and long-term effects.

#### **7.5 Notice of Completion of Draft TEIR.**

- (a) Within no less than thirty (30) days following the completion of the draft TEIR, the Authority shall file a copy of the draft TEIR and a Notice of Completion with the Tribe. The Authority shall also post the Notice of Completion and a copy of the draft TEIR on the Tribe's website. The Notice of Completion shall include all of the following information:
  - (i) A brief description of the Project;
  - (ii) The proposed location of the Project;
  - (iii) An address where copies of the draft TEIR are available; and
  - (iv) Notice of a period of thirty (30) days during which the Tribe will receive comments on the draft TEIR.
- (b) To satisfy the requirement for providing the Public with adequate notice and opportunity to comment, the Authority will provide public notice by at least one of the procedures specified below:

- (i) Publication of the Authority's draft TEIR in a newspaper of general circulation in the area affected by the proposed Project, with notice to the Public of the opportunity to comment on any Significant Effect on the Environment of the Leasing Decision.
- (ii) Posting of the Authority's draft TEIR in the offices of the Tribe and the Authority with notice to the Public of the opportunity to comment on any Significant Effect on the Environment of the Leasing Decision.
- (iii) Posting of the Authority's draft TEIR on the Tribe's website, with notice to the Public of the opportunity to comment on any Significant Effect on the Environment of the Leasing Decision.

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

## **CHAPTER EIGHT SOVEREIGN IMMUNITY**

### **SECTION:**

**8.1** Nothing in this Ordinance shall be deemed to waive the sovereign immunity of the Tribe or any of its enterprises, authorities, officers, agents, or employees, provided that the jurisdiction for civil and criminal matters arising under the Lease shall be as provided in the Lease.

## **CHAPTER NINE CONFLICT; SEVERABILITY**

### **SECTION:**

**9.1 Conflict.** The Authority shall have the discretion to waive any requirements under this Ordinance where the Tribe has a substantial membership interest in the “tenant” or “Lessee” entity under a Lease or derives a substantial economic benefit from a sublease given pursuant to a Lease that is otherwise in conformity with this Ordinance; but where a conflict between this Ordinance and such a Business Site Lease exists, the Ordinance shall control. Accordingly, any waiver of Ordinance provisions, except as specifically provided in Chapters 3.6(c), 3.7(b)(iii), 3.9(d), 3.10(b), 3.11(i), and 4.2, must be done by duly enacted Tribal Resolution and incorporated into the Lease as an attachment.

**9.2 Severability.** If any provision in this Ordinance shall be declared to be invalid or unenforceable by a tribunal of competent jurisdiction, such declaration shall not affect the validity or effectiveness of the remainder of the provisions in this Ordinance, which shall continue to be valid and enforceable.

## **CHAPTER TEN EFFECTIVE DATE; AMENDMENT**

### **SECTION:**

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

**10.2** This Ordinance may be amended by a majority vote of the Tribal Council at a duly called Tribal Council meeting at which a quorum is present. All substantive amendments to this Ordinance must be submitted to and approved by the Secretary of the Interior. No amendments to this Ordinance shall have retroactive effect on any Lease or sublease executed prior to the passing

of such amendments.

**APPROVED:** \_\_\_\_\_ **ADOPTED:** \_\_\_\_\_  
David M. Arroyo Theresa M. Pelcher  
Tribal Chairman Secretary

**CERTIFICATION**

As Secretary of the Tribal Council of the Grand Traverse Band of Ottawa and Chippewa Indians, I hereby certify that the above resolution was approved and adopted at a Special Session of the Tribal Council held in Peshawbestown, Michigan, on October 28, 2020, by a vote of: FOR, \_\_\_ AGAINST, \_\_\_ ABSTAINING, and \_\_\_ ABSENT.

**ATTEST:**

\_\_\_\_\_  
Theresa M. Pelcher, Secretary