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CHEROKEE COUNCIL HOUSE
CHEROKEE, NORTH CAROLINA

Date: JAN 12 2023

ORDINANCE NO. 487 (2023)

An ordinance amending C.C. § 47D-10 governing performance bonds in Tribal commercial leases.

WHEREAS, federal regulations, at 25 CFR § 162.434, require lessees in Tribal business leases to furnish a performance bond to ensure the performance of certain obligations expressed in the lease, such as the payment of rent to the lessor Tribe; and

WHEREAS, the same regulations state that the Secretary of Interior may waive the performance bond requirement if the Tribe has determined that the waiver is in the best interests of the Tribe, and the Secretary is required to defer, to the maximum extent possible, to the Tribe's determination on this issue; and

WHEREAS, Tribal law does not allow the Tribe to benefit from the options available in the federal regulations. C.C. § 47D-10 states that where a rental bond is required by federal regulations, neither Tribal Council nor any Council committee shall have any authority to postpone, suspend, or waive the rental bond; and

WHEREAS, C.C. § 47D-10 should be amended allow the Tribe to take advantage of the flexibility provided in the federal regulations for performance bonds by clarifying when and in what form performance bonds are required, what form of rental bond is acceptable, alternatives, and to state that performance bonds may be waived if the Tribe determines that the waiver is in the Tribe's best interest.

NOW THEREFORE BE IT ORDAINED by the Eastern Band of Cherokee Indians in Tribal Council assembled, at which a quorum is present, that § 47D-10 shall be amended to read as follows:

Sec. 47D-10. - ~~Lease rental bonds~~ Performance bonds in business leases.

~~Where security in the form of a rental bond on properties leased by the Tribe is required by federal regulations, neither the Tribal Council nor any Council committee shall have authority to postpone, suspend or waive a rental bond.~~

(a) For the purposes of this section, the term "performance bond" means security provided by the lessee for the performance of certain business, industrial, or commercial obligations in a lease including, but not limited to, the payment of rent, or a guaranty provided by a third-party surety for such performance.

- 1 (b) If the Tribe is the sole lessor in the lease and determines that a performance bond shall be
2 required in a business lease, such requirement shall be approved, individually or as part of
3 a lease, by the Tribal Business Committee. If the Tribe requires a performance bond for
4 the payment of rent and the lease requires payment of rent in intervals that are less than
5 once a year, the rental bond shall be not less than three months of the required rent. If the
6 lease requires rent to be paid once a year, the performance bond for the payment of rent
7 shall not be less than the annual required rent amount.
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- 9 (c) If the Tribe is the sole lessor in the lease, the Tribe may, through the Tribal Business
10 Committee, suspend, postpone, or waive a performance bond if the Tribe determines that
11 the waiver is in its best interest.
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- 13 (d) If the Tribe is not the sole lessor in a lease but is a co-lessor, and the parties to the lease
14 agree to postpone, suspend, or waive a performance bond, the Tribe may, through the
15 Tribal Business Committee, suspend, postpone, or waive the bond.
16
- 17 (e) Subject to subsection (f), if a performance bond is required, it must be provided in one or
18 more of the following forms of security:
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- 20 (1) Certificates of deposit issued by a federally insured financial institution authorized
21 to do business in the United States;
22 (2) Line of credit issued by a federally insured financial institution authorized to do
23 business in the United States;
24 (3) Negotiable Treasury securities; or
25 (4) Surety bonds issued by a company approved by the U.S. Department of the
26 Treasury.
27
- 28 (f) The Tribe may accept other forms of security, in the alternative to those forms identified
29 in subsection (e), if the Tribal Business Committee determines that the alternative form
30 provides adequate protection to the Tribe and is in the Tribe's best interest.
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32 BE IT FINALLY ORDAINED that all ordinances that are inconsistent with this ordinance are
33 rescinded, and that this ordinance shall become effective when ratified by the
34 Principal Chief.
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36 *Submitted by Chris McCoy, Secretary of Commerce.*