

HEARTH ACT BUSINESS LEASE ORDINANCE CHAPTER ONE INTRODUCTION

1.1 Authority and Delegation. This Ordinance is enacted by the Colville Business Council pursuant to the powers vested to it under Article V, Section 1 of the Constitution of the Confederated Tribes of the Colville Reservation (“Colville Tribes” or the “Tribes”), as approved by the Commissioner of Indian Affairs on April 19, 1938, as amended and as may be amended from time to time (“Constitution”). This Ordinance be effective immediately upon approval by the Assistant Secretary—Indian Affairs, or her designee.

1.2 Scope. The scope of application of this Ordinance shall be limited to Business Leases approved by the Colville Business Council, in accordance with all applicable federal regulations and laws of the Colville Tribes where such approval indicates that the Lease is to be governed by this Ordinance. Nothing herein shall be construed to affect the terms and conditions of existing leases.

1.3 Purpose. The purposes of this Ordinance are to:

- (a) Implement the Helping Expedite and Advance Responsible Tribal Home Ownership (HEARTH) Act of 2012, Pub. L. 112-151, codified at 25 U.S.C. §415(h);
- (b) Recognize the authority of the Colville Tribes to issue, review, approve, and enforce Business Site Leases without BIA approval under the HEARTH Act and establish streamlined procedures for environmental review; and
- (c) Promote self-determination, encourage economic self-sufficiency, and increase business activity and employment on and around the Colville Reservation and on and around other lands held in trust for the benefit of the Colville Tribes, including such lands in the North Half, the former Moses Columbia Reservation, the Tribes’ aboriginal areas, and elsewhere outside the boundaries of the Colville Reservation.

1.4 Leases Subject to Ordinance: Only those Business Site Leases of surface lands held in trust for the benefit of the Colville Tribes identified in a resolution duly enacted by the Colville Business Council shall be subject to this ordinance. Such Leases shall not be effective until the date identified in the duly enacted Tribal Resolution. All other Leases shall proceed through the default BIA review and approval process.

1.5 Short Title. This Ordinance shall be known and cited as the “Confederated Tribes of the Colville Reservation HEARTH Act Business Lease Ordinance.”

1.6 Applicable Law. Except where otherwise required by agreement or applicable law, the Colville Business Council shall manage all Leases pursuant to this Ordinance. The law that will apply to all Leases authorized under this Ordinance will be in the following order: the laws, regulations, and ordinances of the Colville Tribes and any applicable federal regulations.

CHAPTER TWO DEFINITIONS

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 assignee acquires all or some of the Lessee’s rights and assumes all or some of the Lessee’s obligations under a Business Site Lease.
- (b) “*Best Interest of the Tribes*” 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, increase employment and jobs on the Tribal Land, and preserve the sovereignty of the Colville Tribes.
- (c) “*BIA*” means the Bureau of Indian Affairs, United States Department of the Interior.
- (d) “*Business Site Lease(s)*” means the same as “Lease.”
- (e) “*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.
- (f) “*Development Period*” means the period from when a Lease is executed to when improvements are expected to be substantially completed.
- (g) “*Environmental Review Process*” means the process for conducting tribal environmental review to assess whether a proposed development or project as defined under applicable Tribal law or regulations will have a Significant Effect on the Environment.
- (h) “*Environmental Reviewer*” means the Tribes’ Integrated Resources Management Plan (IRMP) Coordinator, or his or her designee, or any other individual otherwise designated by the Colville Business Council.
- (i) “*Executing Official*” means the Director of the Tribal Realty Department, who shall execute all Business Site Leases of the Colville Tribes and take all necessary and proper action on Leases and Subleases, including amendments, modifications, Assignments and cancellations of Leases and Subleases.
- (j) “*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; the Lessee and Lessor each acting prudently and knowledgeably, and assuming

consummation of a Lease contract as of a specified date and the passing of the leasehold from Lessor to Lessee under conditions whereby:

- (i) Lessee and Lessor are typically motivated;
 - (ii) Both parties are well-informed or well-advised, and acting in what they consider their best interests;
 - (iii) A reasonable time is allowed for exposure in the open market;
 - (iv) The rent payment is made in terms of cash in United States dollars, and is expressed as an amount per time period consistent with the payment schedule of the Lease contract; and the rental amount represents the normal consideration for the property leased unaffected by special fees or concessions granted by anyone associated with the transaction.
- (k) “*Holdover*” means circumstances in which a Lessee remains in possession of the leased premises after the Lease term expires.
- (l) “*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. 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.
- (m) “*Leasehold Mortgage*” means a mortgage, deed of trust, or other instrument that pledges a Lessee's leasehold interest as security for a debt or other obligation owed by the Lessee to a lender or other mortgagee.
- (n) “*Leasing Decision*” means the following type of lease transactions that will be acted on by the Tribal Realty Department: lease issuance, lease amendment or modification, subleasing, lease assignment or transfer and tenant leases.
- (o) “*Lessee*” means a person or entity who has acquired a legal right to possess Tribal Land by a Lease pursuant to this Ordinance.
- (p) “*Lessor*” means the Tribal Realty Department, on behalf of the Tribes, who holds property title and conveys the right to use and occupy the property under a Lease.
- (q) “*Land Title and Records Office*” or “*LTRO*” means the office within the Bureau of Indian Affairs charged with the Federal responsibility to record, provide custody, and maintain records that affect titles to Indian lands, to examine titles, and to provide title status reports for such land.
- (r) “*Project*” means the activity contemplated by the proposed Lease.
- (s) “*Public*” for the purposes of the Environmental Review Process means the enrolled members of the Colville Tribes and other individuals that have a concrete interest that may reasonably be affected by a proposed Lease.

- (t) “*Restricted Land*” means any tract held by the U.S. in restricted status for the benefit of the Tribes.
- (u) “*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, as determined by the Director of the Environmental Trust Department.
- (v) “*Space Lease*” means a Lease of space within existing facilities on Tribal Land that is not already leased, i.e., not Subleases.
- (w) “*Sublease*” means a written agreement by which the Lessee grants to an individual or entity a right to possession no greater than that held by the Lessee under a Business Site Lease.
- (x) “*Tribal Land*” means the surface estate of any tract of land held by the United States in trust or restricted status for the benefit of the Colville Tribes.
- (y) “*Tribal Realty Department*” means the administrative department of the Colville Tribes that carries out realty transactions on the Tribes’ behalf, including those tribal personnel that perform BIA realty functions under a contract, compact, cooperative agreement, or other instrument under the Indian Self-Determination and Education Assistance Act of 1975. The Director of the Tribal Realty Department has the authority to perform the duties and responsibilities of the Lessor on behalf of the Tribes, and to approve or disapprove leasing transactions, which include but are not limited to: lease issuance, bond, lease amendment or modification.
- (z) “*Trust or Restricted Land*” means any tract held by the U.S. in trust or restricted status for the benefit of a tribe.
- (aa) “*Trust or Restricted Status*” means that the U.S. holds title to the tract in trust for the benefit of a tribe; or a tribe holds title to the tract, but can alienate or encumber it only with the approval of the U.S. because of limitations in the conveyance instrument under Federal law or limitations in Federal law.

CHAPTER THREE BUSINESS SITE LEASE REQUIREMENTS

3.1 Terms and Conditions. Leases shall be governed by the terms and conditions set forth in the Business Site Lease agreement, this Ordinance, and applicable law. The terms and conditions may be modified only with the approval of the Office of the Colville Business Council, its designee, or the Office of the Reservation Attorney. The Lessee is responsible for understanding these terms and conditions.

3.2 Duration and Renewal. No Lease shall be approved more than 12 months prior to the commencement of the term of the Business Site Lease. The term 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. If the Lease includes an option to renew, the Lease must specify:

(1) The time and manner in which the option must be exercised or is automatically effective;

(2) That confirmation of the renewal will be submitted to the Tribal Realty Department, unless the lease provides for automatic renewal;

(3) Whether Colville Tribes' consent to the renewal is required;

(4) That the Lessee must provide notice of the renewal to the Colville Tribes and any sureties and mortgagees;

(5) The additional consideration, if any, that will be due upon the exercise of the option to renew or the start of the renewal term; and

(6) Any other conditions for renewal (e.g., that the Lessee is not in violation of the lease at the time of renewal).

The Lessee shall notify the Tribal Realty Department of the intent to renew, at least one year before such Lease is due to expire.

3.3 Obtaining a Business Site Lease. Information on obtaining a Business Site Lease shall be available from the Director of the Tribal Realty Department, or his or her designee.

(a) All applicants for a Business Site Lease shall submit the following documents to the Tribal Realty Department:

(i) financial statements, sufficient to inform the Colville Business Council of the economic position of the applicant, including but not limited to bank statements dating back twenty-four (24) months;

(ii) site survey and legal description, if applicable;

(iii) tribal environmental review where required under Chapter 7 of this Ordinance; and

(iv) other documents as may be required by the Tribal Realty Department and pursuant to the Tribal Realty Department's Business Site Leasing procedures.

(b) All Business Site Leases shall contain, at a minimum, the following provisions:

- (i) a legal description of the land that meets the requirements of the Land Title Records Office and, at the request of the Land Title Records Office, any additional information needed by the LTRO to enable the LTRO to ascertain the location of the land;
 - (ii) The purpose of the Lease and authorized uses of the leased premises;
 - (iii) The parties to the Lease;
 - (iv) The term of the Lease and the effective date of the Lease;
 - (v) Identification of the responsible party for constructing, owning, operating, removing, and maintaining any improvements to the leased premises;
 - (vi) Indemnification and hold-harmless provision in favor of United States and the Tribes, as Lessor;
 - (vii) Payment requirements, acceptable forms of payments, and provisions relating to late payments, including interest and penalties;
 - (viii) Unless otherwise provide for in the Lease, the Lessee shall make payments directly to the Tribal Realty Department using an acceptable form of payment listed in Section 3.7(f) of this Ordinance;
 - (ix) Due diligence, insurance and bonding requirements as provided in this Section; and
 - (x) All powers of the Tribal Realty Department that are necessary and proper to enforce the Lease terms, laws, ordinances, regulations, rules, policies, and covenants, consistent with their business site leasing management plans. This includes the power to enter the premises at a reasonable time, with or without notice, assess penalties, and assess late payments.
- (c) The Colville Business Council shall approve or disapprove a Lease within sixty (60) days of receiving a complete Business Site Lease application. Following Colville Business Council approval of a Lease, the Tribal Realty Department shall record Business Site Leases, Subleases, Assignments, amendments, encumbrances, renewals, modifications, and cancellations with:
- (i) Land Title and Records Office
Confederated Tribes of the Colville Reservation
P.O. Box 150
Nespelem, WA 99155
 - (ii) The Tribal Realty Department is responsible for maintaining all records of all Business Site Leases and for disseminating recorded lease documents to the Colville Business Council, the Environmental

Trust Department, the Office of the Reservation Attorney, and if required by the Colville Business Council, to the Colville Indian Housing Authority.

- (iii) The Tribal Realty Department shall send a copy of these Leases and all amendments and renewals for information purposes only, to: Superintendent, Colville Indian Agency, Bureau of Indian Affairs, Post Office Box 111, Nespelem, WA 99155-0111.
 - (iv) The Tribal Realty Department shall send a copy of this Ordinance and a Lease that allows for lease payments directly to the Colville Tribes to: Superintendent, Colville Indian Agency, Bureau of Indian Affairs, Post Office Box 111, Nespelem, WA 99155-0111.
- (c) Records of activities taken pursuant to this Ordinance are the property of the United States, the Tribal Realty Department, and the Tribes' Records compiled, developed, or received by the Tribal Realty Department in the course of business with the Secretary are the property of the Tribes.
- (d) A Lease may include, consistent with tribal law, a provision to give Indian preference in hiring for employment purposes.

3.4 Space Leases. To the extent these Leases require approval pursuant to federal laws and policies, Space Leases shall be reviewed and approved pursuant to this Ordinance.

3.5 Land Descriptions. Business Site Leases shall contain a legal description of the land that meets the requirements of the Land Title Records Office. Space Leases shall contain adequate descriptions of the location and square footage of the space being leased and may include renderings, architectural drawings, or other schematics to illustrate the location of the space.

3.6 Appraisal; Local Studies.

(a) The Fair Annual Lease Value shall be determined by an appraisal or equivalent procedure performed by the Tribal Realty Department 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 Tribal Realty Department and deemed to be in the best interest of the Colville Tribes. An appraisal log reporting the methods of appraisal and value of Tribal Land shall be attached to every Business Site Lease.

(b) Alternatively, the Fair Annual Lease value shall be determined by an appraisal performed by a licensed appraiser utilizing the Uniform Standards of Professional Appraisal Practice or commonly accepted method of appraisal. An appraisal log describing the method of appraisal and value of Tribal Land and shall be attached to every Business Site Lease.

3.7 Fair Annual Lease Value.

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

- (i) The Lease is in the Development Period;
 - (ii) The Lessee is the Colville Tribal Federal Corporation or any other business entity established by the Colville Business Council for the benefit of the Tribes, and any of their affiliates or subsidiaries, provided the Colville Business Council determines the Lease is in the Best Interest of the Tribes; or
 - (iii) The Colville Business Council has negotiated compensation satisfactory to the Tribes, has waived valuation, and has determined that accepting such negotiated compensation and waiving valuation is in its best interest..
- (b) A Lease may be structured at a flat lease rate.
- (c) A Lease may be structured at a flat lease rate plus a percentage of gross receipts.
- (d) A Lease may be structured based on a percentage of gross receipts, or based on a market indicator.
- (e) A Lease must specify the dates on which all payments are due.
- (f) A Lease must specify that the Lessee shall make payments directly to the Tribal Realty Department using an acceptable form of payment. Acceptable forms of payment include money orders, personal checks, certified checks, or cashier's checks.
- (g) Unless otherwise provided in the Lease, payments may not be made or accepted more than one year in advance of the due date.
- (h) The Lease may provide for periodic review and such review may give consideration to the economic conditions, exclusive of improvement or development required by the contract or the contribution value of such improvements.
- (i) Leases 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.
- (j) Leases may be amended to allow for lease rate adjustments.
- (k) The Tribal Realty Department shall keep written records of the basis used in determining the Fair Annual Lease value, as well as the basis for adjustments. These records shall be presented to the Lessee for its review and acceptance or non-acceptance and included in any lease file.

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

3.9 Insurance and Indemnification.

- (a) A Lessee shall provide insurance necessary to protect the interests of the Colville Tribes and in amounts sufficient to protect all insurable improvements on the premises. The insurance may include, but is not limited to, property, liability or casualty insurance or other insurance as specified in the Business Site Lease. The Colville Tribes and the United States must be identified as additional insured parties. The Tribal Realty Department may waive this requirement if the waiver is in the best interest of the Tribes. The waiver may be revoked at any time if the waiver ceases to be in the Tribes' best interest.
- (b) Unless the Lessee would be prohibited by law from doing so, the Lease must also contain the following provisions:
 - (1) The Lessee holds the United States and the Colville Tribes harmless from any loss, liability, or damages resulting from the Lessee's use or occupation of the leased premises; and
 - (2) The Lessee indemnifies the United States and the Colville Tribes 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 material from the leased premises that occurs during the lease term, regardless of fault, with the exception that the Lessee is not required to indemnify the Colville Tribes for liability or cost arising from the Colville Tribes' negligence or willful misconduct.

3.10 Performance Bond.

- (a) Unless waived in writing by the Colville Business Council 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 and may guarantee the annual lease payment, the estimated development cost of improvements; and any additional amount necessary to ensure compliance with the Lease.

If a performance bond is required—

- (1) the Lease must state that the Lessee must obtain the consent of the surety for any legal instrument that directly affects their obligations and liabilities; and

- (2) The performance bond or other security instrument must require the surety to provide notice to the Tribal Realty Office at least 60 days before canceling a performance bond or other security. This will allow the Tribal Realty Department to notify the Lessee of its obligation to provide a substitute performance bond or other security and require collection of the bond or security before the cancellation date. Failure to provide a substitute performance bond or security is a violation of the Lease.
- (b) The Colville Business Council may waive the bond requirement, or reduce the amount, if it determines that doing so is in the Best Interest of the Colville Tribes. The Tribal Realty Department shall maintain written records of waivers and reductions.
 - (c) The performance bond may be in one of the following forms:
 - (1) Certificates of deposit issued by a federally insured financial institution authorized to do business in the United States;
 - (2) Irrevocable letters of credit issued by a federally insured financial institution authorized to do business in the United States;
 - (3) Negotiable Treasury securities; or
 - (4) Surety bond issued by a company approved by the U.S. Department of the Treasury.

3.11 Improvements. All Business Site Leases shall require the Lessee to exercise due diligence and best efforts to complete construction of any improvements within the schedule specified in the Business Site Lease.

- (a) Lessee, at Lessee's expense or as otherwise provided in the Business Site Lease, may construct improvements under a Business Site Lease if the Lease specifies, or provides for the development of:
 - (i) a plan that describes the type and location of any improvements to be built by the Lessee; and
 - (ii) a general schedule for construction of the improvements.
- (b) Lessee shall provide the Tribal Realty Department 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 Tribal Realty Department or otherwise required in the Business Site Lease, Lessee shall further provide the Tribal Realty Department, in writing, an updated schedule for construction.

- (d) Failure of the Lessee to comply with these requirements will be deemed a violation of the Business Site Lease and may lead to cancellation of the Business Site Lease pursuant to Chapter 5 of this Ordinance.
- (e) Improvements to the premises shall become the property of the Colville Tribes unless otherwise provided for in the Business Site Lease. If improvements will be removed, the Business Site Lease must specify the Lessee's responsibility for such removal, the maximum time allowed for such removal, and the Lessee's obligations to restore and reclaim the property to conditions acceptable to the Tribes.
- (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 Colville Business Council has a right of first refusal to purchase the interest.
- (g) The Business Site Lease may provide that at expiration, cancellation, or termination of the Business Site Lease, the Lessor shall purchase improvements to the premises at fair market value. Any Business Site Lease that includes this provision shall also include a depreciation schedule.
- (h) Improvements may be subject to taxation by the Colville Tribes.

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 Tribal Realty Department and Lessee and shall not be effective until approved by the Colville Business Council.
- (b) The Business Site Leases may authorize Subleases and Assignments, in whole or in part, with the written approval of the Colville Business Council, provided a copy of the Sublease or Assignment is provided to the Tribal Realty Department 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.

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 Lease may authorize encumbrances to the leasehold interest for the purpose of financing to develop and improve the premises subject to approval by the Tribal Realty Department and execution from the Executing Official.
- (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 Tribal Realty Department 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 Tribal Realty Department and execution from the Executing Official is required, provided the purchaser agrees in writing to be bound by all terms and conditions of the Lease.

CHAPTER FOUR BUSINESS LEASE MANAGEMENT

4.1 Management generally: Except where required otherwise by the terms of the Lease, applicable law, or the Colville Business Council, the Tribal Realty Department shall manage all Business Site Leases pursuant to this Ordinance. The terms of the Environmental Review Process shall be managed by the Environmental Reviewer.

4.2 Administrative Fees. The Tribal Realty Department may charge administrative fees for costs associated with issuing a Lease, Sublease, Assignment, amendment, mortgage or other administrative transaction.

CHAPTER FIVE ENFORCEMENT

5.1 Generally. Following approval of a Lease by the Colville Business Council, the Tribal Realty Department shall have all powers necessary and proper to enforce the Lease terms, laws, ordinances, regulations, rules, policies, and covenants, consistent with their business site leasing management plans. This includes the power to enter the premises at a reasonable time, with or without notice, assess penalties, and assess late payments. The obligations of the Lessee and its sureties to the Colville Tribes are also enforceable by the United States, so long as the land remains in trust or restricted status.

5.2 Default.

- (a) The Lessee is in default if:
 - (i) The Lessee has failed to make payments required by the Lease; or
 - (ii) The Lessee is otherwise in breach of the terms of the Lease or any other requirement of this Ordinance.
- (b) If the Tribal Realty Department determines the Lessee is in default, the Tribal Realty Department shall send the Lessee a notice of default within five (5) business days of the determination. The notice of default may be provided by certified mail, return receipt requested.

- (c) Within ten (10) days of the mailing, the Lessee shall:
 - (i) Cure the default and notify the Tribal Realty Department in writing that the default has been cured.
 - (ii) Dispute the Tribal Realty Department'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.

- (a) If the Lessee fails to cure the default within the prescribed period, the Tribal Realty Department may:
 - (i) Cancel the Lease pursuant to these regulations: Additionally, the BIA may, upon reasonable notice from the Tribes and at the discretion of the BIA, enter the leased premises for inspection and enforce the provisions of, or cancel, any Lease executed by the Tribes;
 - (ii) Grant an extension of time to cure the default;
 - (iii) Pursue other remedies, including execution on bonds, collection of insurance proceeds, or use of collateral under Section 5.8 of this Ordinance;
 - (iv) Any combination of remedies listed above; or
 - (v) Any other remedy set forth in the business site lease management plan or policy.
- (b) If the Tribal Realty Department cancels a Business Site Lease, the Tribal Realty Department 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. The cancellation letter shall:
 - (i) Explain the grounds for cancellation;
 - (ii) Notify the Lessee of unpaid amounts, interest charges or late payment penalties due under the Lease;
 - (iii) Notify the Lessee of its right to appeal; and
 - (iv) Order the Lessee to vacate the premises within thirty (30) days of mailing of receipt of the cancellation letter, if an appeal is not filed by that time.
- (c) A cancellation shall become effective thirty (30) days after mailing. The filing of an appeal shall not change the effective date of the cancellation.

Pending the outcome of an appeal, the Lessee shall make all requisite payments, as well as comply with the terms of the Lease.

- (d) If the Tribal Realty Department 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 Tribal Realty Department, 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 Tribal Realty Department may take appropriate emergency action. The BIA may, upon reasonable notice from the Tribes and at the discretion of the BIA, enter the leased premises for inspection and enforce the provisions of, or cancel, any Lease executed by the Tribes.

5.6 Holdover. If a Lessee remains in possession after the expiration or cancellation of a Lease, the Tribal Realty Department shall treat such occupation as a trespass. The Tribal Realty Department shall act to recover possession and pursue additional remedies. Filing shall be pursuant to Tribal laws, or alternatively, the Tribal Realty Department may make a written request sent by certified mail to the BIA for resolution under any applicable federal laws.

5.7 Trespass. If a person occupies the premises without the Tribal Realty Department's approval, the Tribal Realty Department or the Colville Business Council may pursue appropriate remedies, including the filing of a trespass action to regain possession under tribal law.

5.8 Use of Collateral to Satisfy Obligations. The Colville Tribes may hold, convert and apply toward unpaid balances, or otherwise utilize the assets of a Lessee or person to satisfy any applicable provision of this Section 5.

CHAPTER SIX APPEALS

6.1 Appeals. The Lessee or interested party may appeal a determination of the Tribal Realty Department, within ten (10) days of the determination. Appeals may be filed with the Colville Tribal Court or other hearing body or entity designated by the Colville Business Council. 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 Colville Tribal Court or other hearing body designated by the Colville Business Council 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 Colville Tribal Court or other hearing body shall be final and shall not be subject to appeal. The BIA shall have discretionary authority to review a determination of the Tribal Realty Department once the Lessee or interested party has exhausted the Tribes' appeal process.

CHAPTER SEVEN ENVIRONMENTAL REVIEW PROCESS

7.1 Generally. Unless exempt under this Chapter, the Tribal Realty Department shall not submit a Business Site Lease to the Colville Business Council for review and approval until the proposed Business Site Lease has completed the Environmental Review Process, administered by the Environmental Reviewer and pursuant to this Chapter and applicable Tribal regulations. Leases approved and executed without compliance with this Chapter shall be null and void.

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 might be expected to have a Significant Effect on the Environment, 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. If historic properties, archeological resources, human remains, or other cultural items not previously reported are encountered during the course of any activity associated with the Lease, all activity in the immediate vicinity of the properties, resources, remains, or items will cease and the Lessee will contact the Tribal Realty Department to determine how to proceed and appropriate disposition.
- (c) **Other Exemptions.** The Environmental Review Process shall not apply to any Business Site Lease where such review is exempt under any other applicable federal law, regulation, or administrative authority.

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 Tribal Realty Department may not

consider the Leasing Decision until the Environmental Reviewer closes the Environmental Review Process in accordance with this Ordinance.

7.4 Environmental Review Process.

- (a) Unless an exemption applies or a Lease is otherwise not subject to the Environmental Review Process, then, before the execution of any Business Site Lease, the Environmental Trust Department shall cause to be prepared a tribal environmental impact report (“TEIR”), that analyzes the potentially significant effects of the proposed action on the environment; provided, however, that information or data that 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 include a detailed statement setting forth all of the following:
- (i) A description of the physical environmental conditions near the Project (the environmental setting and existing baseline conditions), as they exist at the time the notice of preparation is issued;
 - (ii) All Significant Effects on the Environment of the proposed Lease; (iii) In a separate section:
 - (1) Any Significant Effect on the Environment that cannot be avoided if the Lease is 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 Lease 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 Environmental Trust Department shall file a copy of the draft TEIR and a Notice of Completion with the Tribes. The Environmental Trust

Department shall also post the Notice of Completion and a copy of the draft TEIR on the Tribes' website. The Notice of Completion shall include 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 Tribes will receive comments on the draft TEIR.
- (b) To satisfy the requirement for public notice and opportunity to comment under this Ordinance, the Environmental Trust Department will provide public notice by the procedures specified below:
- (i) Publication of the draft TEIR in on the Tribes' public website; or
 - (ii) Publication of the Tribes' draft TEIR in the Tribal Tribune.

7.6 Response to Public Comments. After the thirty (30) day comment period has ended, the Environmental Trust Department will review all comments received from the Public. Prior to the approval and execution of the Business Site Lease, the Environmental Reviewer will provide written reports detailing the 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. Such written report shall include a restoration and reclamation plan, as approved by the Tribes. Upon completion of the Environmental Review Process, the Environmental Trust Department's written reports and final decision shall be posted on the Tribes' public website as notice to the Public.

CHAPTER EIGHT SOVEREIGN IMMUNITY

Nothing in this Ordinance shall be deemed to waive the sovereign immunity of the Colville Tribes or any of its enterprises, authorities, officers, agents, or employees.

CHAPTER NINE SEVERABILITY

If any provision of this Ordinance, or the application thereof to any person or circumstance, shall be held unconstitutional or invalid by the Colville Tribal Court or any other court of

competent jurisdiction, only the invalid provision shall be severed and the remaining provisions and language of this Ordinance shall remain in full force and effect.

CHAPTER TEN
EFFECTIVE DATE; AMENDMENT

This Ordinance shall take effect upon its adoption by the Colville Business Council and approval by the Secretary of the Interior and may be amended by the Colville Business Council. All substantive amendments to this Ordinance must be submitted to and approved by the Secretary of the Interior.