

**STRENGTHENING TRIBAL CONTROL OVER TRIBAL LANDS THROUGH THE HELPING EXPEDITE AND  
ADVANCE RESPONSIBLE TRIBAL HOMEOWNERSHIP (HEARTH) ACT: A Guidebook for  
Implementing Tribal Leasing Codes under the HEARTH Act Requirements**

**BRYAN J. VAN STIPPEN<sup>~</sup>**

*The HEARTH Act promotes greater tribal self-determination by allowing tribes to more quickly and easily lease their lands which, in turn, allows for greater tribal control over tribal lands to promote community development and encourage economic growth in Indian Country. Under the Act, tribes have the opportunity to develop and implement their own regulations governing leasing on tribal trust lands. Upon Secretarial approval of tribal regulations, tribes will have the authority to process land leases without Bureau of Indian Affairs approval. This new authority has the potential to significantly reduce the time it takes to approve leases for homes and small businesses in Indian Country.*

---

<sup>~</sup> Van Stippen is an enrolled member of the Oneida Nation of Wisconsin. He is employed by the Ho-Chunk Nation Legislature as a Legislative Attorney and sits on the Board of Directors for the National Tribal Land Association ([www.ntla.info](http://www.ntla.info)). Van Stippen received his J.D. from the University of North Dakota School of Law and his LL.M. in American Indian and Indigenous Law from the University of Tulsa College of Law. He would like to thank Professors Melissa Tatum and Robert Hershey of the University of Arizona College of Law for all of their assistance with the development of this Guidebook and a special thank you to Professor G. William Rice of the University of Tulsa College of Law for his guidance, time, and support through the process of the development of this Guidebook. Finally, and most importantly, a special dedication to his wife, Colleen, and daughter, Charlotte, for their support and willingness to pick up roots and move around the globe as he pursued his educational opportunities.

## TABLE OF CONTENTS

I.	Introduction .....	Page 1
II.	History of Leasing on Tribal Lands .....	Page 1
III.	The HEARTH Act .....	Page 5
	A. The Navajo Nation and the Leasing Process .....	Page 6
	B. Statutory Requirements .....	Page 7
	C. Concerns with Implementing the HEARTH Act .....	Page 9
IV.	Establishing a Tribal Land Titles and Records Office .....	Page 11
	A. Contracting and Compacting .....	Page 11
	B. Functions of the BIA LTRO .....	Page 12
	C. Tribal LTRO: Risk vs. Reward .....	Page 14
V.	Conclusion .....	Page 16
	Model Leasing Code Pursuant to the HEARTH Act Resolution .....	Page 17
	Model Agricultural Leasing Code .....	Page 18
	Model Agricultural Trust Land Lease .....	Page 34
	Model Business Site Leasing Code .....	Page 43
	Model Business Site Land Lease .....	Page 63
	Model Residential Leasing Code .....	Page 76
	Model Residential Land Lease .....	Page 93
	Model Submission Letter .....	Page 101
	Model PL 93-638 Contact Agreement Resolution .....	Page 102
	Model PL 93-638 Contract Agreement .....	Page 103
	Model Register of Deeds Job Description .....	Page 109
	Model Leasing Specialist Job Description .....	Page 110
	Model Land Titles and Records Specialist Job Description .....	Page 112
	Model Land Acquisition Specialist Job Description .....	Page 114
	Checklist .....	Page 116
	Appendix .....	Page 120

National Policy Memorandum

## **I. INTRODUCTION**

In July 2012, President Obama signed into law the Helping Expedite and Advance Responsible Tribal Homeownership Act<sup>1</sup> (hereinafter “HEARTH Act”). The HEARTH Act amends the Indian Long-Term Leasing Act of 1955<sup>2</sup> (hereinafter “Long-Term Leasing Act”) by allowing tribes to approve leases for enumerated purposes without prior approval of the Secretary of the Interior (hereinafter “Secretary”), assuming “the lease is executed under the tribal regulations approved by the Secretary.” The passage of the HEARTH Act provides tribal governments with a valuable tool, as it allows tribal nations to more quickly and easily lease their lands which, in turn, allows for greater tribal control to promote community development and encourage economic growth in Indian Country.

This Guidebook is designed to assist tribal nations who wish to implement the authority restored to them by the HEARTH Act. To understand the full scope and impact of the HEARTH Act, it is necessary to understand the background and history leading up to the passage of the HEARTH Act. Accordingly, this Guidebook first explores both the general history of leasing tribal lands and the specific history of the HEARTH Act itself. The Guidebook then examines each section of the HEARTH Act, before turning to a discussion of the implementation process. The core of this Guidebook is found in its appendices, which provide model codes, regulations, and other templates for documents tribes will need to develop as part of implementing the HEARTH Act.

## **II. HISTORY OF LEASING OF INDIAN LANDS**

As a result of federal Indian policy, approximately 326 tribal land areas exist in the United States administered as federal Indian reservations including reservations, pueblos, rancherias, missions, villages, and other tribal communities. The United States Department of the Interior (hereinafter “DOI”) holds approximately 56 million acres of these lands in trust for tribal nations and individual Indians. The DOI, through the Bureau of Indians Affairs (hereinafter “BIA”), generally must approve leases of these tribal lands. Understanding how this approval requirement

---

<sup>1</sup> 25 U.S.C. § 415 (2012).

<sup>2</sup> 69 Stat. 539 (codified at 25 U.S.C. § 415 et seq).

came into being requires an examination of the history of Federal Indian policy and the regulation of tribal lands.

One of the first enactments relating to the acquisition of tribal lands was the Indian Trade and Intercourse Act, originally enacted in 1790<sup>3</sup> “(hereinafter “Non-Intercourse Act”), The Non-Intercourse Act was intended to restrain the ability of tribal nations to lawfully alienate their lands without federal approval. Specifically, Section 4 stated:

That no sale of lands made by any Indians, or any nation or tribe of Indians the United States, shall be valid to any person or persons, or to any state, whether having the right of pre-emption to such lands or not, unless the same shall be made and duly executed at some public treaty, held under the authority of the United States.

Although this section restricted tribal nation’s rights to alienate their lands, that restriction necessarily implied that such a right of alienation existed and that tribal nations possessed the right.

<sup>4</sup> This general policy restraining the ability of tribal nations to lawfully alienate their lands without federal approval encompassed the leasing of Indian lands and has persisted ever since.<sup>5</sup>

Although the Non-Intercourse Act addressed tribal control over land, it was not until a century later that Congress passed the first statutes relating specifically to contracts and leases of tribal lands. Two of these statutes are of key relevance for this Guidebook. The first was enacted in 1871 and is known as 25 U.S.C. §81 (hereinafter “Section 81”), and the second was enacted in 1891 as part of an amendment to the General Allotment Act of 1887 “hereinafter “General Allotment Act”). Taking these in reverse order, the General Allotment Act provided:

That whenever it shall be made to appear to the Secretary of the Interior that, by reason of age or other disability, any allottee under the provisions of said act, or any other act or treaty cannot personally and with benefit to himself occupy or improve his allotment or any part thereof the same may be leased upon such terms, regulations, and conditions as shall be prescribed by such Secretary, for a term not exceeding three years for farming or grazing, or ten years for mining purposes:

Provided, That where lands are occupied by Indians who have bought and paid for the same, and which lands are not needed for farming or agricultural purposes, and are not desired for individual allotments, the same may be leased by authority of

---

<sup>3</sup> 25 U.S.C. § 177 (1790).

<sup>4</sup> *The HEARTH Act: Transforming Tribal Land Development*. Bryan Newland. The Federal Lawyer, April 2014, p 67-71.

<sup>5</sup> *Id.*



the Council speaking for such Indians, for a period not to exceed five years for grazing, or ten years for mining purposes, in such quantities and upon such terms and conditions as the agent in charge of such reservation may recommend, subject to the approval of the Secretary of the Interior.<sup>6</sup>

The General Allotment Act's requirement that the Secretary approve leases remained a staple of federal laws governing the leasing of Indian lands for the next century which is referred to as the "secretarial approval requirement."<sup>7</sup>

That centrality secretarial approval is reinforced by Section 81, initially passed in 1871 and amended in key respects in 2001. Section 81 was adopted in an era of federal Indian policy that was based on paternalism. Intended to protect tribal interests in real property, section 81 has been applied to contracts for rendering services that have some sort of "connection" with the tribal land, though determining the nature and extent of that connection has proven to be controversial.<sup>8</sup> The stakes in making that determination are high because a failure to follow section 81, if it applies to a contract, can result in termination of the contract and disgorgement of payments made under it.<sup>9</sup>

Section 81, therefore, is utilized when there is a claim, lien, charge, right of entry, or liability to real property and may include leasehold mortgages, easements, or other contracts that could give a third party exclusive or nearly proprietary control over tribal land.<sup>10</sup> It requires that certain contracts with tribal nations, usually associated with economic development opportunities with non-tribal partners, be approved by the Secretary if the contract allows for an encumbrance on tribal land that is for seven (7) years or more.<sup>11</sup> In such situations, the real property security interest may be a mortgage of a ground lease, because a mortgage may not be taken on the trust land.<sup>12</sup> The ground lease mortgage must be approved under federal regulations governing leases of Indian land (25 C.F.R. part 162).<sup>13</sup> Other contracts, however, that are critical to the project and in which the lender may have a security interest, for instance, management agreements for hotels,

---

<sup>6</sup> Act of Feb. 28, 1891; 26 Stat. 795, § 3.

<sup>7</sup> *Supra* note 4 at 67.

<sup>8</sup> Contracting with Tribes Under 25 U.S.C. § 81: The Uncertainty Continues. Mark A. Smith *available at* [http://www.americanbar.org/publications/probate\\_property\\_magazine\\_home/probate\\_2006\\_index/probate\\_mar\\_apr\\_2006\\_index/rppt\\_publications\\_magazine\\_2006\\_ma\\_smith.html](http://www.americanbar.org/publications/probate_property_magazine_home/probate_2006_index/probate_mar_apr_2006_index/rppt_publications_magazine_2006_ma_smith.html).

<sup>9</sup> *Id.*

<sup>10</sup> Decision Letter from Arch H. Wells, Regional Director BIA (Feb. 7, 2002)

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Supra* note 8.

casinos, energy facilities, resorts, or any other on-reservation business, may also require section 81 approval.<sup>14</sup> It is important to note that some leases are specifically exempted per a 2011 amendment to Section 81 by 25 CFR §84.004(b) which states, “leases of tribal land that are exempt from approval by the Secretary under 25 U.S.C. 415 (Leases of restricted lands) or 25 U.S.C. 477 (Incorporation of Indian tribes; charter; ratification by election)”.

Congress continued to enact laws relating to leasing of tribal lands, with important steps occurring in 1955, 1970, and 2000. While trust lands are not alienable, they may be leased to Indians or non-Indians for a variety of purposes under applicable law, specifically the Indian Long-Term Leasing Act which, among other things, requires the approval of the Secretary for the leasing of Indian trust and restricted Indian lands for residential leases.<sup>15</sup> The Secretary is responsible for administering the land leasing process and any lease that is not approved by the Secretary is considered to be invalid.<sup>16</sup> Further, under the Indian Long-Term Leasing Act, the Secretary has authority to cancel leases if there are violations of lease terms and remains responsible for ensuring tenants meet their payment obligations to landowners and for ensuring tenant compliance with any operating requirements contained in the lease agreement.<sup>17</sup> The Secretary may also take “immediate action” to recover possession from trespassers operating without a lease, and may take “emergency action” to preserve the value of the land. 25 CFR §162.108. The Indian Long-Term Leasing Act, however, retained the longstanding secretary approval requirement.<sup>18</sup>

The secretarial approval process can be lengthy, taking months and sometimes years, which can hinder housing, infrastructure, and related economic development on trust lands. Thus, the Indian Long-Term Leasing Act has been subject to severe criticism for the statutory limits on lease terms as well as the time-consuming requirement that the Secretary review and approve lease agreements under the statute. Due to lengthy delays, and the desire by individual tribal nations for more authority and latitude in the leasing of their own lands, the Indian Long-Term Leasing Act relaxed federal restrictions on the ability of tribal nations and individual Indians to lease their lands

---

<sup>14</sup> *Id.*

<sup>15</sup> National American Indian Housing Council White Paper on Legislation to Amend the Indian Long Term Leasing Act of 1955. June 29, 2009 *available at* <http://www.naihc.net/uploads/hearth-act/1955-ACT-Background-Memo.pdf>.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

by extending the lease term up to twenty-five (25) years, which could be renewed for one additional twenty-five (25) year term.

In 1970, Congress enacted the first statute to expressly authorize tribal leasing without the secretarial approval requirement when it restored the authority of the Tulalip Tribes of Washington to enter into leases without Secretarial approval.<sup>19</sup> Under that statute, the tribe could enter into any lease “except a lease for the exploitation of any natural resource” for a period of up to 15 years without secretarial approval.<sup>20</sup> This restoration of authority for the Tulalip Tribe would set the stage for the Navajo Nation’s broader efforts to secure the ability to negotiate and enter into lease agreements and renewals of leases of trust lands without the requirement that the Secretary review and approve such leases. Those efforts, and the resulting statute, supplied the foundation for what would become the HEARTH Act and are explored more fully in the next section.

### **III. THE HEARTH ACT**

Prior to the passage of the HEARTH Act tribal nations struggled with leasing as the BIA approval would often take several years, hampering economic development and making home ownership in Indian country a difficult proposition. The HEARTH Act restores to tribal nations the authority to implement their own programs to approve leases for agricultural, business, residential, and other purposes, pursuant to the approval of the tribal regulations submitted to the Secretary.

The HEARTH Act amended the Indian Long-Term Leasing Act to extend to all federally recognized tribes the authority provided to the Navajo Nation, and certain other Congressionally-authorized tribes, to enter into leases pursuant to tribal regulation, and without the requirement of federal lease approval.<sup>21</sup> This section begins by exploring the statute relating to the Navajo Nation, and then turns to a discussion of the terms of the HEARTH Act.

---

<sup>19</sup> 25 U.S.C. § 415(b).

<sup>20</sup> *Supra* note 13.

<sup>21</sup> It took approximately six years for the leasing regulations of the Navajo Nation to receive approval. It took over a decade for regulations to be approved for the Tulalip Tribes.

## A. THE NAVAJO NATION AND THE LEASING PROCESS

In 2000, Congress enacted the Navajo Nation Trust Land Leasing Act<sup>22</sup> a statute whose purpose was, “[t]o authorize the Navajo Nation, pursuant to tribal leasing regulations, which must be approved by the Secretary, to lease Navajo trust lands without the approval of the Secretary of the Interior for the individual leases, except leases for exploration, development or extraction of any mineral resources.” The Navajo Nation Trust Land Leasing Act required the Navajo Nation to develop tribal leasing regulations governing such leases which are “consistent” with the DOI’s existing regulations governing the lease of tribal lands. The tribal leasing regulations needed to include an environmental review process that identifies and evaluates any “significant effects of the proposed action on the environment”; provides for public notice and opportunity to comment on environmental impacts of the proposed action; and requires the tribe to provide responses to “relevant and substantive” public comments before the tribal nation may approve the lease, before it could institute its own land leasing regime and, most importantly, eliminate the secretarial approval requirement.

In order to move toward the development of the tribal leasing regulations governing leases the Navajo Nation established a task force, which produced a first draft of the tribal leasing regulations in 2002.<sup>23</sup> The process of public comments and public hearings ensued, and the draft tribal leasing regulations were presented to the Navajo Nation Council for approval in 2005. On August 1, 2005, the Navajo Nation submitted the Navajo Nation Business Leasing Regulations to the Secretary for approval. On January 5, 2006, the BIA requested clarification on the Nation’s submittal of the leasing regulations.<sup>24</sup>

There were two contentious issues that the BIA was seeking clarification. The first issue was the Statute stated that the tribal regulations must be “consistent” with the Code of Federal Regulations. There was a disagreement in the interpretation of “consistent.” The Navajo Nation took the position this process was consistent and the inclusion of the BIA contradicted the intent of the Statute.<sup>25</sup>

---

<sup>22</sup> 25 U.S.C. §415(e.)P.L. 106-568, title XII, Sec. 1202 (Dec. 27, 2000)

<sup>23</sup> Tribal Land Leasing: Opportunities Presented by the HEARTH Act & the Newly Amended 162 Leasing Regulations by Karis Begaye, Attorney, Navajo Nation Department of Justice and Matthew C. Kirkland, Chief, Division of Real Estate Services, Office of the Deputy Director Trust Services.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

The second issue was determining how the BIA is to maintain its trust responsibility without having some kind of oversight or monitoring. The BIA had provided a rebuttal draft to Navajo Nation, reinserting the BIA into the leasing process. The Navajo Nation concluded that the intent of Congress was to give full authority to tribes as there was no involvement, approval, or monitoring by the BIA permitted in the Statute.<sup>26</sup>

On July 3, 2006, the Navajo Nation submitted a second draft in response to the rebuttal draft by BIA and removed all references to the BIA and Office of Special Trustee. On July 10, 2006, the Department of the Interior agreed that the intent of the Statute was to give full autonomy to tribes over leasing. On the same day, the Navajo Nation Business Leasing Regulations were signed by the Assistant Secretary of Indian Affairs and the Navajo Nation President. On March 1, 2007, the Navajo Nation issued its very first business site lease and the first BIA lease was transferred to the governing authority of the Navajo Nation. This multi-year undertaking by the Navajo nation to assume leasing responsibilities from the BIA laid the foundation for the HEARTH Act.<sup>27</sup>

#### B. STATUTORY REQUIREMENTS

The HEARTH Act represents a major shift of authority over tribal lands from the federal government to tribal nations. The HEARTH Act will benefit tribal governments and businesses as they seek to attract a qualified workforce, it makes it easier for tribal members to own homes, and for non-tribal members to lease homes on Indian lands, which have been inhibited by delay and uncertainty arising from the BIA approval processes.<sup>28</sup> The HEARTH Act also requires that BIA report to Congress on means by which tribes can assume control over the records relating to their lands, which is the importance for the establishment of a tribal Land Titles and Records Office (hereinafter “LTRO”).<sup>29</sup> Further, tribes that choose to adopt their own leasing regulations will have the authority to create a leasing process tailored specifically to their tribal needs and implement a leasing process that will move at a tribally determined pace rather than depending on BIA officials

---

<sup>26</sup> *Id.*

<sup>27</sup> Navajo President Joe Shirley, Jr., BIA, sign regulations to remove BIA from Business Site Leasing process. July 12, 2006 *available at* <http://www.navajonsn.gov/images/pdf%20releases/George%20Hardeen/jul06/NN%20President%20BIA%20sign%20regulations%20to%20remove%20BIA%20from%20Business%20Site%20Leasing%20process.pdf>

<sup>28</sup> *HEARTH Act Presents Opportunity for Tribes to Improve Business Site Leasing in Indian Country*, Sarah M. Stevenson. *Native American Law Watch*, Fall 2012.

<sup>29</sup> *Id.*

to take action in a timely fashion.<sup>30</sup> This section explores the statutory requirements, and the next section explores issues tribal nations must consider in implementing the HEARTH Act.

The HEARTH Act amended 25 U.S.C. 415(e) removing the “Navajo Nation” and adding “an Indian Tribe” to extend to all federally recognized tribes the authority currently enjoyed by the Navajo Nation, and certain other Congressionally-authorized tribes, to enter into leases pursuant to tribal regulation, and without the requirement of federal lease approval. The HEARTH Act also allows for extended durations of leases. Specifically, agricultural and business leases, which may be approved by tribal nations for a total of seventy-five years (twenty-five years with the possibility of two renewal terms of equal length), while leases for public, religious, educational, recreational, or residential purposes may be up to seventy-five years with no need for renewal terms. It is important to note that excluded from the HEARTH Act are leases for exploration, development, or extraction of mineral resources. Nor may tribal nations approve leases for individually owned Indian allotted land as lease approval for allotted lands remains with the BIA.

The Residential leasing subpart applies to leases for housing purposes; or construction of single family homes or housing for public purposes. The Business subpart applies to business leasing for religious, educational, recreational, cultural, other public purposes; easements for commercial or industrial purposes; and surface leases not covered by other subparts. The Agricultural subpart does not change. Additionally, there were specific changes to allow for landowners to issue permits for use of tribal land without BIA approval and that the BIA no longer could enforce or administer permits on tribal land (exception for agriculture) although permitted activities must comply with all applicable environmental and cultural resource laws. Lastly, there are two other significant changes which include taxation and tribal employment preferences. First, permanent improvements on leased land, activities conducted under a lease, and the leasehold or possessory interest may not be taxed by State or local governments but may be taxed by the tribal nation. Secondly, leases may require the lessee to give a preference to qualified tribal members, based on their political affiliation with the tribe for tribal employment.

The HEARTH Act permits tribal nations with approved programs to conduct environmental analyses in lieu of federal agency compliance with federal environmental law, such

---

<sup>30</sup> *Id.*

as the National Environmental Policy Act, enabling faster review.<sup>31</sup> In addition, the tribal leasing regulations must include a public notice and comment provision, and the tribal nation must respond to relevant and substantive comments before it approves a lease. It is important to note that tribal nations have the ability, and should, determine their own definition of “public”. If requested by a tribal nation, the Secretary will provide a tribal nation with technical assistance in developing an environmental regulatory review process or, for federally-funded projects, a tribal nation may rely on a federal environmental analysis.<sup>32</sup>

The only step a tribal nation cannot control is the recording at the regional LTRO. Tribal nations issuing leases under approved tribal leasing regulations are required to provide BIA with copies of the leases issued so that BIA can carry out its LTRO’s responsibilities. The LTRO will continue to record and is a necessity for businesses to be able to obtain financing.

An important final requirement to implementing tribal leasing regulations under the HEARTH Act requires parties seeking review of actions taken pursuant to tribal leasing regulations must exhaust tribal remedies before appealing to the Secretary. If the Secretary concludes that tribal leasing regulations were violated, after notice, a hearing, and an opportunity to cure, the Secretary may take reasonable action, including rescinding the approval of the tribe’s regulations and reasserting federal responsibility for leasing of the tribe’s lands.<sup>33</sup>

Once the tribal leasing regulations are submitted to the Secretary there is a requirement to approve or disapprove within 120 days as long as they are consistent with the BIA regulations codified at 25 C.F.R. Part 162.<sup>34</sup>

#### C. CONCERNS WITH IMPLEMENTING THE HEARTH ACT

In addition to complying with the statutory requirements, tribal nations considering implementing the HEARTH Act must also address several other concerns, including relieving the liability of the federal government from fiduciary responsibility, comprehensive control over

---

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> There is a National Policy Memorandum: Guidance for Approval of Tribal Leasing Regulations under the HEARTH Act which has been adhered to in developing the model leasing regulations within this Guidebook.

leasing by the federal government, and authority for the Secretary to interpret tribal law. This section addresses those concerns and the factors tribes must consider in addressing those concerns.

While the HEARTH Act restores inherent tribal authority over land use determinations, it also relieves the federal government of liability.<sup>35</sup> The HEARTH Act contains a general waiver of the federal government's liability, stating "[t]he United States shall not be liable for losses sustained by any party to a lease executed pursuant to tribal regulations."<sup>36</sup> Given the breadth of this waiver, concerns arise regarding whether the federal government will uphold its trust responsibility to federally recognized tribes under the HEARTH Act.<sup>37</sup> This is a significant departure from longstanding federal policy in which the Secretary, as part of the fiduciary responsibility in holding lands in trust, shoulders the risk of liability for damages stemming from the approval of leasing of tribal lands.

Further, the HEARTH Act explicitly references the federal government's trust responsibility to tribes providing that "[p]ursuant to the authority of the Secretary to fulfill the trust obligation of the United States to the applicable Indian tribe ... the Secretary may ... enforce the provisions of, or cancel, any lease executed by the Indian tribe."<sup>38</sup> Therefore, the HEARTH Act, and the underlying Indian Long-Term Leasing Act, together establish a comprehensive regulatory structure with which tribal nations must comply in order to successfully lease their lands. In this regard, the federal government possesses "comprehensive control" over the leasing of tribal lands, which is a required element of a successful breach of federal trust responsibility claim under federal trust responsibility cases.

A final concern is that the HEARTH Act also vests the Secretary with authority to review whether a tribal nation has complied with its own leasing regulations, effectively granting the Secretary the power to interpret tribal laws.<sup>39</sup> This authority includes the ability to enforce the terms of any lease approved under any tribal leasing regulations, as well as the authority to rescind tribal leasing regulations.

---

<sup>35</sup> *Supra* note 15, p. 68.

<sup>36</sup> 25 U.S.C. § 415(h)(7)(A).

<sup>37</sup> *Tribal Renewable Energy Development under the HEARTH Act: An Independently Rational, but Collectively Deficient, Option*. Elizabeth Ann Kronk Warner. 55 Ariz.L.Rev. 1031.

<sup>38</sup> 25 U.S.C. § 415(h)(7)(B).

<sup>39</sup> 25 U.S.C. § 415(h)(8).



There may also be tribal and federal laws that affect leasing on tribal lands. It would be prudent to review the leasing processes and tribal acts, codes, or ordinances that may relate to leasing on tribal lands. Further, it would be beneficial to work with the tribal departments and staff that routinely lease tribal lands such as the tribal lands department, natural resources, register of deeds, and planning and zoning offices, just to name a few. Finally, it is advisable to examine federal laws such as 25 U.S.C. § 477. For instance, tribal government corporations operating under charters issued by the Secretary under 25 U.S.C. § 477 can lease tribal land for twenty-five (25) year-maximum terms without BIA approval. However, these leases authorized by the tribal corporation cannot include an option to renew the twenty-five (25) year base term.

#### **IV. ESTABLISHING A TRIBAL LAND TITLES AND RECORDS OFFICE (LTRO)**

The Indian Land Record of Title is the official record of title documents and instruments affecting tribal land which requires approval by the Secretary. The Division of Land Titles and Records and the eleven Land Titles and Records Offices are the official Federal offices-of-record for all documents affecting title to tribal lands, and for the determination, maintenance, and certified reporting of land title ownership and encumbrance on tribal trust and restricted lands.<sup>40</sup> The purpose of examining title to tribal trust and restricted lands is to determine the location and boundaries of the land, the identification of individuals and entities who own rights and interests in the land, the amount of the rights and interests, and whether the rights and interests are encumbered, and the extent and holder of the encumbrance.<sup>41</sup> Assuming the fiduciary trust responsibilities from the BIA for land titles and records through the creation of a tribally operated LTRO exerts greater control over tribal lands while promoting self-governance.

##### **A. CONTRACTING AND COMPACTING**

The BIA has begun to change its role from that of a service provider and manager of tribal affairs to that of a provider of financial resources and an advocate for tribal self-governance and control. Through contracting and compacting it creates opportunities for tribal nations to exercise administratively their inherent sovereign powers, with minimal federal oversight and involvement.

---

<sup>40</sup> U.S. Department of the Interior Indian Affairs Division of Land Titles and Records.  
<http://www.bia.gov/WhoWeAre/BIA/OTS/DLTR/index.htm>.

<sup>41</sup> Indian Affairs Manual - Land Titles and Records Examination and Certification of Land Title, Part 51, Ch. 4 Pg. 1.

Contracts and compacts are very similar in that they are authorized by the Indian Self-Determination and Education Assistance Act (ISDEAA)<sup>42</sup> which allows Indian tribes and tribal organizations to acquire increased control over the management of federal programs that impact their members, resources and governments. Self-Determination *contracts* are authorized under the ISDEAA. Self-Governance *compacts* are made possible by 1994 amendments to the ISDEAA. The model PL 93-639 contract is available through this Guide along with model resolutions and model job descriptions that are requested when submitting a contract or compact to your regional BIA office to assume LTRO functions.<sup>43</sup>

## B. FUNCTIONS OF THE BIA LTRO

The BIA LTRO is the office of record for the recording of tribal land title documents, for the maintenance of the chain-of-title, and the examination, reporting, and certification of land title for tribal trust and restricted lands. It is the duty and responsibility of the BIA LTRO to ensure that the chains-of-title for tribal trust and restricted lands are current, accurate, and complete, and to certify the Federal reports of the title status as true and correct.

The major functions conducted by the BIA LTRO are:

1. *Real Property-Based Automated System of Title Ownership & Encumbrance.*

The BIA LTRO is the custodian of BIAs' automated land titles and records system-of-record: Trust Asset and Accounting Management System (TAAMS).

2. *Recording Title and Encumbrance Documents.* The recording of all conveyance and encumbrance documents affecting title to trust and restricted tribal lands,

---

<sup>42</sup> *Public Law 93-638, 25 U.S.C. §458aaa-2.* The 1975 Indian Self-Determination and Education Assistance Act, Pub. L. 93-638, gave Indian tribes the authority to contract with the Federal government to operate programs serving their tribal members and other eligible persons. The Act was further amended by the Technical Assistance Act and other Acts, Pub. L. 98-250; Pub. L. 100-202; Interior Appropriations Act for Fiscal Year 1988, Pub. L. 100-446; Indian Self-Determination and Education Assistance Act Amendments of 1988, Pub. L. 100-472; Indian Reorganization Act Amendments of 1988, Pub. L. 100-581; miscellaneous Indian Law Amendments, Pub. L. 101-301; Pub. L. 101-512; Indian Self-Determination and Education Assistance Act Amendments of 1990, Pub. L. 101-644; Pub. L. 102-184; Pub. L. 102-573; Pub. L. 103-138; Indian Self-Determination Act Amendments of 1994, Pub. L. 103-413; Pub. L. 103-435; and Pub. L. 103-437. Of these, the most significant were Pub. L. 100-472 (the 1988 Amendments), Pub. L. 101-644 (the 1990 Amendments) and Pub. L. 103-413 (the 1994 Amendments).

<sup>43</sup> There will need to be an estimated budget that will need to be included with the PL 93-638 model contract along with an organization chart of the department and positions that are to be responsible for the functions of the contract or compact.

and to certain government lands under the jurisdiction of the BIA, that law and regulations require to be managed by the Secretary.

3. *Title Maintenance.* Examination, certification and issuance of Title Status Reports (TSRs - report current ownership and encumbrance information of tracts of Indian land), including the maintenance of tribal and government ownership records. This function also includes issuance of Probate Inventory Reports for the estates of deceased tribal members, and the Individual/Tribal Interest Reports that reports all of an individual landowner's land ownership.
4. *Indian Probate Curative Actions.* Identification and issuance of administrative modifications to a probate order is issued to correct probate errors that are clerical in nature and which do not affect vested property rights or involve questions of due process or law. If the error is not clerical in nature, notification of the appropriate Deciding Official, as defined in the probate regulations, while making a notice in the Indian Land Record of Title that an error exists. Once a Deciding Official corrects an error in a probate order and submits a probate order modification evidencing the correction, the modification is recorded and the land title is corrected and updated.
5. *Title Document Certification.* The reproduction and certification of a copy of a title document as a true and accurate representation of the original title document for all evidentiary, legal, and financial purposes.
6. *Title Status Map Maintenance.* Creation and maintenance of land status maps (the representation of ownership on a map of one or more tracts of Indian land), which illustrates comprehensive ownership and boundaries of all tracts within an tribal reservation or land area. This function is in the process of redesign and reengineering for operation within the TAAMS environment.

7. *Title Image Repository*. The TAAMS Title Image Repository (TIR) is the document imaging and management function that is part of TAAMS to support TAAMS Title and Leasing with certified images of title documents. The TIR is designed and operated as the official Federal repository for all Federal Indian title documents, including patents, deeds, probate orders, leases, land/resource contracts, rights-of-way, easements, covenants, title status reports, Cadastral Surveys, and other documents affecting the title to Indian trust and restricted lands.<sup>44</sup>

The above functions are not all inclusive of the BIA LTRO responsibilities but do outline the main role the BIA LTRO plays in the land records and titles process. It is important to note that a tribal nation has the option as to which functions they would like to contract or compact for and do not need to assume all functions under one contract or compact.

#### C. TRIBAL LTRO: RISK VS. REWARD

Appropriating the fiduciary trust responsibilities from the BIA to establish a tribal LTRO, as well as implementing tribal leasing regulations under the HEARTH Act, may seem to be a daunting task, however, there are many reasons why a tribal nation may wish to do so. The main reason is to establish and increase tribal sovereignty over existing tribal lands or lands that have been recently acquired and placed into trust. Another important reason is to facilitate access to homeownership for tribal members by reducing the time it takes to purchase or build homes on tribal lands, including the elimination of backlogs at the BIA. The advancement of economic development for tribal members through improved lending methods is yet another reason. Finally, establishing tribal control over and the improvement of the general processing of chains of title and ownership will eliminate lag times at the BIA and speed up the time for leasing of tribal lands.<sup>45</sup>

---

<sup>44</sup> U.S. Department of the Interior Indian Affairs Division of Land Titles and Records.  
<http://www.bia.gov/WhoWeAre/BIA/OTS/DLTR/index.htm>.

<sup>45</sup> *Exercising Sovereignty and Expanding Economic Opportunity Through Tribal Land Management - A Study Addressing the Range of Options to Expedite Land Title Processing on Indian Lands*. The First Nations Development Institute and the NCAI Policy Research Center, 2009, p. 12.

Tribal LTRO's have the ability to exercise self-determination by establishing a more effective mechanism for asserting control over tribal land base and by creating a sense of hope that a tribal nation can regain control over their land. There are pitfalls that can occur, however, that must be examined when determining if it is in the best interest of the tribal nation to establish a tribal LTRO. First and foremost is funding as the BIA does not provide sufficient funds when a tribal nation contracts or compacts for these services. It has been shown through pilot programs that the federal government does not provide adequate funding for LTRO start-up and operational costs. In particular, it has been noted that additional funds should be provided for both BIA and tribal efforts to update the thousands of records that must be "cleaned up," mostly due to ongoing staffing issues at the BIA.<sup>46</sup>

A second issue is for tribal nations that lack the resources to pay for the transition to a tribal LTRO need alternatives. The process of establishing a tribally run LTRO is one that should be available to all tribal nations, however, this option may not be feasible for many tribal nations because of the required resources to cover staffing, equipment, and related expenses. The transition and operational costs for a tribal LTRO are considerable. Where the size of the tribal nation is the major impediment to tribal management of the LTRO function, there needs to be a range of alternatives. Some alternatives may be, partnerships with other tribal nations currently managing LTRO services; forming a consortium of tribal nations interested in managing their own LTRO function; or directly funding a position at the BIA to expedite the LTRO functions for their tribal nation particularly.<sup>47</sup>

Also a concern is that the BIA needs to further clarify and standardize their processes, such as was accomplished under the HEARTH Act. Outside of Indian country, uniformity in laws and processing techniques is a key element of the success of the land title system. Uniformity is one of the main elements that is sorely lacking in many land tenure transactions related to tribal lands. The standardization of BIA processes would be a significant benefit for tribal nations operating LTRO offices. Since the BIA offices follow a range of different procedures and processes, streamlining the BIA processes could be a monumental task but would certainly improve

---

<sup>46</sup> *Id.* at 33.

<sup>47</sup> *Id.* at 33-34.

efficiencies. Streamlining and clarifying the process would also help to reduce confusion and frustration at each stage for tribal nations seeking to expedite title processing on tribal lands.<sup>48</sup>

## V. CONCLUSION

Tribal nations ceded millions of acres of land that made the United States what it is today and, in return, received the guarantee of on-going self-governance of their lands. Self-governance is essential if tribal nations are to continue to protect their unique cultures and identities. While there are risks associated with implementing tribal leasing regulations under the HEARTH Act and appropriating LTRO responsibilities from the BIA the opportunity is ripe for tribal nations to acquire more control over their lands, hence, increasing sovereignty over not only the land but strengthen the government and enhance services for tribal membership.

This Guidebook provides the documents needed along with other necessary materials to allow tribal nations the ability to submit tribal leasing regulations to the Secretary, with any necessary modifications, that have adhered to the National Policy Memorandum to provide Guidance for Approval of Tribal Leasing Regulations under the HEARTH Act (hereinafter “Memorandum”). The model tribal leasing regulations focus on the requirements laid out in the Memorandum and can be enhanced if a tribal land staff wishes to do so. However, nothing may be eliminated or the tribal leasing regulations may fail to be approved.

---

<sup>48</sup> *Id.* at 34.

**[TRIBE/NATION] [TRIBAL COUNCIL/LEGISLATURE]  
APPROVE AND ENACT THE [AGRICULTURAL/BUSINESS SITE/RESIDENTIAL]  
LEASING CODE  
PURSUANT TO THE HEARTH ACT**

**RESOLUTION \_\_\_\_\_**

**WHEREAS,** the [Tribe/Nation] (“[Tribe/Nation]”) is a federally recognized Indian Tribe, organized pursuant to the Indian Reorganization Act of 1934; and

**WHEREAS,** Article \_\_\_\_\_, Section \_\_\_\_\_ of the Constitution of the [Tribe/Nation] grants the [Tribal Council/Legislature] to make laws, including codes, ordinances, resolutions, and statutes; and

**WHEREAS,** the [Tribe/Nation] currently exercises authority to lease its lands, when appropriate, by [Tribal Council/Legislative] approval and/or upon approval by the Bureau of Indian Affairs (“BIA”); and

**WHEREAS,** in July 2012, the Helping Expedite and Advance Responsible Tribal Homeownership Act of 2012 (“HEARTH Act”) was adopted to establish a process by which Indian tribes can approve their own surface land leases without needing BIA approval of each lease; and

**WHEREAS,** under the HEARTH Act, tribes, at their discretion, may develop and implement regulations governing leasing on tribal trust lands upon approval of the Secretary of the Interior that are consistent with any regulations issued by the Secretary under 25 U.S.C. § 415(a); and

**WHEREAS,** the [Tribal Council/Legislature] finds it appropriate for the [Tribe/Nation] to consider the development of its own laws and/or regulations applicable to leasing tribal trust lands, so that it may assume greater sovereign control of leasing for, but not limited to, residential, governmental, and business purposes; and

**NOW, THEREFORE, BE IT RESOLVED,** that the [Tribal Council/Legislature], pursuant to its authority under the Constitution and tribal law, has reviewed the [Agricultural/Business Site/Residential] Leasing Policy attached hereto and hereby approves and enacts the [Agricultural/Business Site/Residential] Policy;

**BE IT FURTHER RESOLVED,** that the [Tribal Council/Legislature] hereby authorizes the [Chairperson/President] to execute and deliver the [Agricultural/Business Site/Residential] Leasing Policy to the United States Department of Interior for review and approval pursuant to the HEARTH Act.

[TRIBE/NATION] CODE  
– AGRICULTURAL LEASING CODE

ENACTED BY [TRIBAL COUNCIL/LEGISLATURE]:

CITE AS:

**TABLE OF CONTENTS**

**CHAPTER I – INTRODUCTION**

1. Authority.....	2
2. Purpose .....	3
3. Intent .....	3
4. Applicability .....	4
5. Controlling Law .....	4
6. Amendment .....	4
7. Effective Date .....	4
8. Severability .....	4
9. Definitions.....	5

**CHAPTER II – APPROVAL OF LEASE, REQUIREMENTS, PROCESS,  
PAYMENT, TERM[NATIO], FORFEITURE,  
EXTENSIONS, AND RECORDING**

10. Approval of Lease .....	8
11. Lease Requirements .....	8
12. Lease Application Process .....	10
13. Payment .....	11
14. Termination of Lease .....	11
15. Trespass .....	11
16. Forfeiture of Lease .....	12
17. Lease Extensions .....	12
18. Recording .....	12
19. Ownership of Records .....	12

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

20. Purpose of Review .....	12
21. Requirements for Approval .....	12
22. Categorical Exclusions .....	13
23. Environmental Review .....	13



## **CHAPTER IV – APPROVAL OF SUBLEASE AND ASSIGNMENT, REQUIREMENTS AND RECORDING**

24. Approval of Sublease and Assignment .....	15
25. Requirements .....	15
26. Recording .....	16

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

27. Approval of Leasehold Mortgage .....	16
28. Recording .....	16

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

29. Complaint .....	16
30. Form of Complain .....	16
31. Informal Resolution .....	17
32. Decision .....	17
33. Appeal .....	17
34. No Waiver of Sovereign Immunity .....	17

## **CHAPTER I INTRODUCTION**

### **1. Authority**

a. Article           , Section           of the [Tribe/Nation] Constitution (“Constitution”) grants the [Tribal Council/Legislature] the power to make laws, including codes, ordinances, resolutions, and statutes.

b. Article           , Section           of the Constitution grants the [Tribal Council/Legislature] the power to enact laws to manage, lease, permit, or otherwise deal with the [Tribe/Nation]’s lands, interests in lands or other assets.

### **2. Purpose**

The purpose of this Code is to enhance accountability and ensure real property held in trust by United States for the [Tribe/Nation] (“[Tribe/Nation]”) and leased to its members or non-members is used to provide minimal financial risk and clarify the legal responsibility of the [Tribe/Nation].

The [Tribe/Nation] has a critical role and responsibility to provide the [Tribe/Nation]’s communities and members with a sustainable, compatible method of leasing the [Tribe/Nation]’s lands that clarifies the expectations and responsibilities between the lessor and lessee. The [Tribe/Nation] recognizes that the provision of land and buildings, including but not limited to barns, sheds, pole buildings, plays a vital role in the successful functional use of the [Tribe/Nation]’s lands in all communities.

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

### **3. Intent**

a. The Code covers all land held in trust by United States for the [Tribe/Nation] and/or buildings that are leased by the Nation for agricultural purposes on trust lands. The [Tribe/Nation]’s real property, consisting of land, buildings, air rights, mineral rights, cultural rights, and all other constitutional, legal and Code rights, may only be used for a purpose that benefits the [Tribe/Nation] and the [Tribe/Nation]’s members.

b. Lease Agreements may relate to agricultural land and buildings.

c. The [Tribe/Nation] will not, under any circumstances, permit the unrestricted use of its property by individuals or groups. Use of the [Tribe/Nation]’s properties requires a written lease, license, or contract.

d. The Lessee will agree to abide by all laws of the [Tribe/Nation].

### **4. Applicability**

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

1. Leases providing for agricultural use; and

b. This Code shall not apply to:

1. Residential leases;

2. Commercial or business leases;

3. Mineral leases; or
4. To any lease of individually owned Indian allotted land in accordance with 25 U.S.C. 415(h)(2).

## **5. Controlling Law**

- a. To the extent that this Code conflicts with any applicable federal statutes or regulations the federal statute or regulation shall control.
- b. To the extent that any Lease to which this Code applies conflicts with this Code, this Code shall control.

## **6. Amendment**

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

## **7. Effective Date**

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

## **8. Severability**

If any provision or provisions of this Code shall in the future be declared invalid by the [Tribe/Nation] Judiciary, the invalid provision or provisions shall be severed and the remaining provisions shall continue in full force and effect.

## **9. Definitions**

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

- a. Agricultural land. The [Tribe/Nation]’s land suited or used for the production of crops, livestock or other agricultural products, or Indian land suited or used for a business that supports the surrounding agricultural community.
- b. Agricultural lease. A lease of [Tribe/Nation]’s agricultural land for farming and/or grazing purposes.
- c. Agricultural products. Agricultural, horticultural, viticultural, and dairy products, livestock and the products thereof, the products of poultry and bee raising, the edible products of forestry, and any and all products raised or produced on farms and processed or

manufactured products thereof, transported or intended to be transported in interstate and/or foreign commerce.

d. Agricultural use. The production of food, feed, and fiber commodities, livestock and poultry, bees, fruits and vegetables, and sod, ornamental, nursery, and horticultural crops that are raised, grown, or produced for commercial purposes as well as the raising of domestic animals and wildlife in domestication or a captive environment.

e. AIARMA. The American Indian Agricultural Resources Management Act of December 3, 1993 (107 Stat. 2011, 25 U.S.C. 3701 et seq.), as amended on November 2, 1994 (108 Stat. 4572).

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

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

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

i. Constructive notice means notice:

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

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

k. DNR. The [Tribe/Nation]'s Department of Natural Resources.

l. Fair Annual Lease Value. The amount of rental income that a leased tract of the [Tribe/Nation]'s land would most probably command in an open and competitive market, or as determined by competitive bidding.

m. Interested Party. An Indian or non-Indian individual or corporation, or tribal or non-tribal government whose interests could be adversely affected by a decision of the [Tribe/Nation] to lease a Housing Unit or the [Tribe/Nation]'s land.

n. Lease. A written contract between the [Tribe/Nation] and a Lessee, whereby the Lessee is granted a right to possess the [Tribe/Nation]'s land, for a specified purpose and duration.

The Lessee's right to possess will limit the [Tribe/Nation]'s right to possess the leased premises only to the extent provided in the lease.

o. Lessee. A person or entity who has acquired a right to possess the [Tribe/Nation]'s land by executing a Lease.

p. Leasehold Estate. The possessory interest in the [Tribe/Nation]'s land established pursuant to a Lease between a Lessor and a Lessee.

q. Leasehold Mortgage. A mortgage, deed of trust, or other instrument that pledges a Lessee's leasehold interest as security for a debt or other obligation owed by the Lessee to a lender or other mortgagee.

r. Leasing Office. The [Tribe/Nation]'s Leasing Office.

s. [Tribal Council/Legislature]. The [Tribe/Nation] [Tribal Council/Legislature].

t. Lessor. The legal, beneficial, or equitable owner of the [Tribe/Nation]'s land subject to a Lease, including the [Tribe/Nation], and any heir, successor, executor, administrator, or assign of the Lessor.

u. LTRO. The Land Titles and Records Office of the Bureau of Indian Affairs.

v. Material Breach. A breach of contract that is significant enough to permit the aggrieved party to elect to treat the breach as a total thus excusing that party from further performance and affording it the right to sue for damages.

w. [Tribe/Nation]'s land. Any tract, in which the surface estate is owned the [Tribe/Nation] in trust or restricted status, and includes such lands reserved for BIA administrative purposes. The term also includes the surface estate of lands held by the United States in trust for an Indian corporation chartered under Section 17 of the Act of June 18, 1934 (48 Stat. 988; 25 U.S.C. 477).

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

y. Permanent Improvements. Buildings, other structures, and associated infrastructure attached to the [Tribe/Nation]'s land.

z. Public. Includes enrolled members of the [Tribe/Nation], and other persons as authorized by the [Tribal Council/Legislature], Executive Branch, Judiciary, or General Council to attend a meeting.

aa. Real Property. The [Tribe/Nation]'s property that is land or land and building.

bb. Secretary. The Secretary of the Interior.

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

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

ee. Trespass. Any unauthorized occupancy, use of, or action on the [Tribe/Nation]'s land.

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

gg. Trust or restricted status.

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

2. That the [Tribe/Nation] 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.

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

## **CHAPTER II**

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

#### **10. Approval of Leases**

a. All leases are subject to the approval of the [Tribal Council/Legislature].

b. All leases shall be signed by the [Chairperson/President] of the [Tribe/Nation].

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

d. Any lease which is approved and executed under this Section shall refer to this Code as authority for its execution on behalf of the [Tribe/Nation].

## 11. Lease Requirements

a. All leases shall be in writing, and at a minimum, shall:

1. Describe the tract or parcel of the [Tribe/Nation]'s land that is being leased and where it is located with reference to a public or private survey plan, if available, in terms sufficient to determine the location;

2. State the purpose of the lease and authorized uses of the premises;

3. Identify the parties to the lease;

4. State the effective date and term of the lease, which shall not exceed twenty-five (25) years except that any such lease may include an option to renew for up to one (1) additional term, which may not exceed twenty-five (25) years. The Lessee shall notify the Leasing Office of the intent to renew at least ninety (90) days before such lease is due to expire;

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

6. State, if leased land is within an irrigation district, the following:

If the leased premises are within an Indian irrigation project or drainage district, except as provided by 25 C.F.R. 171, the Lessee must pay all operation and maintenance charges that accrue during the lease term. The Lessee must pay these amounts to the appropriate office in charge of the irrigation project or drainage district.

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

8. A performance bond shall not be required;

9. If a Lease authorizes the Lessee to make Permanent Improvements during the term of the Lease the Lease shall identify the general type of each improvement by providing a building plan, construction schedule, and the location of the improvement, and the responsibility for constructing, operating, maintaining, and managing the Permanent Improvements during the Lease term. The Lessee shall be required to provide reasonable notice to Lessor of the construction of any Permanent Improvements not described in the lease. Ownership of Permanent Improvements shall be defined by the Lease.

10. State whether there will be rental reviews or adjustments, how and when they will be done, when any adjustments will be effective, and how disputes regarding adjustments will be resolved;

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

12. State the governing law, which may include the [Tribe/Nation]'s laws and applicable federal statutes and regulations; and

13. Include or attach supporting documents, if necessary, including the following:

i. If the Lessee is a corporation, partnership or other legal entity, it must provide organizational and financial documents, as needed to show that the lease will be enforceable against the Lessee and the Lessee will be able to perform all of its lease obligations.

ii. The Lessee, when appropriate, must provide environmental and archaeological reports, surveys, and site assessments, as needed, to document compliance with NEPA and other applicable federal and tribal land use requirements.

14. Include or attach all other provisions required under any applicable federal statutes or regulations, including without limitation, each of the required terms for leases set forth in 25 C.F.R. 162.219.

15. State that agricultural land under the jurisdiction of a [Tribe/Nation] must be managed in accordance with the goals and objectives of agricultural resource management plan and/or conservation plan developed by the [Tribe/Nation], if any, or by the BIA in close consultation with the [Tribe/Nation], under AIARMA.

## **12. Lease Application Process**

a. Land Use and Site Planning: Agricultural leases are issued only for properties identified appropriate for Agricultural development within the [Tribe/Nation]'s Land Use Plan and should be consistent with the [Tribe/Nation]'s official zoning map. Prior to approval of an Agricultural lease, an acreage map will be provided to the Leasing Office as a plan-of-record.

b. Site Availability: The Leasing Office will maintain grid maps for property which the [Tribal Council/Legislature] has approved for agricultural development.

c. Initial Screening: [designated entity i.e. Planning/Zoning Department] staff will verify in writing to the Leasing Office that land is zoned agricultural.

d. Pre-application: Applicant requests assistance in acquiring an Agricultural lease from the Leasing Office. After the applicant identifies an agricultural site, the Leasing Office confirms that the parcel is available for lease and appropriately zoned. Planning must be



consulted to address potential plan amendments, rezoning, or other land-use regulations. A preliminary site evaluation may be completed by the appropriate entities of the [Tribe/Nation].

e. **Application Submittal:** Applicant submits a completed application to the Leasing Office (see completed application requirements). The Leasing Office retains the original application. The application is stamped in with submitted time and date and expires three (3) months from the stamped date if no action is taken.

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

g. **Agricultural Lease Approval:** Once the lease application is complete, the Leasing Office will draft a standard Agricultural Lease per the requirements under Section 11 of this Code. The Leasing Office staff will send the proposed Agricultural Lease to the [designated body] for review. The [designated body] will make an advisory recommendation to the [Tribal Council/Legislature]. The [Tribal Council/Legislature] will approve or deny the Agricultural Lease. Formal ratification by the [Tribal Council/Legislature] is required prior to moving forward with the Agricultural Lease. The [Tribal Council/Legislature] may table the Agricultural Lease pending additional information, if needed. The [Chairperson/President] will sign two (2) original completed Agricultural Leases and forward the approved lease to the Leasing Office with a copy of the Resolution authorizing the Agricultural Lease. [Tribal Council/Legislature] shall provide both an original signed Resolution and original signed Agricultural Lease to the Leasing Office. Leasing Office will record and retain the original documents in a lease file.

### **13. Payment**

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

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

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

### **14. Termination of Lease**

a. The lease may naturally terminate when the purpose of the Lease is complete or as mutually agreed upon by both parties.

b. In the event that conditions beyond the reasonable control of Lessor, which in Lessor's sole discretion cause Lessor to believe, in good faith, that this Lease cannot be reasonably performed by either party, Lessor may terminate the Lease, without penalty, at any time.

c. Grounds for termination of this Land Lease include, but are not limited to:

1. Default of an expressed condition precedent;
2. Manifestation of an expressed condition subsequent;
3. Material breach by Lessee; or
4. Material breach by Lessor.

d. Upon expiration or termination of the Lease, the Lessee shall, upon demand, surrender to the Lessor complete and peaceable possession of the property and all improvements thereon shall become the property of the Lessor.

#### **15. Trespass**

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

#### **16. Forfeiture of Lease**

A Lessee may forfeit their lease by obtaining a Lease Cancellation Form from the Leasing Office. The Lessee must submit a signed, notarized original to the Leasing Office. The Leasing Office will forward the form along with a resolution rescinding the lease to the [Tribal Council/Legislature] for action. If the resolution is executed, it is filed with the Leasing Office. The property will then be offered in accordance with the Selection Review section of the lease process. If the forfeiture is denied the lease shall remain in full force and effect.

#### **17. Lease Renewal**

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

#### **18. Recording**

The Leasing Office will administer the execution of the lease. Lessee shall be required to pay lease rent as is indicated by lease. Following signing and payment of rent Leasing Office will record and provide a certified copy to the Lessee. Original documents will be maintained by Leasing Office and with the Bureau of Indian Affairs Land Titles and Records Office (LTRO) with jurisdiction over the [Tribe/Nation].

## **19. Ownership of Records**

Records of activities taken pursuant to this Code are the property of the [Tribe/Nation].

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

## **20. Purpose of Review**

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

## **21. Requirements for Approval**

a. The [Tribal Council/Legislature] shall not approve a lease under Section 10 of this Code unless:

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

i. Made a determination that the uses authorized by the lease are included within the categorical exclusion stated in Section 22 and provided that determination in writing to the Leasing Office; or

ii. Issued a final decision after following the procedure set forth in Section 23;

2. The DNR has provided the Leasing Office with notice that the [Tribe/Nation] has carried out a project or activity funded by a federal agency and that it has relied on the Environmental Review Process of the applicable federal agency rather than the procedures set forth in Section 23.

## **22. Categorical Exclusions**

a. The [Tribal Council/Legislature] hereby finds that the following actions do not individually or cumulatively have a Significant Effect on the Environment, and therefore, except as otherwise provided in subsection 22(b), are categorically excluded from the procedures set forth in Section 23:

1. Approval of a lease for five (5) acres or less of contiguous land for construction and Agricultural use of a single structure of one (1) to four (4) dwelling units and any associated improvements, access roads, and utilities.

b. Notwithstanding subsection 23(a), the DNR shall follow the procedures set forth in Section 23 if it determines that extraordinary circumstances exist under which the Agricultural use of the premises may, individually or collectively, have a Significant Effect on the Environment, including without limitation, as set forth below:

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

### **23. Environmental Review**

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

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

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

ii. If there is a substantial interest in holding a public meeting it shall be held in accordance with [tribal open meetings ordinance to provide an opportunity for [Tribe/Nation] members and non-members to comment, both written and verbal, on the finding of no significant impact.

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

iv. Unless subsection 23(a)(2) applies a final decision on confirming that the uses authorized by the proposed Lease are expected to have no Significant Effect on the Environment shall be issued, sent to the [Tribal Council/Legislature] for approval, and posted for fifteen (15) calendar days in a prominent, noticeable place in the [Tribe/Nation]'s Executive Office Building.

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

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

ii. A meeting shall it shall be held in accordance with [tribal open meetings ordinance on the draft environmental review to provide an opportunity for [Tribe/Nation] members and residents on the [Tribe/Nation]'s land to comment, both written and verbal, on any Significant Effect on the Environment of the uses authorized by the proposed Lease;

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

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

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

#### **CHAPTER IV**

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

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

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

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

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

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

## **25. Requirements**

a. A Lessee may sublease the [Tribe/Nation]'s land in accordance with this Section.

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

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

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

## **26. Recording**

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

# **CHAPTER V**

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

## **27. Approval of Leasehold Mortgage**

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

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

## **28. Recording**

All Leasehold Mortgage, assignments, amendments, and sales relating thereto shall be recorded and maintained at the Leasing Office and with copies of the Leasehold Mortgages and related documents provided to the LTRO with jurisdiction over the [Tribe/Nation]'s land,

to the extent required by a Mortgagee. A Leasehold Mortgage shall also be recorded in the appropriate county register of deeds.

## **CHAPTER VI**

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

#### **29. Complaint**

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

#### **30. Form of Complaint**

The Complaint shall be in writing, signed by the Interested Party, with a description of the alleged noncompliance with this Code which is the subject of the Complaint, state all relief requested and submitted to the [designated entity].

#### **31. Informal Resolution**

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

#### **32. Decision**

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

#### **33. Appeal**

In accordance with 25 U.S.C. 415(h)(8)(A) an Interested Party who has exhausted the [Tribe/Nation]'s remedies set forth in this Section may submit a petition to the Secretary, at such time and in such form as the Secretary deems appropriate, to review the [Tribe/Nation]'s compliance with this Code.

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

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

## AGRICULTURAL TRUST LAND LEASE

---

**THIS AGRICULTURAL TRUST LAND LEASE** (hereinafter, "Lease"), is made and entered into by and between the [Tribe/Nation], a federally recognized Indian Tribe, located at \_\_\_\_\_, and beneficial owner of the property, (hereinafter, "Lessor") AND \_\_\_\_\_ (hereinafter, "Lessee").

As used in this Lease, the term "Legislature" means the [Tribe/Nation] [Tribal Council/Legislature] or its duly authorized representative. This Lease is subject to the approval of the [Tribal Council/Legislature] pursuant to the [Tribe/Nation] Code \_\_\_\_\_. That in consideration of mutual covenants, promises, and agreements herein contained, said Parties hereto do hereby covenant, promise, and agree to and with each other as follows:

### 1. TERMS.

#### A. FAIRNESS AND GOOD FAITH.

In entering into this Lease, the parties recognize that it is impracticable to make provision for every contingency, which may arise during the term of this Lease, and the parties declare it is their intention that this Lease shall be conducted in fairness and good faith. This section shall apply if, during the term of this Lease, a new situation arises which is beyond the reasonable control of either party and which is not covered by any of the provisions of this Lease and if a situation results in: (i) a material disadvantage to one party and a corresponding material advantage to the other or, (ii) severe hardship to one party without an advantage to the other party.

#### B. LOCATION OF PROPERTY SUBJECT TO THIS LEASE

##### **Legal description:**

#### C. DURATION OF LEASE.

- i. Lessee shall have and hold the described property with appurtenances for a term of \_\_\_\_\_ calendar years beginning on the date this Lease is fully executed.

Or,

- ii. This Lease shall terminate after \_\_\_\_\_ growing season(s) commencing on \_\_\_\_\_ and ending on \_\_\_\_\_.

#### D. RENEWAL OF LEASE.

- i. There shall be no automatic renewal of this Lease.
- ii. Both parties agree to negotiate, in good faith, all subsequent extensions, modifications, or a new Lease agreement.
- iii. Lessee shall have the first right of refusal under the terms of a bona fide subsequent offer by another potential Lessee.



E. LEASE PAYMENT SCHEDULE.

Total Lease price:

Total acreage:

i. Lessee shall pay one half (1/2) of total Lease price to Lessor within ten (10) days of full execution of this Lease, and on the anniversary of the full execution of this Lease.

ii. Lessee shall pay remaining one half (1/2) of Lease price either before the end of indicated calendar year or December 31st of the Lease year.

iii. It is understood and agreed between the parties hereto that, if any installment of due rent is not paid within thirty (30) days of Lease issuance, that the Lessor has the option to apply interest against the delinquent payment. Interest will be assessed at plus three percent (3%) of amount due.

F. SECURITY INTEREST.

Lessor shall have a security interest in all crops produced, livestock kept, and any proceeds derived as a result of Lessee's use of the Leased land as security for prompt and full Lease payment or awarded damages.

2. DUTIES.

A. LESSEE SHALL:

i. Maintain appearances and aesthetics of the property and to manage the land and farm in accordance with generally accepted farming practices;

ii. Follow an approved soil and water conservation plan as generally recommended by the U.S. Soil Conservation Service;

iii. Keep the property in good repair, Lessee shall be responsible for all damages to buildings, fences and other improvements and appurtenances, except the usual wear and decay;

iv. Prohibit cattle or other livestock to graze in wooded areas where young growth may be damaged;

v. Submit any improvements placed or made on Leased property to Lessor upon termination or expiration of this Lease subject to provisions in Section 3;

vi. Remove all Lessee's personal property removable under the terms of this Lease, prior to the termination or expiration of this Lease, including removal of improvements as provided in Section 3;

vii. Not commit, or allow to be committed, any waste on the Leased property, or any public or private nuisance, as described in Section 7;

viii. Provide Lessor a list of chemicals of any kind to be used on the property;

ix. Comply with all applicable laws and regulations of the State of regarding the use of pesticides, herbicides and other chemical substances on or around the Leased property;

x. Post conspicuous signage indicating that persons should be aware that fungicides and/or insecticides will be used and no one should enter onto the Leased property during the growing season;

- xi. All liquid manure applications must be incorporated into the soil at the time of application; all applications of liquid manure must be in accordance with the NRCS Nutrient Management (590) Standard;
- xii. Buffer/filter strips will be required for all Leased fields adjacent to creeks, streams and all other navigable waters within the watershed area of said Leased parcel. Establishing and maintaining buffer strips is the responsibility of the Lessor or its agents in accordance with the NRCS Filter Strip (393) Standard; or
- xiii. Shall not disturb or destroy any habitat located outside of the area under this Lease. All wildlife areas, grass, or weed borders and fencerows must be left undisturbed. These areas are not to be used as travel lanes or turning places for equipment. Overhanging branches or downed trees may be trimmed and removed if found obstructing the agricultural use of the Leased fields with prior permission from Lessor or its representatives.

**B. LESSOR SHALL:**

- i. Furnish and deliver the Leased property to the Lessee; and
- ii. Have the right, at any reasonable times during the term of this Lease, to enter upon the Leased property or any part thereof, to inspect the same and all buildings and other improvements erected and placed thereon.

**3. LESSEE'S RIGHT TO MAKE IMPROVEMENTS AND RECEIVE REIMBURSEMENT FOR UNEXHAUSTED IMPROVEMENTS.**

Lessee shall have the right to make, at Lessee's own expense, those improvements as are listed in (A) and (B) below, provided authorization has been obtained from Lessor, and Lessee shall be compensated for any permanent improvements by the Lessor at the termination of this Lease for the cost less the agreed upon depreciation of such improvements as provided below:

- A. Before making such improvements, including buildings, additions, or major repairs to buildings, permanent fixtures and equipment, fencing, water or sewage systems, erosion control structures, and other permanent structures, Lessee shall submit to Lessor a statement showing the improvement to be made, the approximate time when it is to be made, the estimated cost, and the rate of depreciation. When any such statement is approved and signed by both Lessor and Lessee, a copy of the statement shall be attached to each copy of this Land Lease, and shall become a part of this Land Lease.

In lieu of compensation for structural improvements for which Lessor has not agreed to pay, Lessee at Lessee's own discretion, and provided Lessee has give written notice of Lessee's intention at the time of expiration of this Land Lease, may within thirty (30) days after the termination of the tenancy remove such structures, provided Lessee leaves the ground and buildings from which such improvements are removed in as good condition as they were prior to the erection of the improvements.

- B. With regard to improvements for which Lessor and Lessee may share the cost, but for which Lessee shall have received no government payments, or, if any, such as only partially offset Lessee's cost, the compensation to Lessee for such unexhausted improvements at the expiration of this Lease shall be based on the original cost to

Lessee, less any government payments received by Lessee and less accumulated depreciation of the balance of the cost.

**4. TIME IS OF ESSENCE.**

All times stated herein are of the essence in this Land Lease.

**5. SUCCESSORS, ASSIGNMENT AND SUBLEASING.**

- A. SUCCESSORS: The benefits and obligations of this Lease shall transfer and be binding upon the Lessee and their respective successors and permitted assigns, provided that Lessee may assign or transfer their interest in this Lease with prior written approval of the Lessor, which shall not be unreasonably withheld.
- B. ASSIGNMENTS: No right or interest in this Lease shall be assigned by Lessee without the written permission of the Lessor, and no delegation of any obligation or duty owed by either party shall be made without the written permission of the other party, which shall not be unreasonably withheld.
- C. SUBLEASING: No right or interest this Lease shall be sublet by Lessee without the written permission of the Lessor and no delegation of an obligation or duty owed by either party shall be made without the written permission of the other party, which shall not be unreasonably withheld.

**6. TERMINATION.**

- A. Termination may occur by, but is not limited to, when the purpose of this Lease is complete or as mutually agreed upon by both parties. Withdrawal of any individual member Lessee, if more than one, from this Lease shall not affect the obligations and duties of the remaining Lessee(s) under this Land Lease.
- B. Lessor's right to terminate Land Lease. In the event that conditions beyond the reasonable control of Lessor occur, which in Lessor's sole discretion cause to believe, in good faith, that this Lease cannot be reasonably performed by either party, Lessor may terminate this Land Lease, without penalty, at any time prior to the termination of this Land Lease. Grounds for termination of this Lease include, but are not limited to:
  - i. Default of an expressed condition precedent;
  - ii. Manifestation of an expressed condition subsequent;
  - iii. Material breach by Lessee; or
  - iv. Material breach by Lessor.
- C. Upon expiration or other termination of this Land Lease, the Lessee shall, upon demand, surrender to the Lessor complete and peaceable possession of the property and all improvements thereon shall become the property of the Lessor, subject to Section 3.
- D. Lessor shall not be liable under the provisions of this Lease for damages on account of strikes, lockouts, accidents, fires, inclement weather, delays of common carriers, acts of God, detrimental governmental actions, state of war or any other causes beyond the control of the Lessor.
- E. Lessor shall not be liable for any failure of crop production due to the lack of rain, flooding, wind, hail, or any natural weather event. In any event, it is understood and agreed that the Lessee will pay in full the amount of rent due under this Lease during its term.

**7. WASTE UPON THE PROPERTY.**

- A. The Lessee shall not commit, or allow to be committed, waste in any manner upon the Leased property. This includes but is not limited to the storage, dumping or burial of pollutants or hazardous materials of any kind on the property or on or in any lands or waterways or watershed areas either within the boundaries of the property, or entering, adjacent to, or flowing through Leased property.
- B. Lessee agrees to take reasonable precautions in order to prevent wrongful acts of others by installation of fencing and/or walls to protect the property.
- C. Lessee shall keep and maintain the property in a safe, clean, and sanitary condition and prudently dispose of all solid and liquid waste material including any toxic materials with potential of affecting public health and safety or that may create degradation of the human environment or depreciation of the land.
- D. If such derogation of the environment or depreciation of the land value occurs as a result of Lessee's wasteful acts or failure to take reasonable precautions, Lessee shall bear all costs and expenses arising from cleanup required by the Environmental Protection Agency and/or the National Environmental Policy Act and amendments thereto.

**8. REMEDIES.**

- A. Purpose of remedies: To bring the aggrieved party(s) to a position as if all parties had fully performed the obligations and duties expressed in this Land Lease.
- B. Right to Cure: Either party shall be allowed reasonable time to cure the event that caused the termination of this Lease and the other party has a duty to cooperate and assist the efforts to cure. The other party has the option to either accept the cure and retain this Lease or cure by modifying this Agreement by a separate writing signed by both parties.
- C. Modifications:
  - i. No modification of this Lease shall be effective unless consented to in separate writing, approved by the [Tribe/Nation] Department of Justice, and signed by all parties.
  - ii. No additional "Consideration" is required for such modifications.
  - iii. Any agreement subsequently made by the parties to amend, extend or discharge this Land Lease, in whole or in part and on one or more occasions, shall not be invalid or unenforceable because of lack of consideration, provided that such additional agreement or agreements shall be in writing and executed by the parties.
- D. At-law money damages for NON-EXCUSED termination of this Lease includes, but is not limited to:
  - i. Consequential damages;
  - ii. Compensatory damages;
  - iii. Incidental damages;
  - iv. Expectation damages;
  - v. Punitive damages;
  - vi. Anticipatory damages;

- vii. Stipulated damages (reasonably foreseeable and remedial amount expressed and noted at contract formation with notation that amount is not construed as a penalty);
  - viii. Actual damages; or
  - ix. Contributory damages
- E. It is agreed that the remedy-at-law for failure of any party to perform pursuant to this Lease may be inadequate, and the injured party (or parties), at their option, shall have the right to compel the specific performance of this Lease in the Tribal Court of the [Tribe/Nation]. This right shall be in addition to and not in lieu of any additional or alternative right or remedy that may be available to a party at law or in equity. Furthermore, since damages may be difficult to ascertain in the event of the failure or refusal of either party to perform any of the terms, conditions or provisions of this Land Lease, the parties shall be entitled to equitable relief of specific performance as is appropriate to satisfy the purpose of this Land Lease.
- F. Monetary damages may be stipulated in any subsequent extensions or modification and will be deemed as remedial and is not construed as a “penalty”.
- G. Injunctive relief shall be at discretion of [Tribe/Nation] Tribal Court.

#### **9. INDEMNIFICATION.**

- A. Lessor shall be entitled to indemnification from Lessee for all liabilities incurred and claims made as a result of Lessor’s good faith performance of duties under this Land Lease. If Lessee or any employee of Lessee is sued based on any cause of action; Lessor shall have the right to defend such actions on behalf of itself. Lessee agrees to defend itself and to fully cooperate with the defense of the Lessor. Lessee shall pay for the cost of Lessor defending a lawsuit as well as any liability incurred by Lessor pursuant to this section.
- B. Lessee will indemnify and hold harmless Lessor and their agents and employees from and against all claims, damages, losses, injury, including attorneys’ fees arising out of or caused in whole or in part by any negligent act or omission of Lessee, anyone directly or indirectly employed by Lessee, or anyone for whose acts both parties may be liable.

#### **10. DUTY TO DEFEND, NOTICE OF CLAIMS.**

If Lessee or any affiliate of Lessee is served with any notice of claim/legal cause of action that may effect any obligation related to this Land Lease, Lessee shall immediately notify, with sufficient detail, the [Tribe/Nation] Department of Justice. Lessee shall defend against all claims in a manner least adverse to its obligations within this Land Lease.

#### **11. NOTICE.**

Any notice required to be given pursuant to this Lease and other communications between the parties shall be sent by Certified/Return Receipt Requested mail to the following addresses:

FOR LESSOR: [Tribe/Nation]

FOR LESSEE:

**12. MISCELLANEOUS.**

- A. **PAYMENT OF TAXES, LICENSES AND PERMITS:** Lessee shall pay all taxes required by law in connection with this Lease including sales, use, and similar taxes, and shall secure all licenses and permits necessary to achieve the purpose of this Land Lease
- B. **NO PARTNERSHIP CLAUSE:** Nothing contained herein shall be construed as to create an employer/employee relationship between the parties, and any person working for or under the leadership of Lessee is Lessee's employee or Independent Contractor.
- C. **NON-INTERFERENCE CLAUSE:** As a material consideration for Lessor entering into this Land Lease, Lessee or their affiliates agree not to attempt undue influence that would be detrimental to the completion of this Lease. Lessor will have sole discretion of determining that degree of undue influence.
- D. **INSURANCE:** Lessee shall provide [Tribe/Nation] with a Certificate of Insurance no later than one (1) week prior to taking possession of the property. Lessee shall obtain and maintain insurance issued by an A-rated insurance carrier. Such insurance coverage shall include all insurance to provide minimum coverage of \$300,000 in the aggregate and \$300,000 per occurrence, including but not limited to:
  - i. Comprehensive General Liability coverage;
  - ii. Personal injury;
  - iii. Loss of personal property;
  - iv. Any property damage in connection with the use of the property; and
  - v. Environmental insurance to provide coverage for contamination clean-up costs resulting from an environmental accident.
- E. The obligations of the Lessee and its sureties to the Lessor will also be enforceable by the United States, so long as the land remains in trust or restricted status.
- F. Nothing contained in this Lease shall operate to delay or prevent a termination of federal trust responsibilities with respect to the land by the issuance of a fee patent or otherwise during the term of the Lease; however, such termination shall not serve to abrogate the Lease. The owners of the land and Lessee shall be notified of any such change in the status of the land.
- G. The Lessee must comply with all applicable laws, ordinances, rules, regulations, and other legal requirements, including tribal laws and leasing policies.
- H. There must not be any unlawful conduct, creation of a nuisance, illegal activity, or negligent use or waste of the Leases premises.

**13. CHOICE OF LAW.**

Lessee does hereby agree that the Tribal Court of the [Tribe/Nation] shall have exclusive jurisdiction over any and all disputes arising hereunder, other than claims precluded by the sovereign immunity of the [Tribe/Nation]. Lessee does hereby consent to the subject matter and personal jurisdiction of said Court over any such dispute arising pursuant to this Lease and any and all subsequent additions, appendixes, addenda or any other amendment to this Lease, without regard to conflicts of laws.

**14. NON-WAIVER OF SOVEREIGN IMMUNITY.**

Nothing contained in this Lease or any amendments hereinafter shall in any manner be construed or deemed to be a waiver of the sovereign immunity of the [Tribe/Nation]. Commencement of an action by the [Tribe/Nation] against Lessee shall not constitute consent to any countersuit by Lessee.

**15. SEVERABILITY OF LEASE CLAUSE.**

The parties shall comply with and observe, and this Lease shall be subject to, any and all relevant present and future laws, statutes, regulations and ordinances of all governmental authorities with appropriate jurisdictions. However, if any provision of this Lease is invalid or unenforceable under any statute or rule of law, the provision is to that extent to be deemed omitted and the remaining provisions shall not be affected in any way.

**16. DUPLICATE AND COUNTERPARTS.**

This Lease may be signed in one copy or any number of copies, and all copies shall constitute one and the same original.

**17. CAPTIONS, HEADINGS, AND SUBHEADINGS.**

The captions, headings, subheadings and the like and any information contained therein, are for the convenience of the parties only and are not to be used for interpretation of the provisions of this Lease.

**18. WARRANTIES OF AUTHORITY TO ENTER CONTRACTS.**

Each party represents and warrants that it has the full right, power and authority to enter into this Lease and to effectuate the purpose and intent hereof. Each party further represents and warrants, respectively, that it is aware of no obligation or disability that would prevent it from entering into this Lease and fully performing all of its obligations hereunder.

**19. ENTIRE AGREEMENT.**

This Lease contains the entire agreement and understanding between [Tribe/Nation] and Lessee relating to the subject matter herein, and supersedes any other agreement or understanding, whether written or oral, relating to this Lease.

IN WITNESS WHEREOF, the Parties hereunto execute this Lease,  
**LESSEE(S),**

By: \_\_\_\_\_ Date: \_\_\_\_\_

By: \_\_\_\_\_ Date: \_\_\_\_\_

AND  
**LESSOR, [TRIBE/NATION],**

By: \_\_\_\_\_ Date: \_\_\_\_\_

[Tribe/Nation], [Chairperson/President]



[TRIBE/NATION] CODE  
SECTION                      – BUSINESS SITE LEASING CODE

ENACTED BY [TRIBAL COUNCIL/LEGISLATURE]:

CITE AS:

**TABLE OF CONTENTS**

**CHAPTER I – INTRODUCTION**

1. Authority.....	2
2. Purpose .....	3
3. Intent .....	3
4. Applicability .....	4
5. Controlling Law .....	4
6. Amendment .....	5
7. Effective Date .....	5
8. Severability .....	5
9. Definitions.....	5

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

10. Approval of Lease .....	8
11. Lease Requirements .....	8
12. Lease Application Process .....	10
13. Appraisal .....	11
14. Fair Annual Lease Value .....	12
15. Payment .....	13
16. Insurance .....	13
17. Performance Bond .....	13
18. Improvements .....	14
19. Termination of Lease .....	15
20. Trespass .....	15
21. Forfeiture of Lease .....	15
22. Lease Extensions .....	15
23. Recording .....	15
24. Ownership of Records .....	16

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

25. Purpose of Review .....	16
26. Requirements for Approval .....	16
27. Categorical Exclusions .....	17
28. Environmental Review .....	17

**CHAPTER IV – APPROVAL OF SUBLEASE AND ASSIGNMENT,  
REQUIREMENTS AND RECORDING**

29. Approval of Sublease and Assignment .....	19
30. Requirements .....	19
31. Recording .....	19

**CHAPTER V  
APPROVAL OF LEASEHOLD MORTGAGE AND RECORDING**

32. Approval of Leasehold Mortgage .....	20
33. Recording .....	20

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

34. Complaint .....	20
35. Form of Complain .....	20
36. Informal Resolution .....	20
37. Decision .....	21
38. Appeal .....	21
39. No Waiver of Sovereign Immunity .....	21

**CHAPTER I  
INTRODUCTION**

**1. Authority**

a. Article                      , Section                      of the [Tribe/Nation] Constitution (“Constitution”) grants the [Tribal Council/Legislature] the power to make laws, including codes, ordinances, resolutions, and statutes.

b. Article                      , Section                      of the Constitution grants the [Tribal Council/Legislature] the power to enact laws to manage, lease, permit, or otherwise deal with the [Tribe/Nation]’s lands, interests in lands or other assets.

## **2. Purpose**

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

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

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

## **3. Intent**

a. The Code covers all land held in trust by United States for the [Tribe/Nation]. It also covers land and/or buildings that are leased by the [Tribe/Nation] for governmental operations, enterprises, and other commercial business uses. The [Tribe/Nation]’s real property, consisting of land, buildings, air rights, mineral rights, cultural rights, and all other constitutional, legal and Code rights, may only be used for a purpose that benefits the [Tribe/Nation] and the [Tribe/Nation]’s members.

b. Lease may relate to land or land and buildings.

c. The [Tribe/Nation] will not, under any circumstances, permit the unrestricted use of its property by individuals or groups. Use of the [Tribe/Nation]’s properties requires a written lease, license, or contract.

d. The Lessee will agree to abide by all laws of the [Tribe/Nation].

## **4. Applicability**

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

1. Leases for business purposes;
  2. Leases for religious, educational, recreational, cultural, or other public purposes;
  3. Commercial or industrial leases for retail, office, manufacturing, storage, biomass, waste-to-energy, or other business purposes; and
  4. All future Leases for purposes or uses listed above.
- b. This Code shall not apply to:
1. Agricultural leases;
  2. Residential leases authorized under the [Tribe/Nation] Residential Leasing Code; or
  3. To any lease of individually owned Indian allotted land in accordance with 25 U.S.C. 415(h)(2).

## **5. Controlling Law**

- a. To the extent that this Code conflicts with any applicable federal statutes or regulations the federal statute or regulation shall control.
- b. To the extent that any lease to which this Code applies conflicts with this Code, this Code shall control.

## **6. Amendment**

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

## **7. Effective Date**

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

## **8. Severability**

If any provision or provisions of this Code shall in the future be declared invalid by the [Tribe/Nation] Judiciary, the invalid provision or provisions shall be severed and the remaining provisions shall continue in full force and effect.

## 9. Definitions

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

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

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

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

d. Constructive notice means notice:

1. Posted at the tribal government office, tribal community building, and/or the United States Post Office; and

2. Published in the local newspaper(s) nearest to the affected land and/or announced on the local radio station(s).

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

f. DNR. The [Tribe/Nation]'s Department of Natural Resources.

g. Fair Annual Lease Value. The amount of rental income that a leased tract of the [Tribe/Nation]'s land would most probably command in an open and competitive market, or as determined by competitive bidding.

h. Interested Party. An Indian or non-Indian individual or corporation, or tribal or non-tribal government whose interests could be adversely affected by a decision of the [Tribe/Nation] to lease to a business or commercial site on the [Tribe/Nation]'s land.

i. Lease. A written contract between the [Tribe/Nation] and a Lessee, whereby the Lessee is granted a right to possess the [Tribe/Nation]'s land, for a specified purpose and duration. The Lessee's right to possess will limit the [Tribe/Nation]'s right to possess the leased premises only to the extent provided in the lease.

j. Lessee. A person or entity who has acquired a right to possess the [Tribe/Nation]'s land by executing a Lease.

k. Leasehold Estate. The possessory interest in the [Tribe/Nation]'s land established pursuant to a Lease between a Lessor and a Lessee.

l. Leasehold Mortgage. A mortgage, deed of trust, or other instrument that pledges a Lessee's leasehold interest as security for a debt or other obligation owed by the Lessee to a lender or other mortgagee.

m. [Tribal Council/Legislature]. The [Tribe/Nation] [Tribal Council/Legislature].

n. Lessor. The legal, beneficial, or equitable owner of the [Tribe/Nation]'s land subject to a Lease, including the [Tribe/Nation], and any heir, successor, executor, administrator, or assign of the Lessor.

o. LTRO. The Land Titles and Records Office of the Bureau of Indian Affairs.

p. Mortgage. A lien on a Leasehold Estate given to secure advances on a loan to purchase, construct, refinance, or renovate a business site or improvement, and may refer both to a security instrument creating a lien, whether called a mortgage, deed of trust, security deed, or other term, as well as the credit instrument, or note, secured thereby.

q. Mortgagee. Any person, entity, or government agency which lends under a Leasehold Mortgage, and includes any assignee, or any heir, successor, executor, administrator, or assign thereof.

r. Mortgagor. The [Tribe/Nation] or any person or entity who has executed a Leasehold Mortgage, including any heir, successor, executor, administrator, or assign thereof.

s. [Tribe/Nation]'s land. Any tract, in which the surface estate is owned by the [Tribe/Nation] in trust or restricted status, and includes such lands reserved for BIA administrative purposes. The term also includes the surface estate of lands held by the United States in trust for an Indian corporation chartered under Section 17 of the Act of June 18, 1934 (48 Stat. 988; 25 U.S.C. 477).

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

u. Permanent Improvements. Buildings, other structures, and associated infrastructure attached to the [Tribe/Nation]'s land.

v. Public. Includes enrolled members of the [Tribe/Nation], and other persons as authorized by the [Tribal Council/Legislature], Executive Branch, Judiciary, or General Council to attend a meeting.

w. Real Property. The [Tribe/Nation]'s property that is land or land and building.

x. Leasing Office. The [Tribe/Nation]'s Leasing Office.

- y. Secretary. The Secretary of the Interior.
- z. Significant Effect on the Environment. A substantial, or potentially substantial, adverse change on the environment.
- aa. Sublease. A written agreement by which the Lessee grants to an individual or entity a right to possession no greater than that held by the Lessee under the lease.
- bb. Trespass. Any unauthorized occupancy, use of, or action on the [Tribe/Nation]'s land.
- cc. Trust or restricted land. Any tract, held in trust or restricted status.
- dd. Trust or restricted status.
  - 1. That the United States holds title to the tract in trust for the benefit of the [Tribe/Nation]; or
  - 2. That the [Tribe/Nation] holds title to the tract or interest, but can alienate or encumber it only with the approval of the United States because of limitations in the conveyance instrument under Federal law or limitations in Federal law.
- ee. Violation. A failure to take an action, including payment of compensation, when required by the lease, or to otherwise not comply with a term of the lease. This definition applies for purposes of our enforcement of a lease under this part no matter how "violation" or "default" is defined in the lease.

## CHAPTER II

### APPROVAL OF LEASE, REQUIREMENTS, PROCESS, PAYMENT, EXTENSIONS, TERMINATION, FORFEITURE, CONTINUATION, AND RECORDING

#### 10. Approval of Leases

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

## **11. Lease Requirements**

a. All leases shall be in writing, and at a minimum, shall:

1. Describe the tract or parcel of the [Tribe/Nation]'s land or building that is being leased with reference to a public or private survey plan, if available, in terms sufficient to determine the location;

2. State the purpose of the lease and authorized uses of the premises;

3. Identify the parties to the lease;

4. State the effective date and term of the lease. The Lessee shall notify the Leasing Office of the intent to apply for a new lease at least ninety (90) days before such lease is due to expire:

i. Business Leases: An initial twenty-five (25) year term with the option to extend for two (2) additional terms (each not to exceed twenty-five (25) years) for a total term of seventy-five (75) years.

ii. Religious, educational, recreational, cultural, and other purposes: Up to seventy-five (75) years.

5. If a Lease authorizes the Lessee to make Permanent Improvements during the term of the Lease the Lease shall identify the general type of each improvement by providing a building plan, construction schedule, and the location of the improvement, and the responsibility for constructing, operating, maintaining, and managing the Permanent Improvements during the Lease term. The Lessee shall be required to provide reasonable notice to Lessor of the construction of any Permanent Improvements not described in the lease. Ownership of Permanent Improvements shall be defined by the Lease.

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

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

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

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

10. If the leased premises are within an Indian irrigation drainage project or drainage district the lease must state the following: If the leased premises are within



an Indian irrigation drainage project or drainage district, except as provided in 25 CFR 171, the lessee must pay all operational and maintenance charges that accrue during the lease term. The lessee must pay these amounts to the appropriate office in charge of the irrigation project or drainage district.

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

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

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

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

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

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

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

vii. Hazardous Materials. The Lessee indemnifies the Lessor and the United States against all liabilities or costs in relation to the use, handling, treatment, removal, storage, transportation, or disposal of hazardous materials, or release or discharge or any hazardous material from the Leased Premises that occurs during the lease term, regardless of fault, with the exception that the Lessee is not required to indemnify

the Lessor for liability or cost arising from the Lessor's negligence or willful misconduct.

## **12. Lease Application Process**

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

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

c. Pre-application: Applicant requests assistance in acquiring a lease from the Leasing Office. After the applicant identifies a potential building site, the Leasing Office confirms that the parcel is available for lease and appropriately zoned. The [designated entity i.e. Planning/Zoning Department] must be consulted to address potential plan amendments, rezoning, or other land-use regulations. A preliminary site evaluation must be completed by the appropriate entities of the [Tribe/Nation].

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

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

f. Business Site Lease Approval: Once the lease application is complete, the Leasing Office will draft a standard Business Site Lease per the requirements under Section 11 of this Code. The Leasing Office staff will send the proposed Business Site Lease to the [designated entity i.e. Register of Deeds] for review. The [designated entity] will make an advisory recommendation to the [Tribal Council/Legislature]. The [Tribal Council/Legislature] will approve or deny the Business Site Lease. Formal ratification by the [Tribal Council/Legislature] is required prior to moving forward with the Business Site Lease. The [Tribal Council/Legislature] may table the Business Site Lease pending additional information, if needed. The [President/Chairperson] will sign two (2) original completed Business Site Leases and forward the approved lease to the Leasing Office with a copy of the resolution authorizing the Business Site Lease. [Tribal Council/Legislature] shall provide both an original signed resolution and original signed Business Site Lease to the Leasing Office. Leasing Office will record and retain the original documents in a lease file.

### **13. Appraisal**

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

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

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

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

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

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

1. The lease is in the development period;
2. The [Tribal Council/Legislature] is providing an incentive for a business to locate on the [Tribe/Nation]'s land and must provide lease concessions, lease improvement credits, or lease abatements to attract such businesses; or
3. The [Tribal Council/Legislature] determines such action is in the best interest of the [Tribe/Nation].

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

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

d. A lease may be structured based on a percentage of gross receipts or based on a market indicator.

e. The lease may provide for periodic review and such review may give consideration to the economic conditions, exclusive of improvement or development required by the contract or the contribution value of such improvements.

f. Leases for terms of less than five (5) years may be structured to allow for lease rate adjustments. The lease shall specify how adjustments will be made, who will make such adjustments, when adjustments will go into effect, and how disputes shall be resolved.

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

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

## **15. Payment**

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

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

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

## **16. Insurance**

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

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

c. The [Tribe/Nation] and the United States must be identified as additional insured parties.

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

## **17. Performance Bond**

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

1. The annual lease payment
2. The estimated development cost of improvements; and
3. Any additional amount necessary to ensure compliance with the lease.

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

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

1. Certificates of deposit issued by a federally insured financial institution authorized to do business in the United States;
2. Irrevocable letters of credit issued by a federally insured financial institution authorized to do business in the United States;
3. Negotiable treasury securities; or
4. Surety bond issued by a company approved by the U.S. Department of Treasury.

## **18. Improvements**

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

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

1. A plan that describes the type and location of any improvements to be built by the Lessee; and
2. A general schedule for construction of improvements.

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

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

e. Failure of the Lessee to comply with these requirements will be deemed a violation of the lease and may lead to cancellation of the lease pursuant to Section 19. Termination of Lease.

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

## **19. Termination of Lease**

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

## **20. Trespass**

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

## **21. Forfeiture of Lease**

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

## **22. Lease Renewal**

The [designated entity] will review requests for lease renewal on a case-by-case basis.

## **23. Recording**

a. The Leasing Office will administer the execution of the lease. Lessee shall be required to pay lease rent as is indicated by the lease prior to lease issuance. Following signing and payment of rent Leasing Office will record and provide a certified copy to the Lessee. Original documents will be maintained by Leasing Office with copies of the leases and related lease

documents provided to the Bureau of Indian Affairs Land Titles and Records Office with jurisdiction over the [Tribe/Nation].

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

## **24. Ownership of Records**

Records of activities taken pursuant to this Code are the property of the [Tribe/Nation].

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

## **25. Purpose of Review**

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

## **26. Requirements for Approval**

a. The [Tribal Council/Legislature] shall not approve a lease under Section 10 of this Code unless:

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

i. Made a determination that the uses authorized by the lease are included within the categorical exclusion stated in Section 25 and provided that determination in writing to the LDT;

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

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

## **27. Categorical Exclusions**

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

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

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

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

## **28. Environmental Review**

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

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

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

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

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



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

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

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

ii. A meeting shall it shall be held in accordance with [tribal public meeting ordinance] on the draft environmental review to provide an opportunity for [Tribe/Nation] members and non-members to comment, both written and verbal, on any Significant Effect on the Environment of the uses authorized by the proposed Lease;

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

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

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

**CHAPTER IV**  
**APPROVAL OF SUBLEASE AND ASSIGNMENT, REQUIREMENTS AND**  
**RECORDING**

**29. Approval of Sublease and Assignment**

- a. All Subleases and Assignments, other than to a Mortgagee, shall be subject to the approval of the [Tribal Council/Legislature] in manner consistent with the [Tribe/Nation]'s Constitution and laws.
- b. All Subleases and Assignments which are subject to the approval of the [Tribal Council/Legislature] shall be signed on behalf of the Vice-President.
- c. After the Secretary approves this Code, all Subleases and Assignments which are approved and executed under this Section shall be effective without federal approval under 25. U.S.C. 415, unless the Secretary rescinds approval of this Code and reassumes responsibility for such approval.
- d. All Subleases and Assignments shall require the prior approval of any Mortgagee or Surety, if required by the Mortgagee or Surety Agreement.

**30. Requirements**

- a. A Lessee may sublease a lease in accordance with this Section.
- b. A Lessee may assign a lease in accordance with this Section.
- c. No Sublease shall relieve the Lessee or sublessor of any liability under the lease.
- d. In any Assignment, other than to a Mortgagee of the Leasehold Estate, the assignee must agree in writing to assume all of the obligations and conditions of the lease, and that the lease is subject to all applicable laws.

**31. Recording**

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

**CHAPTER V**  
**APPROVAL OF LEASEHOLD MORTGAGE AND RECORDING**

**32. Approval of Leasehold Mortgage**

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

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

**33. Recording**

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

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

**34. Complaint**

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

**35. Form of Complaint**

The Complaint shall be in writing, signed by the Interested Party, with a description of the alleged noncompliance with this Code which is the subject of the Complaint, state all relief requested and submitted to the [designated entity].

**36. Informal Resolution**

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

### **37. Decision**

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

### **38. Appeal**

In accordance with 25 U.S.C. 415(h)(8)(A) an Interested Party who has exhausted the [Tribe/Nation]'s remedies set forth in this Section may submit a petition to the Secretary, at such time and in such form as the Secretary deems appropriate, to review the [Tribe/Nation]'s compliance with this Code.

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

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

## BUSINESS SITE LAND LEASE

---

This Lease is made and entered into this            day of            ,            , between the [Tribe/Nation], hereinafter designated as Lessor", and            hereinafter designated as "Lessee" whether one or more. In consideration of the rents, covenants, and agreements herein contained, Lessor and Lessee do hereby obligate themselves as follows:

As used in this Lease, the term "Legislature" means the [Tribe/Nation] Legislative branch or its duly authorized representative. This Lease is subject to the approval of the Legislature pursuant to the [Tribe/Nation] Code. That in consideration of mutual covenants, promises, and agreements herein contained, said Parties hereto do hereby covenant, promise, and agree to and with each other as follows:

### 1. LEASED PREMISES.

The Lessor does hereby lease to the Lessee(s) all that tract or parcel of land designated as ☐ Trust ☐ Fee Simple on the property known as within the legal description of            .

### 2. USE OF LEASED PREMISES.

It is understood and agreed that Lessee will use the Leased Premises for the purpose of            .

### 3. TERM.

Lessee shall have and hold the Leased Premises for a term of            years (up to 25-years) beginning on the effective date of this Lease. Lessee will provide a six (6) month written notice prior to the expiration of the Lease term to exercise their option to renew the Lease for additional term of            (up to 25 years).

### 4. RENT.

The rent shall be based on a month-to-month basis in the amount of \$            . Payments are due on the            day of each month beginning on the effective date of this lease. The rental figure shall be net of all expense to be paid by the Lessee pursuant to the terms hereof.

If any rental payments are not paid within ten (10) days after becoming due, interest will be assessed at the existing prime rate, plus 3%, times the amount owed for the period during which payments are delinquent. Interest will become due and payable from the date such rental becomes due and will run until said rental is paid.

### 5. HOLDING OVER.

Holding over by Lessee after the expiration or termination of this Lease will not constitute a renewal or extension thereof or give lessee any rights in or to the Leased Premises. Lessee agrees to promptly remove all property removable under the terms of the Lease prior to the termination of this Lease.

**6. FIVE YEAR RENT ADJUSTMENT.**

The next annual rent adjustment shall be adjusted upward on \_\_\_\_\_ and thereafter at the end of each five (5) year period by the same percentage as the cost of living index has changed or an increase of 3% whichever is more. The cost of living index to be used is the Consumer Price Index, U.S. City Average, Mid-West Region, "All Items" (index base period 1982-84=100) published by the Bureau of Labor Statistics of the U.S. Department of Labor. The formula for calculating the index changes for each five year period will be converted to index points. The index point will start from the month the lease was commenced ("original index point"), then will be subtracted from the index point of five years later. This figure will equal the index point change (or difference) and divided by the original index point to equal the results. The results are multiplied by one hundred which equals the percent change. The percent change is multiplied by the current annual rents to equal the rent adjustment. The next rent adjustment will be five years from the last rent adjustment calculated in the same manner as described above. If no figures are issued for such month for the index, then the first figures of said index issued immediately after such date will be used. If for any reason whatsoever, there is any change in the method of calculation or formulation of said price index, or if that index is no longer published, then another index generally recognized as authoritative will be substituted by agreement. In any event, the base used by any index will be reconciled to the 1982-84= 100.

**7. DELIVERY OF LEASED PREMISES.**

Lessor shall deliver possession of the Leased Premises to Lessee at the commencement of the lease. Lessor covenants that it will put Lessee in actual possession of the Leased Premises at the commencement of the term of this Lease, and that Lessee, upon paying the rental provided herein and performing the covenants agreed by it to be performed, will and may peaceably and quietly have, hold, and occupy the Leased Premises for the term of this Lease. At the termination or expiration of this Lease, Lessee will peaceably and without legal process deliver up the possession of the Leased Premises in good condition. Any property which remains on or attached to the Leased Premises following the expiration or termination of this Lease shall be deemed abandoned and shall become the sole property of Lessor.

**8. OWNERSHIP OF IMPROVEMENTS.**

All improvements now existing or constructed under the terms of this lease shall be owned by Lessee for the duration of this Lease and any subsequent renewals thereof. All such repairs, alterations, additions or improvements shall at the expiration or earlier termination of the Lease become the property of Lessor and shall remain upon and be surrendered with the Leased Premises, unless agreed otherwise by the parties in writing.

**9. QUIET ENJOYMENT.**

Lessor agrees to defend the title to the Leased Premises and also agrees that Lessee and any successors in interest shall peaceably and quietly hold, enjoy and occupy the Leased Premises for the duration of this Lease without any hindrance, interruption, ejection or molestation by

Lessor or by any other person or persons whomsoever, except if the requirements of any part of this Lease are not kept by Lessee. Notwithstanding the foregoing, Lessee and Lessee's assigns are subject to all the laws of the [Tribe/Nation].

#### **10. SUBLEASE, ASSIGNMENT, TRANSFER.**

Lessee shall not sublease, assign or transfer this lease or any right to or interest in this lease or any of the improvements on the Leased Premises without the prior written approval of the Lessor, whose approval shall not be unreasonably withheld. Any such subleases, assignments or transfers shall be only for the purposes set forth in this Lease, shall include the same terms and conditions of this Lease and shall not have a term extending beyond the term of this Lease. Lessee shall furnish the Lessor within thirty (30) days an original or certified copy of the sublease, assignment or transfer for recordation.

#### **11. STATUS OF LEASE AND SUBLEASE.**

Termination of this Lease, by cancellation or otherwise, will not serve to cancel a sublease but will operate as an assignment to Lessor of any and all such subleases.

#### **12. GOVERNING LAW.**

The Laws, Ordinances, and Policies of the [Tribe/Nation] shall govern the terms of this Lease. Should Lessee breach the terms of this Lease, it is agreed that the [Tribe/Nation] Trial Court will have exclusive jurisdiction. Lessee also agrees that nothing in this Lease constitutes a waiver of Lessor's Sovereign Immunity. Lessee understands that if the Leased Premises are held in trust, lease violations will be acted upon in accordance with tribal laws to the extent such tribal laws are not inconsistent with the provisions of 25 C.F.R. Part 162, in which instances, lease violations will be acted upon in accordance with the provisions of 25 C.F.R. Part 162.

#### **13. COMPLIANCE WITH REGULATIONS OF PUBLIC BODIES.**

Lessee will, at Lessee's expense, make such improvements on the Leased Premises and perform such acts and do such things as may be lawfully required by any public body having jurisdiction over the Leased Premises, to comply with such sanitary, zoning, setback, and other similar requirements designed to protect the public, applicable only to the manner of the Lessee's use and occupancy of the Leased Premises, and to comply with any and all deed restrictions that may be imposed on the title to the Leased Premises.

#### **14. UNLAWFUL USES.**

Lessee agrees that it will not use or cause to be used any part of the Leased Premises for any unlawful business, use or purpose, or for any business, use or purpose deemed disreputable or hazardous, or for any purpose or in any manner which is in violation of any present or future Tribal or federal laws or regulations; provided, however, that Lessee shall always be permitted to use the Leased Premises for the purposes set forth in Section 2 above. For purposes hereof,

the term “unlawful purpose” shall mean the use of the Leased Premises in violation of zoning regulations, building codes, certificate of occupancy, general prohibitions against nuisances, activities jeopardizing insurance coverage, impairing Lessor’s title, or similar activities which are in violation of present or future Tribal laws or regulations.

**15. GENERAL PROHIBITION UPON LESSEE AND ANY TENANT.**

Lessee covenants and agrees that during the term of this Lease, neither Lessee nor any tenant or agent, employee, contractor, invitee, assignee, or sublessee thereof shall cause any Hazardous Substance to be brought upon, kept or used in, or upon the Leased Premises or transported to or from the Leased Premises without the prior written consent of Lessor, unless the Hazardous Substance:

- A. is necessary or useful to Lessee or Tenant’s business;
- B. is typically used or sold by Lessee in its stores;
- C. is used, kept, stored or disposed of in a manner that fully complies with all laws, rules, statutes, ordinances, orders, requirements, or policies of any governmental agency or authority or any fire insurance underwriters applicable to any such Hazardous Substance (collectively “Hazardous Substance Laws”); and
- D. will not substantially increase the risk of fire or other casualty to the Leased Premises.

If substance is discharged from in or on the Leased Premises, Lessee shall promptly take actions at its sole expense, as necessary or appropriate, to return the Leased Premises to the condition existing before that discharge or release; provided, however, that Lessee shall first obtain Lessor’s prior approval, including, without limitation, approval of any contractors Lessee proposes to hire to perform the remedial work, which approval Lessor shall not unreasonably withhold as long as Lessee demonstrates to Lessor’s satisfaction that those actions would not have any significant adverse long term or short term effect upon the Leased Premises. Lessor acknowledges that in an emergency situation, Lessee may begin remedial work without obtaining Lessor’s prior consent.

**16. PLANS AND DESIGNS.**

Before beginning any construction whatsoever on the Leased Premises, the lessee shall submit certifiable construction plans and general specifications for the improvements proposed for approval by the Lessor. Any material changes in the initial plans, drawings, or general specifications must also be approved by the Lessor, whose consent shall not be unreasonably withheld. Lessee is responsible for obtaining licenses and permits prior to construction.

**17. CONSTRUCTION, MAINTENANCE, REPAIRS, ALTERATIONS**

- A. Construction: All improvements placed on the Leased Premises shall be constructed in a good workmanlike manner and in compliance with applicable building codes. Construction shall be completed no later than one year from the start of construction.



- B. Alterations: Lessee may, at its own expense, make structural or nonstructural changes, alterations, additions to improvements to the Leased Premises (“Alterations”) as will, in the judgment of Lessee, better adapt the same for its operational needs, provided that Lessee complies with the following provisions:
- i. The alterations shall not result in a violation of or require a change in any certificate of occupancy applicable to the building.
  - ii. The alteration shall not weaken or impair the structure of the building or damage the Leased Premises.
  - iii. The proper functioning of the building equipment shall not be materially adversely affected.
  - iv. Upon completion of any alterations (other than decorations) Lessee shall deliver to Lessor three copies of “as built” plans for such alterations.
  - v. The alterations shall at all times comply with all applicable laws and regulations, and Lessee, at its expense, shall obtain all necessary building permits, authorizations, approvals, and certificates for the construction of such alterations, and deliver a copy to Lessor prior to proposed changes.
  - vi. Lessee shall defend, indemnify and save harmless Lessor against liability for any and all mechanics’ and other liens filed in connection with the alterations, and shall bond over, obtain title insurance over, or procure the discharge of any such lien within thirty (30) days after the filing thereof.
- C. Maintenance and Repairs: Lessee shall maintain and repair the property and the improvements in good and substantial repair and condition at its expense. Lessor shall not be required at any time to maintain or make any improvements or repairs whatsoever on the Leased Premises during the term of this lease.

#### **18. DIRT/FILL FROM CONSTRUCTION ACTIVITY.**

All dirt and fill excavated from the Leased Premises by Lessee or Lessee’s contractors during Lessee’s construction activities shall be the property of the Lessor. Lessor shall designate a location to which all excavated dirt and fill shall be delivered by Lessee or Lessee’s contractors.

#### **19. SIGNS.**

During the term of this Lease, Lessee may install signs on the Leased Premises subject to approval by Lessor, whose approval shall not be unreasonably withheld. Lessor shall not be required to consent to any signs that do not comply with the [Tribe/Nation] Zoning Ordinance.

#### **20. INSURANCE.**

Lessee shall, during the term of this Lease and any other period of occupancy, at Lessee’s sole cost and expense, maintain a reasonable amount of insurance to cover the following:

- A. Standard form property insurance insuring against the perils of fire, extended coverage, vandalism, and malicious mischief and special extended coverage (all risk), in an amount not less than 100% of the replacement cost of the improvements thereon. This insurance policy shall insure all property owned by Lessee, for which Lessee is legally liable, or that was installed at Lessee's expense and which is located on or in the Leased Premises, including, but not limited to, building(s), furniture, fittings, fixtures, and any other personal property in the amount of the full replacement value of such property.
- B. Comprehensive general liability insurance insuring Lessee against any liability arising out of this Lease, or the use, occupancy, or maintenance of the Leased Premises and all areas appurtenant to the Leased Premises . Such insurance shall not be less than a combined single limit of \$1,000,000 with respect to bodily injury liability. Said policy to be written jointly to protect Lessee and Lessor as their interests may appear. The insurance policy shall insure against hazards arising from the Leased Premises and operations conducted in and on the Leased Premises , claim or actions by or against or involving independent contractors, and contractual liability under this Lease (including the duty to indemnify Lessor), and shall name Lessor as insured parties as their interests may appear. Lessor shall be furnished with a copy of the certificate of insurance. Such insurance shall be primary and non-contributing with any insurance carried by Lessor. The liability insurance policy shall contain endorsements requiring thirty (30) days written notice to Lessor prior to any cancellation or reduction in the amount of coverage.
- C. Lessee, at its expense, shall carry or cause its contractors to carry (i) workers' compensation insurance in statutory limits covering all persons employed in connection with such alteration; and (ii) comprehensive liability insurance covering any occurrence in or about the Leased Premises in connection with such alterations, which comprehensive liability insurance policy shall have coverage of at least \$1,000,000.00 per occurrence, and shall otherwise comply with the insurance requirements.

## **21. EASEMENTS.**

Lessor reserves the sole right to grant easements across the Leased Premises for the construction of roads, and utility services and other public purposes. Where Lessee desires construction of utility services including, but not limited to gas, water, electricity, telephone, sewer, and street rights-of-way necessary for the full enjoyment of the Leased Premises and the development thereof in accordance with the provisions of this Lease, Lessee shall submit a written request to Lessor containing (1) copy of the draft agreement thereof together with a plat or diagram showing the proposed locations of the utility lines or streets to be constructed. Lessor shall process such requests in accordance with Lessor's established procedures.

## **22. LIENS, TAXES, ASSESSMENTS, UTILITY CHARGES.**

Lessee agrees to pay prior to delinquency all properly assessed taxes, assessments and utility charges including, but not limited to real estate taxes, park fees, assessments, special assessments, water rates, sewer rates, excises, levies, licenses and permits. Lessee also agrees

to pay prior to delinquency any and all taxes assessed against and levied upon leasehold improvements, fixtures, furnishings, equipment, and all other property of Lessee contained in or on the Leased Premises or elsewhere. Lessee shall, if necessary, cause leasehold improvements, trade fixtures, furnishings, equipment, and all other property to be assessed and billed separately from the real property of Lessor. Lessee shall, promptly upon receipt, provide notice of any lien, tax, or assessment affecting Lessor's interest. Lessor reserves the right to contest imposition and collection of such liens, taxes or assessments.

### **23. TAX IMMUNITY.**

Nothing contained in this Lease shall be deemed to constitute a waiver of applicable laws providing tax immunity to trust or restricted Indian property or any interest therein or income therefrom. Nothing contained in the Lease shall be deemed to constitute a waiver of applicable laws providing state tax immunity to the [Tribe/Nation] or enrolled members of the [Tribe/Nation].

### **24. INDEMNIFICATION.**

Neither Lessor nor the United States, nor their officers, agents and employees shall be liable for any loss, damage, injury, claim, demand, or expense, including reasonable attorney's fees arising out of the business and activities conducted by Lessee on the Leased Premises or out of the use, condition or operation of any item of machinery or equipment, regardless of where, how, and by whom operated, unless the same are caused by the negligent or willful misconduct of Lessor. Lessee shall promptly assume the settlement and defense of any suit or other legal proceeding brought to enforce all such losses, damages, injuries, claims, demands, and expenses, and shall promptly pay all judgments entered in any such suit, order or demand of a governmental agency or other legal proceeding. The foregoing shall not preclude Lessor from appearing and presenting defenses in which the Lessor is a named defendant or intervening in any action as Lessor may deem appropriate. Lessee agrees to indemnify Lessor and United States 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. The indemnities and assumptions of liabilities and obligations herein provided for shall continue in full force and effect notwithstanding the termination of this Lease, whether by expiration of time, by operation of law, or otherwise. The foregoing indemnification shall not apply to any losses, damages or injuries caused by the negligence or willful misconduct of Lessor.

### **25. PARTIES INTEREST.**

Except as otherwise set forth herein, all covenants, agreements, representations, warranties and undertakings contained in this Lease shall be binding on and shall inure to the benefit of the respective successors and assigns of the parties hereto.

## **26. INSPECTION.**

Lessor, through any of its designated agents, reserves the right at any reasonable time during the term of this Lease and any extension thereof to enter upon the Leased Premises or any part thereof, to inspect the same and all buildings and improvement placed upon the Leased Premises. During the last six (6) months of the Lease term (or any extension thereof), if Lessee has not exercised its option to extend the Lease term to a date more than six months in the future, Lessor may show the Leased Premises to prospective tenants or renters at reasonable times and upon reasonable notice.

## **27. DEFAULT BY LESSEE.**

Any of the following occurrences shall constitute an “event of default” or “default” hereunder:

- A. The filing of a petition by or against Lessee for adjudication under the Bankruptcy Code, now or hereafter amended or supplemented, or for reorganization under Chapter 11 of said Bankruptcy Code, or the filing of any petition by or against Lessee under another bankruptcy act for the same or similar relief.
- B. The dissolution or the commencement of any action or proceeding for the dissolution or liquidation of Lessee, whether instituted by or against Lessee or for the appointment of a receiver or trustee of the property of Lessee.
- C. The taking possession of the Leased Premises or property of Lessee upon the Leased Premises by any governmental officer or agency pursuant to statutory authority for the dissolution, rehabilitation, reorganization or liquidation of Lessee.
- D. The making by the Lessee of any assignment for the benefit of creditors. If the default described is involuntary on the part of Lessee, the event in question will not be deemed a default within the meaning of this Lease in the absence of any adjudication thereof or final order thereon. Default will be deemed “involuntary” on the part of Lessee, if such event is dismissed or vacated by Lessee within sixty (60) days from the occurrence of the event; otherwise, such an event will constitute a default hereunder.
- E. A failure to pay the rent, or additional rent, or any part thereof within ten (10) days after written notice from Lessor.
- F. A failure in the performance of any other covenant, condition, or obligation under this Lease *on the part of Lessee for a period of thirty (30) days after receipt of written notice.* No failure on Lessee’s part in the performance of work required to be performed or acts required to be done or conditions to be modified shall be deemed to exist if steps will have, in good faith, been commenced promptly by Lessee to rectify the same and will be pursued to completion with diligence and continuity.

In the event of any default by Lessee, Lessor may serve a written notice upon Lessee that Lessor elects to terminate this Lease upon a specified date not less than sixty (60) days after the date of the serving of such notice. If the default remains uncured or the period of time is not extended, this Lease will terminate on the date so specified as if that date had been originally fixed as the expiration date of the term. If this Lease is terminated as provided,

Lessor may immediately, or at any time thereafter, reenter and resume possession of the Leased Premises and remove all persons and property, either by summary proceedings or a suitable action or proceeding at law, without being liable for any damages. Moving out of the Leased Premises or leaving the Leased Premises vacant is not to be deemed an abandonment of the Leased Premises, provided that Lessee continues to pay rent as and when due. No reentry by Lessor is deemed as acceptance of a surrender of this Lease.

**28. OPTION.**

In the event of default by Lessee on any mortgage or other loan agreement for which this Lease or any improvements on the Leased Premises are pledged as security, Lessor shall have the right of first refusal to acquire Lessee's interest in the Leased Premises (subject to all valid liens and encumbrances) upon (a) payment of all sums then in arrears, and (b) either payment of the balance of the loan or assumption of the mortgage. Said right of first refusal may be exercised at any time within thirty (30) days after notice in writing from the lender. Lessor may invoke any other remedies provided under the mortgage or by law, and shall be exercised by notice in writing from Lessor to Lessee and the lender; provided, however, that Lessee shall have fifteen (15) days from the date of the latter notice to cure the default. The estate acquired by Lessor through exercise of said right of first refusal shall not merge with any other estate or title held by Lessor as long as this Lease and/or any improvement on the Leased Premises, or any interest therein, are mortgaged or otherwise pledged as security for any loan, and said estate shall remain subordinate to any valid and subsisting mortgage or other security instrument.

**29. AGREEMENT TO PERFORM NECESSARY ACTS.**

Each party hereto and the successors and assigns of the Lessor and the Lessee shall perform any further acts and execute and deliver any documents or procure any court orders which may reasonably be necessary to carry out the provisions of this Lease.

**30. REMEDIES CUMULATIVE.**

All rights, options, and remedies of Lessor and Lessee contained in this Lease shall be construed and held to be cumulative, and no one of them shall be exclusive of the other. Either party shall have the right to pursue any one or all of such remedies or any other remedy or relief that may be provided by law, whether or not stated in this Lease.

**31. ASSENT NOT WAIVER OF FUTURE BREACH OF COVENANTS.**

No assent, express or implied, to any breach of this Lease shall be deemed to be a waiver of any succeeding breach of covenants. Any failure of any party to this agreement to comply with any obligation, covenant, agreement or condition of this Lease may be expressly waived, to the extent permitted under applicable law, in writing, by the other party or parties to this agreement, but such waiver or failure to insist on strict compliance with such obligation,

covenant, agreement or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure to comply.

### **32. LESSOR'S INTEREST.**

Provided that Lessee is not in default, Lessor will execute such subordination, non-disturbance and attornment agreement(s) as Lessee may reasonably request in connection with financing of improvements, alterations, maintenance or repairs to the Leased Premises.

Any encumbrance of Lessor's interest in this Lease must comply with the requirements of the Division of Land Management. An encumbrance, if approved as aforesaid, may be made for the purpose of borrowing capital for the development of improvements on the Leased Premises provided that no encumbrance incurred by Lessee shall, and Lessee shall not have the power to incur any encumbrance that will, constitute a lien or encumbrance on the interests of Lessor in the Leased Premises. Lessee's interest in the Leased Premises is specifically limited to the interest created by this Lease.

Any approval by Lessor herein contained or hereafter given to any assignment, mortgage, or other encumbrance shall be held to apply only to the specific transaction thereby approved. Such consent shall not be construed as a waiver of the duty of Lessee, its successors or assigns, to obtain Lessor's approval of any other subsequent assignment, mortgage deed of trust, or other encumbrance.

In the event of default by Lessee of the terms of any approved encumbrance, encumbrancer may exercise the rights provided in such an approved encumbrance, provided that before any sale or foreclosure, encumbrancer shall give notice to Lessor of the same character and duration as is required to be given to Lessee by applicable law. If notice of such sale be given and the default upon which such notice of sale is based shall then continue, Lessor shall have the following rights which may be exercised at any time prior to the completion of said proceedings and upon written notice to mortgagor of Lessor's rights:

- A. To pay encumbrancer the full unpaid principal amount of the approved encumbrance, plus unpaid interest accrued to the date of such payment; or
- B. To pay encumbrancer the amount of any such uncured default, together with costs and expenses chargeable under such approved encumbrance and to assume and make all payment thereafter under such approved encumbrance on the leasehold interest described herein.

If Lessor exercises either of the above rights, all rights, title and interest of Lessee in this Lease shall terminate and Lessor shall automatically acquire Lessee's interest. In the event Lessor does not avail itself of the rights above and any sale under the approved encumbrance occurs, whether by power of sale or foreclosure, the purchaser at such sale, if other than the

encumbrancer, shall succeed to all the rights, title and interest of Lessee in the leasehold covered by said approved encumbrance and shall be bound by all of the terms and conditions of this Lease. If the purchaser at such sale is encumbrancer, encumbrancer may sell and assign the leasehold without any further consent, provided that the assignee shall agree in writing to be bound by all of the terms and conditions of this Lease. If encumbrancer is the purchaser, it shall be required to perform under the terms of this Lease only so long as it retains title hereto.

Notwithstanding the foregoing, if any person furnishing or claiming by, through, or under Lessee will file a lien or in any other manner encumber Lessee's interest without the consent and approval of Lessor, Lessee, within thirty (30) days after being notified thereof, will cause the lien to be satisfied of record or the Leased Premises released by posting a bond or obtaining a title insurance endorsement or other security as prescribed by law, or will cause same to be discharged by an order of a court having jurisdiction to discharge such a lien.

### **33. PAYMENTS AND NOTICES.**

All notices, payments and demands shall be sent to the parties hereto at the addresses herein recited. Lessor shall receive notices at: [Tribe/Nation], Register of Deeds Office, P.O. Box 310, Black River Falls, Wisconsin 54615. Lessee shall receive notices at the address first noted in this Lease. Parties may receive notices at such different addresses hereafter designated in writing. Notices and demands shall be delivered in person or sent by registered mail. Service of any notice or demand shall be deemed complete 10 days after mailing or on the date actually received, whichever occurs first. Where the Leased Premises are held in trust, copies of all notices and demands shall also be sent to the Bureau of Indian Affairs – Great Lakes Agency, 916 West Lakeshore Drive, Ashland, Wisconsin 54806.

### **34. EFFECTIVE DATE.**

This Lease and all its terms and provisions shall be binding upon the heirs, successors, executors, administrators, and assigns of Lessee and any successor in interest to Lessor, and shall take effect on the date executed.

### **35. SEVERABILITY.**

It is agreed that if any provision of this Lease shall be determined to be void by judicial decision, then such determination shall not affect any other provision of this Lease and all such other provisions shall remain in full force and effect.

### **36. TIME OF THE ESSENCE.**

It is specifically declared and agreed that time is of the essence as to this Lease.

**37. SECTION HEADINGS.**

The headings of the sections of this Lease are inserted solely for convenience of reference and are not part of and are not intended to govern, limit or aid in the construction of any term or provision hereof.

**38. FEDERAL SUPERVISION.**

Nothing contained in this Lease shall operate to delay or prevent a termination of Federal responsibilities with respect to the Leased Premises by the issuance of a fee patent, the lifting of restrictions on alienation, or otherwise during the term of the Lease; such termination, however, shall not serve to abrogate the Lease. No member of Congress or any delegate thereto or any Resident Commissioner shall be admitted to any or part of this Lease or to any benefit that may arise here from.

**39. OBLIGATIONS TO THE UNITED STATES.**

It is understood and agreed that while the Leased Premises are in trust or restricted status, all of Lessee's obligations under this Lease, and the obligation of his sureties, are to the United States as well as to the [Tribe/Nation].

**40. COUNTERPARTS.**

This Lease and any exhibit hereto may be executed in multiple counterparts, each of which shall constitute an original but all of which shall constitute but one and the same instrument.

**41. ENTIRE AGREEMENT.**

This Lease constitutes the full and complete agreement of the parties. No supplement, modification or amendment of this Lease shall be binding unless in writing and executed by all of the parties to this Lease. The following exhibits are attached and made part of this Lease:

- A. Exhibit A - e.g. Certified Survey Map
- B. Exhibit B - e.g. Resolution
- C. Exhibit C - e.g. Disclaimer

**IN WITNESS WHEREOF**, the parties hereto have executed this agreement on the day and year first written above and by signing, warrant authority to be bound by the above terms.



**LESSEE(S),**

By: \_\_\_\_\_ Date: \_\_\_\_\_

By: \_\_\_\_\_ Date: \_\_\_\_\_

**AND**

**LESSOR, [TRIBE/NATION],**

By: \_\_\_\_\_ Date: \_\_\_\_\_

[Tribe/Nation], [Chairperson/President]

[TRIBE/NATION] CODE  
– RESIDENTIAL LEASING CODE

ENACTED BY [TRIBAL COUNCIL/LEGISLATURE]:

CITE AS:

**TABLE OF CONTENTS**

**CHAPTER I – INTRODUCTION**

1. Authority.....	2
2. Purpose .....	3
3. Intent .....	3
4. Applicability .....	4
5. Controlling Law .....	4
6. Amendment .....	4
7. Effective Date .....	4
8. Severability .....	5
9. Definitions.....	5

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

10. Approval of Lease .....	8
11. Lease Requirements .....	8
12. Lease Application Process .....	10
13. Payment .....	11
14. Termination of Lease .....	12
15. Trespass .....	12
16. Forfeiture of Lease .....	12
17. Lease Continuation .....	12
18. Lease Extensions .....	13
19. Recording .....	13
20. Ownership of Records .....	13

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

21. Purpose of Review .....	13
22. Requirements for Approval .....	13
23. Categorical Exclusions .....	14
24. Environmental Review .....	14

## **CHAPTER IV – APPROVAL OF SUBLEASE AND ASSIGNMENT, REQUIREMENTS AND RECORDING**

25. Approval of Sublease and Assignment .....	16
26. Requirements .....	16
27. Recording .....	17

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

28. Approval of Leasehold Mortgage .....	17
29. Recording .....	17

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

30. Complaint .....	17
31. Form of Complain .....	18
32. Informal Resolution .....	18
33. Decision .....	18
34. Appeal .....	18
35. No Waiver of Sovereign Immunity .....	18

## **CHAPTER I INTRODUCTION**

### **1. Authority**

a. Article           , Section            of the [Tribe/Nation] Constitution (“Constitution”) grants the [Tribal Council/Legislature] the power to make laws, including codes, ordinances, resolutions, and statutes.

b. Article           , Section            of the Constitution grants the [Tribal Council/Legislature] the power to enact laws to manage, lease, permit, or otherwise deal with the [Tribe/Nation]’s lands, interests in lands or other assets.

### **2. Purpose**

The purpose of this Code is to enhance accountability and ensure that real property held in trust by United States for the [Tribe/Nation] (“[Tribe/Nation]”) and leased by the [Tribe/Nation] to its members or non-members is used to provide minimal financial risk and clarify the legal responsibility of the [Tribe/Nation].

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

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

### **3. Intent**

a. The Code covers all land held in trust by United States for the [Tribe/Nation]. It also covers land and/or buildings that are leased by [Tribe/Nation] members for residential purposes. The [Tribe/Nation]'s real property, consisting of land, buildings, air rights, mineral rights, cultural rights, and all other constitutional, legal and Code rights, may only be used for a purpose that benefits the [Tribe/Nation] and the [Tribe/Nation]'s members.

b. Lease Agreements may relate to land or land and buildings.

c. The [Tribe/Nation] will not, under any circumstances, permit the unrestricted use of its property by individuals or groups. Use of the [Tribe/Nation]'s properties requires a written lease, license, or contract.

d. The lessee will agree to abide by all laws of the [Tribe/Nation].

### **4. Applicability**

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

1. All future Leases providing for the occupation or use of any Housing Unit for residential use; and

2. All future Leases providing for the occupation or use of any of the [Tribe/Nation]'s land for residential use.

b. This Code shall not apply to:

1. Agricultural leases;

2. Commercial or business leases; or
3. To any lease of individually owned Indian allotted land in accordance with 25 U.S.C. 415(h)(2).

## **5. Controlling Law**

- a. To the extent that this Code conflicts with any applicable federal statutes or regulations the federal statute or regulation shall control.
- b. To the extent that any Lease to which this Code applies conflicts with this Code, this Code shall control.

## **6. Amendment**

This Code may be amended by majority vote of the [Tribe/Nation] [Tribal Council/Legislature] (“[Tribal Council/Legislature]”) provided that no major substantive amendment hereto shall be effective unless approved by the Secretary in accordance with applicable federal laws and regulations.

## **7. Effective Date**

This Code shall become effect as the [Tribe/Nation]’s law, for all purposes, on the date of enactment by [Tribal Council/Legislature] and approval by the Secretary.

## **8. Severability**

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

## **9. Definitions**

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

- a. Assignment. An agreement between a Lessee and an Assignee, whereby the Assignee acquires all or some of the Lessee’s rights, and assumes all or some of the Lessee’s obligations, under a lease.
- b. BIA. The Secretary of the Interior or the Bureau of Indian Affairs within the Department of the Interior and any tribe acting on behalf of the Secretary or Bureau of Indian Affairs under § 162.018.
- c. Code. A guiding or governing principle that mandates or constrains actions, has [Tribe/Nation]-wide application, will change infrequently and sets a course for the foreseeable

future, helps to ensure compliance, enhances the [Tribe/Nation]'s mission and reduces liability risk, and is approved by the authoritative decision-makers of the [Tribe/Nation].

d. Constructive notice means notice:

1. Posted at the tribal government office, tribal community building, and/or the United States Post Office; and

2. Published in the local newspaper(s) nearest to the affected land and/or announced on the local radio station(s).

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

f. Department of Housing. The [Tribe/Nation]'s Department of Housing.

g. Fair Market Rental. The amount of rental income that a leased tract of the [Tribe/Nation]'s land would most probably command in an open and competitive market, or as determined by competitive bidding.

h. Housing Unit. All or any portion of any house, home, building, or other structure used as a residence by any person that is located on the [Tribe/Nation]'s land subject to a Lease, to which this Code applies. Each Housing Unit type is of "Single-family residence" as defined in 25 C.F.R. Section 162.103.

i. Interested Party. An Indian or non-Indian individual or corporation, or tribal or non-tribal government whose interests could be adversely affected by a decision of the [Tribe/Nation] to lease a Housing Unit on the [Tribe/Nation]'s land.

j. Lease. A written contract between the [Tribe/Nation] and a Lessee, whereby the Lessee is granted a right to possess the [Tribe/Nation]'s land, for a specified purpose and duration. The Lessee's right to possess will limit the [Tribe/Nation]'s right to possess the leased premises only to the extent provided in the lease.

k. Leasing Office. The [Tribe/Nation]'s Leasing Office.

l. Lessee. A person or entity who has acquired a right to possess the [Tribe/Nation]'s land by executing a Lease.

m. Leasehold Estate. The possessory interest in the [Tribe/Nation]'s land established pursuant to a Lease between a Lessor and a Lessee.

n. Leasehold Mortgage. A mortgage, deed of trust, or other instrument that pledges a Lessee's leasehold interest as security for a debt or other obligation owed by the Lessee to a lender or other mortgagee.

- o. [Tribal Council/Legislature]. The [Tribe/Nation] [Tribal Council/Legislature].
- p. Lessor. The legal, beneficial, or equitable owner of the [Tribe/Nation]'s land subject to a Lease, including the [Tribe/Nation], and any heir, successor, executor, administrator, or assign of the Lessor.
- q. LTRO. The Land Titles and Records Office of the Bureau of Indian Affairs.
- r. Mortgage. A lien on a Leasehold Estate given to secure advances on a loan to purchase, construct, refinance, or renovate a Housing Unit or improvement, and may refer both to a security instrument creating a lien, whether called a mortgage, deed of trust, security deed, or other term, as well as the credit instrument, or note, secured thereby.
- s. Mortgagee. Any person, entity, or government agency which lends under a Leasehold Mortgage, and includes any assignee, or any heir, successor, executor, administrator, or assign thereof.
- t. Mortgagor. The [Tribe/Nation] or any person or entity who has executed a Leasehold Mortgage, including any heir, successor, executor, administrator, or assign thereof.
- u. [Tribe/Nation]'s land. Any tract, in which the surface estate is owned the [Tribe/Nation] in trust or restricted status, and includes such lands reserved for BIA administrative purposes. The term also includes the surface estate of lands held by the United States in trust for an Indian corporation chartered under Section 17 of the Act of June 18, 1934 (48 Stat. 988; 25 U.S.C. 477).
- v. NEPA. The [Tribe/Nation]al Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*
- w. Permanent Improvements. Buildings, other structures, and associated infrastructure attached to the [Tribe/Nation]'s land.
- x. Public. Includes enrolled members of the [Tribe/Nation], and other persons as authorized by the [Tribal Council/Legislature], Executive Branch, Judiciary, or General Council to attend a meeting.
- y. Real Property. The [Tribe/Nation]'s property that is land or land and building.
- z. Register of Deeds Office. The [Tribe/Nation]'s Register of Deeds Office.
- aa. Secretary. The Secretary of the Interior.
- bb. Significant Effect on the Environment. A substantial, or potentially substantial, adverse change on the environment.

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

dd. Trespass. Any unauthorized occupancy, use of, or action on the [Tribe/Nation]'s land.

ee. Trust or restricted land. Any tract, or interest therein, held in trust or restricted status.

ff. Trust or restricted status means:

3. That the United States holds title to the tract for the benefit of the [Tribe/Nation]; or

4. That the [Tribe/Nation] 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.

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

## **CHAPTER II**

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

#### **10. Approval of Leases**

a. All leases shall be subject to the approval of the [Tribal Council/Legislature].

b. All leases shall be signed by the [Chairperson/President] of the [Tribe/Nation].

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

d. Any lease which is approved and executed under this Section shall refer to this Code as authority for its execution on behalf of the [Tribe/Nation].

#### **11. Lease Requirements**

a. All Leases shall be in writing, and at a minimum, shall:

1. Describe the tract or parcel of the [Tribe/Nation]'s land that is being leased, or on which the residential unit being leased is located with reference to a public or private survey plan, if available, in terms sufficient to determine the location;



2. State the purpose of the Lease and authorized uses of the premises;
3. Identify the parties to the Lease;
4. State the effective date and term of the Lease, which shall not exceed seventy-five (75) years;
5. If a Lease authorizes the Lessee to make Permanent Improvements during the term of the Lease the Lease shall identify the general type of each improvement by providing a building plan, construction schedule, and the location of the improvement, and the responsibility for constructing, operating, maintaining, and managing the Permanent Improvements during the Lease term. The Lessee shall be required to provide reasonable notice to Lessor of the construction of any Permanent Improvements not described in the lease. Ownership of Permanent Improvements shall be defined by the Lease.
6. Specify all rent and payment requirements, including payment due dates, payee, place of payment, and any interest;
7. State the due diligence and insurance requirements that apply, if any;
8. A performance bond shall not be required;
9. State the process for amendment, which shall be in writing, signed by both parties, and with the consent of any Mortgagee;
10. State the governing law, which may include the [Tribe/Nation]'s laws and applicable federal statutes and regulations; and
11. Include or attach all other provisions required under any applicable federal statutes or regulations, including without limitation including the following:
  - i. Use of Premises. It is herein agreed that during the lease term that there must not be any unlawful conduct, creation of a nuisance, illegal activity, or negligent use of waste on Leased Premises.
  - ii. Violations of Lease. The Lessee must comply with all applicable laws, ordinances, rules and regulations;
  - iii. Historic Preservation. If historic properties, archeological resources, human remains, or other cultural items not previously reported are encountered during the course of any activity associated with this lease, all activity in the immediate vicinity of the properties, resources, remains, or items will cease and the Lessee will contact BIA and the [Tribe/Nation] to determine how to proceed and appropriate disposition;

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

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

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

vii. Hazardous Materials. The Lessee indemnifies the Lessor and the United States against all liabilities or costs in relation to the use, handling, treatment, removal, storage, transportation, or disposal of hazardous materials, or release or discharge or any hazardous material from the Leased Premises that occurs during the lease term, regardless of fault, with the exception that the Lessee is not required to indemnify the Lessor for liability or cost arising from the Lessor's negligence or willful misconduct.

12. State, if Leased land is within an Indian irrigation project or drainage district, the following:

If Leased premises are within an Indian irrigation project or drainage district, except as provided by 25 CFR 171, the Lessee must pay all operation and maintenance charges that accrue during the lease term. The Lessee must pay these amounts to the appropriate office in charge of the irrigation project or drainage district.

## **12. Lease Application Process**

a. Land-Use and Site Planning: Residential Leases are issued only for properties identified appropriate for residential development within the [Tribe/Nation]'s Land-Use Plan and should be consistent with the [Tribe/Nation]'s official zoning map. Prior to approval of a residential lease, a subdivision plat or certified survey map with a legal land description for the property must be approved and provided to the Leasing Office as a plan-of-record.

b. Site Availability: The Leasing Office will maintain grid maps for property which the [designated entity i.e. Planning/Zoning Department] has approved for residential development. The maps will show all available sites for building.

c. Initial Screening: [designated entity i.e. Housing] staff will verify in writing to the Leasing Office that all applicants have been approved by the [designated entity i.e. Housing]

for new home construction, if the applicant is funded through a federal program. If the applicant is utilizing other methods of funding, [designated entity i.e. Housing] staff will verify that applicant has the funding necessary for new home construction.

d. Pre-application: Applicant requests assistance in acquiring a residential lease from the Leasing Office. After the applicant identifies a potential building site, the Leasing Office confirms that the parcel is available for lease and appropriately zoned. The [designated entity i.e. Planning/Zoning] must be consulted to address potential plan amendments, rezoning, or other land-use regulations. A preliminary site evaluation must be completed by the appropriate entities of the [Tribe/Nation].

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

f. Application Review: The Leasing Office staff will review the application for completeness. Incomplete applications will be returned to the Applicant with a letter outlining information necessary to move the application forward. Completed applications are filed with the Leasing Office. A cover letter and completed application copy is provided to the [designated entity i.e. Housing].

g. Land Lease Approval: Once the lease application is complete, the Leasing Office staff will draft a standard Lease per the requirements under Section 11 of this Code. The Leasing Office staff will send the proposed lease to the [Tribal Council/Legislature] for review. The [Tribal Council/Legislature] will approve or deny the land lease. The [Tribal Council/Legislature] may table a land lease pending additional information, if needed. Ratification of the [Tribal Council/Legislature] meeting minutes is required prior to beginning new home construction. The Leasing Office staff will sign two original completed lease applications. The Leasing Office shall provide both an original Land Lease Agreement to the [designated entity i.e. Register of Deeds Office]. [designated entity i.e. Register of Deeds Office] will record and retain the original documents in a lease file. [designated entity i.e. Register of Deeds Office] will further provide certified copies, including any amendments or renewals to the lease, to the Secretary and the Lessee when indicated.

### **13. Payment**

For any Lease requiring payments, which shall be negotiated by the [Tribe/Nation] or through its designated department, official, or agent and approved by Legislative resolution, to be made to the [Tribe/Nation] the [Tribe/Nation] shall provide the Secretary with such documentation of the lease payments that are sufficient to enable the Secretary to discharge the trust responsibility of the United States such that:

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

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

#### **14. Termination of Lease**

If construction has not commenced within one (1) year of the execution date of the Lease, the Leasing Office will notify the [designated entity i.e. Housing]. The [designated entity i.e. Housing] will notify the Lessee that they have thirty (30) days in which to execute a signed construction contract. If a contract is not provided to the [designated entity i.e. Housing] within thirty (30) days, the lease will be forwarded to the [Tribal Council/Legislature] for review and make an appropriate decision for extension or termination. If a Lease is terminated, the Leasing Office may also initiate the lease process according to their guidelines.

#### **15. Trespass**

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

#### **16. Forfeiture of Lease**

A Lessee may forfeit their lease by obtaining a Land Lease Cancellation Form from the Leasing Office. The Lessee must submit a signed, notarized original to the Leasing Office. The Leasing Office will forward the form rescinding the land lease to the [Tribal Council/Legislature] for action. Once the rescission is executed, it is filed with the [designate entity i.e. Register of Deeds Office] and a copy is provided to the [designated entity i.e. Housing]. The property will then be offered in accordance with the Selection Review section of the land lease process. If the property has not been reserved for the [designated entity i.e. Housing], the Leasing Office may also initiate the lease process according to their guidelines.

#### **17. Lease Continuation**

If during the land lease application process the Applicant withdraws from the [designated entity i.e. Housing] only, the land lease may, by request of the Applicant, continue to be processed by the Leasing Office for the remainder of the one year timeframe for new home construction, after which if lessee has not obtained other financing and a construction contract has not been signed, the Termination of Lease action will commence.

#### **18. Lease Renewal**

The [Tribal Council/Legislature] will review requests for lease renewals on a case-by-case basis.

## **19. Recording**

a. The Leasing Office will provide the completed Lease and the Designation of a Beneficiary of Lease Form for signature by applicant. Lessee shall be required to pay lease rent as is indicated by lease agreement prior to lease issuance. Following signing and payment of rent Leasing Office will record and provide a certified copy to the Lessee. Original documents will be maintained by [designated entity i.e. Register of Deeds Office] and with the Bureau of Indian Affairs Land Titles and Records Office (LTRO) with jurisdiction over the [Tribe/Nation]. The [designated entity i.e. Housing] will receive a certified copy where indicated.

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

## **20. Ownership of Records**

Records of activities taken pursuant to this Code are the property of the [Tribe/Nation].

# **CHAPTER III**

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

## **21. Purpose of Review**

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

## **22. Requirements for Approval**

a. The [Tribal Council/Legislature] shall not approve a Lease under Section 10 of this Code unless:

1. The [Tribe/Nation] Department of Natural Resources (“DNR”) has reviewed the Lease and such other information as may be necessary to identify and evaluate any Significant Effect on the Environment of the intended use of the Premises, and has:

i. Made a determination that the uses authorized by the Lease are included within the categorical exclusion stated in Section 23 and provided that determination in writing to the LDT;

ii. Issued a final decision after following the procedure set forth in Section 24; or

2. The DNR has provided the [Tribal Council/Legislature] with notice that the [Tribe/Nation] has carried out a project or activity funded by a federal agency and that it has relied on the Environmental Review Process of the applicable federal agency rather than the procedures set forth in Section 24.

### **23. Categorical Exclusions**

a. The [Tribal Council/Legislature] hereby finds that the following actions do not individually or cumulatively have a Significant Effect on the Environment, and therefore, except as otherwise provided in subsection 23(b), are categorically excluded from the procedures set forth in Section 24:

1. Approval of the Lease for residential use of an existing housing unit, including any associated improvements, access roads, and utilities;

2. Approval of a Lease for five (5) acres or less of contiguous land for construction and residential use of a single structure of one (1) to four (4) dwelling units and any associated improvements, access roads, and utilities.

b. Notwithstanding subsection 24(a), the DNR shall follow the procedures set forth in Section 24 if it determines that extraordinary circumstances exist under which the residential use of the Premises may, individually or collectively, have a Significant Effect on the Environment, including without limitation, as set forth below:

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

### **24. Environmental Review**

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

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

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

ii. If there is a substantial interest in holding a public meeting it shall be held in accordance with [tribal open meetings ordinance to provide an

opportunity for [Tribe/Nation] members to comment, both written and verbal, on the finding of no significant impact.

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

iv. Unless subsection 24(a)(2) applies a final decision on confirming that the uses authorized by the proposed Lease are expected to have no Significant Effect on the Environment shall be issued, sent to the [Tribal Council/Legislature] for approval, and posted for fifteen (15) calendar days in a prominent, noticeable place in the [Tribe/Nation]'s Executive Office Building.

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

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

ii. A meeting shall it shall be held in accordance with [tribal open meetings ordinance on the draft environmental review to provide an opportunity for [Tribe/Nation] members and residents on the [Tribe/Nation]'s land to comment, both written and verbal, on any Significant Effect on the Environment of the uses authorized by the proposed Lease;

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

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

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

#### **CHAPTER IV**

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

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

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

b. All Subleases and Assignments which are subject to the approval of the [Tribal Council/Legislature] shall be signed on behalf of the [Chairperson/President].

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

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

#### **26. Requirements**

a. A Lessee may sublease a Housing Unit or [Tribe/Nation]'s land in accordance with this Section.

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

c. No Sublease shall relieve the Lessee or sublessor of any liability under the Lease as provided in 25 C.F.R. 162.353(b)(2).

d. In any Assignment, other than to a Mortgagee of the Leasehold Estate, the assignee must agree in writing to assume all of the obligations and conditions of the Lease, and that the Lease is subject to all applicable laws as provided in 25 C.F.R 162.014.



## **27. Recording**

All Subleases and Assignments and amendments thereto shall be recorded at the [designated entity i.e. Register of Deeds Office] with copies provided to the LTRO with jurisdiction over the [Tribe/Nation]'s land.

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

## **28. Approval of Leasehold Mortgage**

a. All Leasehold Mortgages under a Lease must be separately authorized by the [Tribal Council/Legislature], unless the Lease authorizes a Leasehold Mortgage and states the law governing foreclosure.

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

## **29. Recording**

All Leasehold Mortgage, assignments, amendments, and sales relating thereto shall be recorded at the [designated entity i.e. Register of Deeds Office] with copies provided to the LTRO with jurisdiction over the [Tribe/Nation]'s land provided that, to the extent required by a Mortgagee. A Leasehold Mortgage shall also be recorded in the appropriate county register of deeds.

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

## **30. Complaint**

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

## **31. Form of Complaint**

The Complaint shall be in writing, signed by the Interested Party, with a description of the alleged noncompliance with this Code which is the subject of the Complaint, state all relief requested and submitted to the [designated entity].

## **32. Informal Resolution**

The [designated entity] shall make reasonable efforts to resolve the Complaint informally, including, but not limited to, scheduling a meeting with the Interested Party for such purpose. All

Complaints which are resolved through such informal resolution shall be reduced to writing and signed by the [designated entity] and the Interested Party.

### **33. Decision**

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

### **34. Appeal**

In accordance with 25 U.S.C. 415(h)(8)(A) an Interested Party who has exhausted the [Tribe/Nation]'s remedies set forth in this Section may submit a petition to the Secretary, at such time and in such form as the Secretary deems appropriate, to review the [Tribe/Nation]'s compliance with this Code.

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

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

## [TRIBE/NATION] RESIDENTIAL TRUST LAND LEASE

---

**THIS RESIDENTIAL TRUST LAND LEASE** (hereinafter, "Lease"), is made and entered into by and between the [Tribe/Nation], a federally recognized Indian [Tribe/Nation], located at [address], and beneficial owner of the property, (hereinafter, "Lessor") AND (hereinafter, "Lessee").

As used in this Lease, the term "[Tribe/Nation]" means the [Tribe/Nation] and "Legislature" means the [Tribe/Nation] Legislative branch or its duly authorized representative. This Lease is subject to the approval of the Legislature pursuant to the [Tribe/Nation] Code [Residential Lease Regulations] enacted on [Date]. That in consideration of mutual covenants, promises, and agreements herein contained, said Parties hereto do hereby covenant, promise, and agree to and with each other as follows:

- 1. SECRETARIAL APPROVAL; FEDERAL AGENCY APPROVAL** This Lease is subject to the approval of the Secretary of the Department of the Interior pursuant to [the Act of August 9, 1955, 69 Stat. 539, as amended, 25 U.S.C. § 415 or the Native American Housing and Self-Determination Act, 25 U.S.C. § 4211], as implemented by Title 25, Code of Federal Regulations, Part 162. *Notwithstanding the foregoing, on [Date], the Secretary approved, the [Tribe/Nation] Residential Leasing Code ("Leasing Code") pursuant to the Help Expedite and Advance Responsible Tribal Home Ownership Act of 2012, 25 U.S.C. 415 ("HEARTH Act"), and the Secretary has not rescinded the Leasing Code and has not reassumed responsibility for approval of residential leases. Therefore, in accordance with the HEARTH ACT and the Leasing Code, this Lease shall take effect, without the approval of the Secretary, upon signature by Lessee and approval and signature by Lessor in accordance with the Leasing Code.* The form of this Lease has been accepted by the Secretary of Housing and Urban Development (HUD) pursuant to 24 C.F.R. § 203.43h(c), which implements section 248 of the National Housing Act, 12 U.S.C. § 1715z-13, for use in connection with Federal Housing Administration (FHA) insurance of a mortgage on the interest created by this Lease, and pursuant to 24 C.F.R. § 1005.107, which implements Section 184 of the Housing and Community Development Act of 1992 (Pub. L.102-550) for use in connection with HUD's issuance of a loan guarantee of a mortgage on the interest created by this Lease.
- 2. LEASED PREMISES.** The Lessor does hereby lease to the Lessee(s) all that tract or parcel of land located in Lot # ☐ [Tribe/Nation] Trust ☐ Fee Simple ☐ ILCA acquired ☐ Homestead or Allotment #439 T on the property known as \_\_\_\_\_ within the legal description of \_\_\_\_\_.
- 3. USE OF PREMISES.** The object of this is to enable the Lessee(s) to construct, improve, and or maintain a dwelling and related structures on the Leased Premises, and otherwise to use or occupy said Leased Premises for residential purposes. Lessee(s) shall maintain the Leased Premises and perimeter areas in a neat, sanitary, and safe condition. The Lessee agrees not to use any part of the p Leased Premises for any

unlawful conduct or purposes and will comply with all applicable Tribal and Federal Laws.

4. **TERM.** Lessee(s) shall have and hold the described Leased Premises with their appurtenances for a term of seventy-five years (75) beginning on the date signed by the Lessor. This Lease may not be terminated by either or both parties during its term if, and as long as, the Lease and/or any improvements on the Leased Premises, or any interest therein, is mortgaged or otherwise pledged as security for any loan in accordance with the provisions hereof, unless consent in writing to such termination is given by the lender and, if the loan is guaranteed, insured, or made by HUD, a written consent of that agency is also required. This Lease shall not be subject to any forfeiture or reversion and shall not be otherwise terminable, if such event would adversely affect any interest in the Leased Premises, including improvements thereon, acquired in accordance with the provisions hereof by the holder of any mortgage or other lien, or of any purchaser at a foreclosure sale under such mortgage (or lien) or under any conveyance given in lieu of foreclosure, or of any holder subsequent to such purchase. In the event HUD acquires a mortgage on the interest created by this Lease by assignment from a lender, the Lessor shall not terminate the Lease without the written consent of HUD, as long as the mortgage is in force.
5. **RENT.** Lessee(s) shall pay the Lessor, for the use of the Leased Premises for a term of seventy-five (75) years, rent at the rate of one dollar (\$1.00). Payment of the one seventy-five (75) year term is due prior to Lease issuance. Lessee(s) additionally agrees to pay a sum equal to the annual assessed property taxes on the parcel and the improvements thereon. All other applicable rent payments are to be made to [Tribe/Nation] Register of Deeds Office or [Tribe/Nation] Home Ownership Program within the time designated on the invoice. It is agreed that there shall be no adjustment of the rent in the event that any part of the Leased Premises is taken by condemnation for highway or other public purpose. The Lessor reserves the right to grant right-of-ways over and through the Leased Premises for construction of roads, utility services, and for other purposes which may increase the value of the parcel or adjacent lands. Rent is subject to adjustment at the discretion of the Lessor with proper notice given to Lessee(s). It is understood and agreed between the parties hereto that, if any installment of due rent is not paid within thirty (30) days of Lease issuance, that the Lessor has the option to apply interest against the delinquent payment defined under Section 19 of this Lease.
6. **USE RIGHT.** Upon expiration of this Lease, or upon its termination in accordance with the terms hereof, unless such termination is due to default upon the part of Lessee, Lessee or any successors in interest shall be entitled to use rights in the Leased Premises if qualified under the laws of the [Tribe/Nation]. If not so eligible, Lessee, his or her (their) sublessee and any successors in interest shall, upon demand, surrender to Lessor upon expiration or other termination of this Lease complete and peaceable possession of the Leased Premises and all improvements thereon which shall be the property of the [Tribe/Nation].

7. **QUIET ENJOYMENT.** Lessor agrees to defend the title to the Leased Premises and also agrees that Lessee and any successors in interest shall peaceably and quietly hold, enjoy and occupy the Leased Premises for the duration of this Lease without any hindrance, interruption, ejection or molestation by Lessor or by any other persons whomsoever, except if the requirements of any part of this Lease are not kept by the Lessee. Notwithstanding the foregoing, Lessee and his or her (their) assigns is (are) subject to all the laws of the [Tribe/Nation] to the same extent as any other [Tribe/Nation] member or resident.

8. **ASSIGNMENT AND SUBLEASE.**

(a) Except as otherwise provided herein, Lessee shall not assign or sublet this Lease without the prior written consent of the Lessor and sureties. If this Lease and/or any improvements on the Leased Premises are mortgaged or pledged as security for a loan, Lessee shall not assign or sublet this Lease without the written approval of the lender and HUD. Any such sublease or assignment shall be recorded in the Land Title and Records Office having jurisdiction over the land. Lessee may assign the Lease and deliver possession of the Leased Premises, including any improvements thereon, to the lender or its successors, or HUD guaranteeing or insuring the loan, if Lessee default(s) in any mortgage or other loan agreement for which the Lease and/or improvements on the Leased Premises are pledged as security, and, in such event, the lender or its successors in interest may transfer this Lease or possession of the Leased Premises to a successor Lessee; provided, however, that the Lease may only be transferred to another member of the [Tribe/Nation] or tribal entity. Nothing in this Lease shall prevent the Lessee, with the approval of the Secretary of the Interior and the Secretary of HUD (for Section 184 Indian Housing Loan Guarantee and 248 insured loans), from executing and recording a mortgage, declaration of trust and/or other security instrument as may be necessary to obtain financing for the purchase of a dwelling, refinancing of an existing mortgage, construction and/or improvement of a dwelling and related structures, or shall prevent the mortgagee or other lender from foreclosing or instituting other appropriate proceedings under law in the event of default of any mortgage or other loan agreement by the Lessee, or assigns. Except in cases involving loans for home construction or home improvement by a bank, recognized lending institution, or a lending agency of the United States Government, where no such consent or approval of Lessor shall be required, Lessee may not execute a mortgage, declaration of trust or other security instrument pledging their interest in this Lease or any improvements on the Leased Premises without the prior written consent of Lessor and the approval of the Secretary. Notwithstanding the provisions contained above, the following additional requirements shall be applicable to a Lease which secures a mortgage insured, guaranteed or held by a Federal Agency, if any:

- (b) Notwithstanding that the term sublease is used herein, the Lessee shall not sublease the Leased Premises if the Lease is the security for a mortgage guaranteed under Section 184 or insured under Section 248. The Lessee may assign the Lease in accordance with the terms hereunder.

In the event HUD is the lender or acquires the mortgage secured by this Lease, and subsequently acquires said Lease by foreclosure, or by the assignment of said Lease by Lessee, his or her (their) Lessees or assigns (for which the approval of the [Tribe/Nation] is not required), then:

- 1) HUD will notify the [Tribe/Nation] of the availability of the Lease for sale, the sales price of the home and other terms of sale.
- 2) The Lease may only be assigned to another member of the [Tribe/Nation] or [Tribe/Nation] entity, except that HUD may assign the Leased Premises to a non-member under the conditions specified herein. Any such sublease or assignment shall be executed consistent with [Tribe/Nation] law and Federal law.
- 3) If a purchaser is found, the Lease will be transferred by HUD to the purchaser, with the prior written consent of the [Tribe/Nation].
- 4) If a purchaser cannot be found, HUD shall be entitled to sublease the Leased Premises and improvements with the prior written approval of the [Tribe/Nation]. Such sublease shall be a member of the [Tribe/Nation], unless a member of the [Tribe/Nation] Lessee cannot be found, in which case HUD may sublease to any individual with the prior written approval of the [Tribe/Nation]. The term of the initial Lease period and any succeeding period shall not exceed one (1) year each. Any purchase of the Lease shall be subject to any sublease by HUD pursuant to this subsection.
- 5) No mortgagee (except HUD as mortgagee or assignee of a mortgagee) may obtain title to the interest created by this Lease without the prior written consent of the [Tribe/Nation].

In the event that the lender is the entity responsible for acquiring the Lease and the leasehold estate by foreclosure, the lender shall have the rights of HUD who had insured or guaranteed the foreclosed mortgage under subparagraphs (1) through (5) above, provided this sentence does not apply to loans under HUD Section 184 loan guarantee/FHA's Section 248 insurance program.

- 9. OPTION.** Subsequent to Lessee's breach of any covenant or agreement under a mortgage or other security instrument for which the Lease or any improvements on the Leased Premises are pledged as security, and upon the expiration of any applicable cure period, the Lessor shall have an option (the "option" herein) to acquire the Lessee's Leasehold interest, (subject to all valid liens and encumbrances) upon either payment in full of all sums secured by the mortgage or assumption of the loan with the approval of the lender or HUD as evidenced by the note and mortgage and execution of an

assumption agreement acceptable in all respects to the Lender. Such option is subject to the following conditions:

- (a) If the Lessee or any assignee of Lessee fails to cure the default, the lender shall give written notice to the Lessor and any applicable [Tribe/Nation] housing authority of Lessee's or its assignee's failure.
- (b) If the Lessee fails to cure the default, said notice shall be given before the lender or successor invokes any other remedies provided under the mortgage or by law. Thereafter, the lender may issue an acceleration notice to the Lessee, its Lessees or assigns, under the mortgage or other security instrument, requiring the Lessee, its Lessees or assigns to pay all sums secured by the mortgage or other security instrument. If the Lessee, its Lessees or assigns fail to cure the default in accordance with the terms of the lender's acceleration notice, the lender shall give the Lessor written notice of said failure to cure. The Lessor may exercise its option at any time within thirty (30) days of the date of the lender's written notice to the [Tribe/Nation] of said failure to cure. This option shall be exercised by notice in writing from the Lessor to the Lessee and the lender.
- (c) Notwithstanding the Lessor's option to acquire the Lessee's interest in the Leased Premises, such option shall be subject to any right the Lessee may have under the mortgage or by law to reinstatement after the acceleration, and the right to bring appropriate court action to assert the non-existence of a default or any other defense to acceleration and sale or foreclosure.
- (d) The estate acquired by the Lessor through the exercise of the option shall not merge with any other estate or title held by the Lessor as long as the leasehold interest or any improvements on the Leased Premises, or any interest therein, are mortgaged or otherwise pledged as security for any loan, and the leasehold interest shall remain subject to any valid and subsisting mortgage or other security instrument.

**10. EFFECTIVE DATE.** This Lease and all its terms and provisions shall be binding upon the successors, and assigns of the Lessee and any successor in interest to the Lessor, and shall take effect following signature by Lessee and approval by, and signature on behalf of, the [Tribe/Nation] pursuant to [Section] of the Leasing Code.

**11. OBLIGATION TO THE UNITED STATES.** It is understood and agreed that the obligations of the Lessee to the [Tribe/Nation] are also enforceable by the United States, so long as the land remains in trust or restricted status. .

**12. ASSENT NOT WAIVER OF FUTURE BREACH OF COVENANTS.** No assent, express or implied, to any breach of any of the Lessee's covenants, shall be deemed to be a waiver of any succeeding breach of any covenants.

**13. VIOLATIONS OF LEASE.** The parties have agreed to the following negotiated remedies: remedies available under applicable law, as modified by the deed of trust for

any mortgage. It is understood and agreed that violations of this Lease shall be acted upon in accordance with the regulations in 25 C.F.R. Part 162.

- 14. CARE OF LEASED PREMISES.** It is understood and agreed that the Lessee is to keep the Leased Premises covered by this Lease in good repair. There must not be any unlawful conduct, creation of a nuisance, illegal activity, or negligent use or waste of the leased premises. Lessee shall not remove or tear down any building or other improvements thereto, but shall keep the same in good repair. Lessee shall not destroy or permit to be destroyed any trees, except with the consent of the Lessor, and shall not permit the Leased Premises to become unsightly. The Lessee will be held financially responsible for all unrepaired damages to buildings, fences, improvements or appearance, except for the usual wear and decay.
- 15. FORCE MAJEURE.** Whenever under this instrument a time is stated within which or by which original construction, repairs or re-construction of said improvements shall be completed, and if during such period any cause reasonably beyond the Lessee's power to control occurs, the period of delay so caused shall be added to the period allowed herein for the completion of such work.
- 16. INSPECTION OF THE PREMISES.** The lender, HUD, and the Lessor and their authorized representative shall have the rights, at any reasonable times during the term of this Lease, and with reasonable notice, to enter upon the Leased Premises, or any part thereof, to inspect the same and all buildings and other improvements erected and placed thereon. The Bureau of Indian Affairs ("BIA") has the right, at any reasonable time during the term of the lease and upon reasonable notice in accordance with § 162.364, to enter the Leased Premises for inspection and to ensure compliance.
- 17. INDEMNIFICATION.** The Lessee holds the United States and the [Tribe/Nation] harmless from any loss, liability, or damages resulting from the Lessee's use or occupation of the Leased Premises; and the Lessee indemnifies the United States and the [Tribe/Nation] against all liabilities or costs relating to use, handling, treatment, removal, storage, transportation, or disposal of hazardous materials, or 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 [Tribe/Nation] for liability or cost arising from the [Tribe/Nation] negligence or willful misconduct.
- 18. UTILITIES.** Neither the Lessor nor the United States shall have any obligation to provide utilities as of the commencement of this Lease. In the event that the Lessee requires utilities, the installation and maintenance thereof shall be the Lessee's sole obligation, provided that such installation shall be subject to the written consent of the Lessor, which the Lessor will not unreasonably withhold. The Lessee shall pay, as they become due, all bills for electricity and other utilities that are furnished to the Leased Premises.



- 19. LATE PAYMENT INTEREST.** It is understood and agreed between the parties hereto that, if any installment of rental is not paid within thirty (30) days after becoming due, interest will be assessed at the existing prime rate, plus three (3) percent, per annum, times the amount owed for the period during which payments are delinquent. Interest will become due and payable from the date such rental becomes due and will run until said rental is paid. The interest rate formula is Interest = (Prime rate + 3%) times (x) (Rental Amount Due) times (x) (Number of Days Past Due/365).
- 20. RIGHT OF REMOVAL.** Prior to the termination or expiration of the lease, the Lessee of a residential dwelling shall be entitled to remove the dwelling and related structures from the Leased premises and relocate such improvements to an alternative site, not located on the Leased Premises. Any Lessee who exercises such a right shall be required to pay all costs related to the relocation of the dwelling and related structures. Lessee shall leave the Leased Premises in good order and condition, with the Leased Premises being restored as closely as possible to their condition before construction of the improvements. All other improvements shall become the property of the Lessor at the expiration of this Lease, and must be left in a condition satisfactory to the Lessor. This paragraph does not apply to property that is mortgaged; unless the Lender's prior written consent is provided to the [Tribe/Nation].
- 21. INSURANCE.** The Lessee agrees, so long as this Lease is in effect, to keep buildings and improvements on the Leased Premises insured against loss or damage by fire with extended coverage endorsements in an amount equal to the full insurable value of the buildings and improvements insured. Said policy is to be made payable to HUD and lender for the benefit of the Lessor. Lessee shall pay all premiums and other charges payable in respect to such insurance. Except, during such time that a mortgage is in effect against this Leasehold interest, that said policy is to be made jointly payable to the Lessee and the Lender, and premium payments provided for per specific requirements of the Lender.
- 22. HISTORIC PRESERVATION.** If historic properties, archeological resources, human remains, or other cultural items not previously reported are encountered during the course of an activity associated with this Lease, all activity in the immediate vicinity of the premises, resources, remains, or items will cease. The Lessee(s) also agree that contact will be made with the Lessor and the appropriate agencies to determine how to proceed and appropriate disposition.
- 23. GOVERNING LAW AND CONSENT TO JURISDICTION.** Lessee(s) and their residents, guests of Lessee, Lessee's employees and agents, assignees, and sublessees and their employees and agents hereby agree to abide by all laws, regulations and ordinances of the [Tribe/Nation], now or hereafter in force and effect. Lessee(s) and their residents, its employees and agents, assignees, and sub-Lessees and their employees and agents hereby consent to the jurisdiction of the [Tribe/Nation] Tribal Court. Such jurisdiction shall include, but not be limited to, jurisdiction to levy fines and enter judgments for compensatory and punitive damages and injunctive relief, in connection with activities conducted by Lessee(s) and their residents, assignees, sub-

Lessees and agents on the [Tribe/Nation] land or which have a proximate (legal) effect on persons or property on [Tribe/Nation] land. Any lender securing a loan or mortgage with the Leased Premises must consent to the jurisdiction of the [Tribe/Nation] Tribal Court and agree to abide by all laws, regulations, and ordinances of the [Tribe/Nation], now or hereafter in force and effect, that are not in conflict with applicable federal law. Where HUD is carrying out a foreclosure, HUD, or the appropriate United States Attorney's Office representing HUD, shall determine the appropriate court of competent jurisdiction.

**24. SOVEREIGN IMMUNITY.** Nothing in this agreement shall be construed to affect or be deemed a waiver of immunity by the [Tribe/Nation].

**25. OTHER.**

- (a) No mortgage or other loan secured by the Leased Premises may be executed by any individual(s) other than those signatory Lessee(s) below and any and all mortgages or other loans secured by the Leased Premises must be executed by all signatory Lessee(s) herein.
- (b) BIA may, at its discretion, treat as a lease violation any failure by the Lessee to cooperate with a BIA request to make appropriate records, reports, or information available for BIA inspection and duplication.

IN WITNESS WHEREOF, the Parties hereunto execute this Land Lease,

**LESSEE(S),**

By: \_\_\_\_\_ Date: \_\_\_\_\_

By: \_\_\_\_\_ Date: \_\_\_\_\_

AND

**LESSOR, [TRIBE/NATION],**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
[Tribe/Nation], [Chairperson/President]

[DATE]

Helen Riggs  
Acting Deputy Bureau Director - Trust Services  
Bureau of Indian Affairs  
1849 C Street NW, MIB  
Washington, D.C. 20240

RE: Request for Approval of [Agricultural/Business Site/Residential] Leasing Policy

Ms. Riggs:

The intent of this letter is to request that the Secretary of the Interior ("Secretary") approve the [Agricultural/Business Site/Residential] Leasing Policy enacted by the [Tribe/Nation] ("[Tribe/Nation]"). The [Agricultural/Business Site/Residential] Leasing Policy implements the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012 ("HEARTH Act") with regard to [Agricultural/Business Site/Residential] leases of [Tribe/Nation] land by establishing a process under which the [Tribe/Nation] may directly approve such leases without subsequent approval by the Secretary.

On [DATE], the [Tribe/Nation]'s [Tribal Council/Legislature] approved Resolution No. \_\_\_\_\_ ("Approved Resolution") thereby approving the [Agricultural/Business Site/Residential] Leasing Policy and authorizing the submission to the Bureau of Indian Affairs for approval in accordance with the HEARTH Act. The Approved Resolution and two (2) originals of the [Agricultural/Business Site/Residential] Leasing Policy are attached to this letter for your consideration.

The HEARTH Act represents a significant achievement for proponents of inherent tribal sovereignty, autonomy, and self-governance. If you have any further questions please contact \_\_\_\_\_, Attorney General, with any questions or concerns regarding this matter.

Respectfully,

[Chairperson/President]

[Tribe/Nation]

**[TRIBE/NATION]**  
**638 CONTRACT AGREEMENT BETWEEN THE [TRIBE/NATION] AND THE**  
**UNITED STATES DEPARTMENT OF THE INTERIOR BUREAU OF INDIAN**  
**AFFAIRS RESOLUTION**

**WHEREAS**, on [Date], the United States Secretary of the Interior approved a new Constitution for the [Tribe/Nation].

**WHEREAS**, the [Tribe/Nation] (“[Tribe/Nation]”) is a federally recognized Indian Tribe, pursuant to the Indian Reorganization Act of 1934; and

**WHEREAS**, Article            of the Constitution gives the [Tribal Council/Legislature] the power to ...

**WHEREAS**, Article            of the Constitution gives the [Tribal Council/Legislature] the power to ...

**WHEREAS**, the [Tribe/Nation] recognizes the need to provide more timely, quality service and to improve management of the [Tribe/Nation]’s leases for agricultural, residential and commercial, by implementing leasing policies and procedures; and

**WHEREAS**, the [Tribe/Nation] realizes there is a need for the establishment of a Land Titles and Records Office to provide the [Tribe/Nation] with the ability to management their lands more effectively and efficiently;

**WHEREAS**, the Constitution reserves to the [Tribal Council/Legislature] the power of oversight, but daily operations and management to the responsibility of the Executive Branch, so long as the actions of the executive departments are not contrary to the laws created by the Legislature.

**NOW THEREFORE BE IT RESOLVED** that the [Tribe/Nation] hereby authorizes the [Tribe/Nation] to enter into a Memorandum of Understanding with the United States Department of the Interior Bureau of Indian Affairs to establish a framework of partnering among the [Tribe/Nation] and the BIA to improve assistance to the [Tribe/Nation] for the development of policy and procedures to lease the [Tribe/Nation]’s and members lands and the creation of a Land Titles and Records Office.

**[TRIBE/NATION]**

**TO PERFORM SELECTED FUNCTIONS OF THE  
BUREAU OF INDIAN AFFAIRS LAND TITLES & RECORDS  
OFFICE**

**[TRIBE/NATION LOGO]**

**DATE SUBMITTED**

## TABLE OF CONTENTS

Memorandum of Understanding .....	Page X
[Tribe/Nation] Trust Land Lease Policy .....	Page X
[Tribe/Nation] Trust Land Lease .....	Page X
[Tribe/Nation] Trust Land Lease Resolution .....	Page X
638 Contract Agreement Resolution .....	Page X
Records File Clerk Position Description .....	Page X
Lease Specialist Position Description .....	Page X
Land Titles & Records Specialist Position Description .....	Page X
Land Acquisition Specialist Position Description .....	Page X
Register of Deeds Position Description .....	Page X
Organizational Chart .....	Page X

**MEMORANDUM OF UNDERSTANDING**

**BETWEEN THE**

**[TRIBE/NATION]**

**AND THE**

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

This Memorandum of Understanding (hereinafter “MOU”) is entered into by the [Tribe/Nation] (hereinafter “[Tribe/Nation]”) and the Bureau of Indian Affairs (hereinafter “BIA”) of the United States Department of the Interior.

**I. AUTHORITY**

This MOU is entered into pursuant to the requirements specifically stated in the [Tribe/Nation] Code and in [Tribe/Nation] Resolution ; Executive Order 13175 - Consultation and Coordination With Indian Tribal Governments, November 6, 2000; PL 93-638, Indian Self-Determination] and Education Assistance Act of 1975, as amended (PL 106-260); and in accordance with the BIA regulations relating to the Land Records and Title Documents, 25 CFR 150.

**II. INTRODUCTION/HISTORY**

The [Tribe/Nation] is a federally recognized Indian [Tribe/Nation] organized and exercising governmental powers under a Constitution ratified by the [Tribe/Nation] on [Date] in accordance with Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984).

Pursuant to Article V §2(l) of the Constitution, the [Tribe/Nation] has enacted laws to manage, lease, permit, or otherwise deal with the [Tribe/Nation]’s lands, interests in lands or other assets.

Resolution was duly adopted by the [Tribe/Nation], which updated the [Tribe/Nation] Lease Policy, and makes the Lease Policy compliant with the requirements of 25 CFR 162 – Leases and Permits and to establish a Land Title Records Office (hereinafter “LTRO”).

**III. STATEMENT OF NEED**

The [Tribe/Nation] has the responsibility of assuring that all leases are conducted in compliance with the requirements stated in the [Tribe/Nation]’s Lease Policy and contained in Resolution ; and

In an effort to improve land management, the [Tribe/Nation] plans to establish a LTRO by integrating leasing, and lease management, land fractionation, probate, title maintenance, recording of title and encumbrance documents, title document certification, and other relevant land related management with the [Tribe/Nation]'s current land management operations.

There is a need to strengthen the land management practices of the [Tribe/Nation] in order to improve its ability to maintain and develop its lands in order to best meet the needs of the [Tribe/Nation] and its members. The ability to manage its own land will enhance the quality of life for members and their families.

This MOU establishes the framework for partnership between the [Tribe/Nation] and the BIA. This partnership will assist the [Tribe/Nation] in the development and operation of its lands in fee or trust. [Tribe/Nation] members have significant needs for establishing lease policy, land fractionation policy, probate, and land titling functions which cannot be financed solely by the [Tribe/Nation]. The BIA and the [Tribe/Nation] share a common goal to improve the [Tribe/Nation]'s environment through the delivery of land management practices that will be established by the creation of a LTRO.

#### **IV. MISSION STATEMENTS**

The [Tribe/Nation]'s mission is to be the preeminent stewards of its own resources. As leaders who actively integrate the social, economic, and environmental interests of its communities with integrity and compassion, the [Tribe/Nation] will support its members and employees through visionary leadership, quality service, and will embrace the values of our ancestors.

The BIA's mission is to enhance the quality of life, to promote economic opportunity, and to carry out the responsibility to protect and improve the trust assets of American Indians, Indian [Tribe/Nation]'s, and Alaska natives. The [Tribe/Nation] will accomplish this through the delivery of quality services while maintaining the government-to-government relationship with the United States of America.

#### **V. GOALS AND OBJECTIVES**

The [Tribe/Nation]'s LTRO goals are to provide an accurate and perpetual means of recording, tracking, and maintaining all of the [Tribe/Nation]'s residential and commercial leasehold records, mortgages, and other documents relating to the use, encumbrance, and disposition of all [Tribe/Nation]'s lands to its members. The LTRO will achieve this goal through the following steps:

1. Develop a Recoding Policy & Procedures in accordance with the requirements stated in the [Tribe/Nation] Code and in accordance with the United States Department of the Interior Bureau of Indian Affairs 25 CFR 150.



2. Upgrade local computer system for implementing an overall land services program, which may or may not include the Trust Asset and Accounting Management Systems (TAAMS), for leasing, mapping, certifying, and reporting of the [Tribe/Nation]'s lands.
3. Maintain a library of all surveys of record of trust land, land status maps and initiate the process of creating plat books with GIS on a yearly basis.
4. Record documents affecting the title examination and insure accurate land title information of the [Tribe/Nation]'s property for submission of issuance of final polices to a designated title company.
5. Submit yearly audit reports to the [Tribe/Nation]'s government and the BIA Land Titles and Records Office – [Regional Agency].

## **VI. FUNCTIONS**

The [Tribe/Nation]'s LTRO shall perform all title plant functions, including document and plat recording and imaging, and title examination in accordance with 25 CFR 150, while establishing and maintaining a local title plant for all [Tribe/Nation] trust property.

The title examination functions to be performed will include a check of plats, maps for proper legal description and acreage, resources conveyed, and nature of estates conveyed. Additionally, the documents will be examined for reservations, exceptions, and restrictions, and any other existing or created special interests. Proper identification of grantor/grantee, acceptable execution and acknowledgment, terms, conditions and expiration, proper approval signature, authority and date will be examined. Title examinations will be performed by the [Tribe/Nation]'s title specialist examiner.

Title Status Reports, title documents, administrative corrections and modifications will be prepared by the [Tribe/Nation]'s LTRO including a second level review ([Tribe/Nation] Review) of title status report before the Superintendent's signature. All surveys including metes and bounds descriptions shall be double checked for closure and overlaps. The [Tribe/Nation] will provide the BIA and local and regional Land Titles and Records Offices a mailed copy of all certified documents affecting title. The [Tribe/Nation] will develop a local computerized records systems, which will include document imaging and storage (including off-site storage) and land status and plat book mapping of all of the [Tribe/Nation]'s trust land.

## **VII. PROJECTED OUTCOMES**

The [Tribe/Nation], in establishing an official LTRO, expects to improve the timeliness in delivering of title services to the leaseholder. The [Tribe/Nation] will resolve issues such as issuance of a tract number, clearing of mortgages or defects, and issuing opinion of title. Local management, approval, certification and implementation of new technology will combine to improve service delivery. In the future, the [Tribe/Nation] expects its GIS to be able to locate

a tract of land and query the ownership, lease status, encumbrances, and title certification when requested.

#### **VIII. MUTUAL UNDERSTANDINGS**

In order to achieve the common purposes described in the MOU the Parties agree as follows:

1. The [Tribe/Nation] and the BIA Land Titles and Records Office will each provide the other access to data as mutually agreed upon. The sharing of this data will assist the partners in meeting the needs of the membership more effectively and efficiently.
2. The BIA agrees, in cooperation with the [Tribe/Nation], to provide training to staff of the [Tribe/Nation] on leasing, mortgage approval, and recordation processes, including the necessity for timely review, approval, and recordation and the effect on the homebuyer when timely action does not occur.
3. The BIA recognizes the [Tribe/Nation]'s official Land Titles and Records Office to expedite the mortgage and title process in a timely manner to ensure homeownership opportunities for members who reside on the [Tribe/Nation]'s lands.
4. The [Tribe/Nation] assumes the responsibility of operation and the management of the [Tribe/Nation]'s official LTRO under authority requirements stated in the [Tribe/Nation]'s Code and contained in Resolution .
5. This MOU in no manner prohibits the Secretary from waiving, modifying, or diminishing in any way the trust responsibility of the United States.

**POSITION: REGISTER OF DEEDS**  
**DEPARTMENT: LAND MANAGEMENT**  
**SALARY:**  
**SUPERVISOR: SEE ORGANIZATIONAL CHART**

**DUTIES & RESPONSIBILITIES:**

1. Develop and maintain a recording and filing system cross-referenced by geography, grantor/grantee, and date for all real estate records (deeds, land contracts, mortgages, leases, etc) of the [Tribe/Nation].
2. Develop policies and procedures related to the recording and filing of all records for the [Tribe/Nation].
3. Record, index and file deeds, land contracts, mortgages, judgments, transfers, liens, vital statistical records and other documents in accordance with legal requirements and established office procedures.
4. Maintain vital records including certificates of live births, deaths, marriages and military discharges. Amend, correct, and replace vital records.
5. Gather and maintain all existing deed and ownership documents for tribal properties, including Original Deeds (whenever possible), title insurance, CSMs, Sub-division plats, Plans of record, Easements, ROWs deed and use restrictions, fee to trust transfer documents, research and allotment/heirship records, including probate.
6. Respond to requests for information and retrieve documents regarding property status, heirship, allotments, leases, easements, etc.
7. Gather and maintain lease records for all agricultural, commercial, residential, and billboards, or any other leases on tribal property.
8. Maintain tax records and be responsible for coordinating payment of real estate taxes on all Ho-Chunk [Tribe/Nation] owned fee-simple properties.
9. Assist with the gathering of lease information for allotment properties and maintain a database of heirs and existing and new leases for all tribal lands and allotment properties.
10. Act as liaison with BIA on TAAMS related matters.
11. Interact with the tribal members, public, and co-workers in a courteous, proficient and professional manner. Work in a professional manner with attorneys, abstractors and other officials
12. Must be dependable and work with little supervision.
13. Perform other duties as assigned by supervisor.

**MINIMUM QUALIFICATIONS (REQUIRED KNOWLEDGE & EXPERIENCE)**

1. Bachelor's Degree is preferred. High School Diploma or equivalent; post-secondary coursework in legal secretary, administrative assistant, accounting or related field preferred or (5) five years experience in related field.
2. Must be able to operate computer programs associated with Microsoft Office Suite (Word, Excel, and Access). Set up and maintain various database programs.
3. Certification in BIA TAAMS (Trust Asset and Accounting Management System) or the ability to be certified within a 12 month period. Certification requires federal background check.
4. Knowledge of basic bookkeeping and record keeping.
5. Valid driver's license, dependable transportation and proper insurance are required.
6. Must be a Notary Public or the ability to become a Notary within a 12 month period.

**POSITION: LEASING SPECIALIST**  
**DEPARTMENT: LAND MANAGEMENT**  
**SALARY:**  
**SUPERVISOR: SEE ORGANIZATIONAL CHART**

**POSITION SUMMARY:**

To execute housing administrative duties, to include [Tribe/Nation] leasing policies and procedures, and have knowledge required to assist in maintaining the accurate and perpetual means of recording and tracking all of the [Tribe/Nation]'s residential and commercial leases, mortgages, title searches, and other documents relating to the use, encumbrance, and disposition of all of the [Tribe/Nation]'s leasehold lands.

**DUTIES AND RESPONSIBILITIES:**

1. Create and maintain an in-depth master filing system for all function of the Land Titles and Records Office.
2. Assemble materials from files and records for use in preparing reports, answering correspondence and inquires, and carrying out various office functions.
3. Conduct assigned research as necessary to complete special projects such as compiling data and statistical information.
4. Review documents on which a question of problem exists regarding its recordings. Determine if the documents meet the recording requirements and communicate with the recording party to resolve discrepancies and/or return for correction.
5. Oversee and participate in assisting people by checking and recording documents, conduct file searches regarding property, and perform all other functions of the office of LTRO Lease Specialist
6. Assist in the oversight and maintenance of the [Tribe/Nation]'s leased residential and commercial lands.
7. Assist in originating and verifying all legal documentation for approval of the [Tribe/Nation]'s Legislature.
8. Protect the professional integrity of all original legal documents.
9. Work directly with Title Companies in performing Title Status Reports for clean title and record of said properties.
10. Work directly with the [Tribe/Nation]'s members, community leaders, legal department to record with accuracy all of the [Tribe/Nation]'s properties.
11. Follow policies and procedures of the [Tribe/Nation]'s Lease Policy and Procedures.
12. Other duties as assigned.

**QUALIFICATIONS:**

1. Bachelor's Degree is preferred. High School Diploma or equivalent; post-secondary coursework in real estate, legal secretary, administrative assistant, accounting or related field preferred or two (2) years experience in related field.
2. Background in tribal government helpful.

3. Able to maintain confidentiality and professional demeanor under all work circumstances.
4. Working knowledge of proper filing procedures.
5. Ability to organize and implement a complex filing system.
6. Work experience in an office setting.

**POSITION: LAND TITLES AND RECORDS SPECIALIST**  
**DEPARTMENT: LAND MANAGEMENT**  
**SALARY:**  
**SUPERVISOR: SEE ORGANIZATIONAL CHART**

**POSITION SUMMARY:**

The [Tribe/Nation]'s Land Titles and Records Specialist shall provide an accurate and perpetual means of recording, tracking, and maintaining all of the [Tribe/Nation]'s residential and commercial leases, mortgages, and other documents relating to the use, encumbrances, and disposition of all [Tribe/Nation]'s residential and commercial lands.

**DUTIES AND RESPONSIBILITIES:**

1. Serve the leasehold property title recording, tracking, and certification needs of the [Tribe/Nation] and its members in a timely manner.
2. Serve as the official public record for all residential, commercial, and governmental leasehold agreements, mortgage liens and encumbrances, and other appropriate documentation effecting the accurate disposition of any of the [Tribe/Nation]'s residential, commercial, and governmental lands.
3. Responsible for the timely and accurate searches of the record of the [Tribe/Nation] as they pertain to certain parcels of land within the [Tribe/Nation]'s jurisdiction.
4. Accurately keep systematic track of record at the [Tribe/Nation] Register of Deeds Office. Must be able to retrieve these records upon determining that they pertain to a particular parcel of land.
5. Responsible for entering newly submitted documents into the system by submitting the necessary documents to the appropriate agencies and finalizing the recording process upon return from the Bureau of Indian Affairs.
6. Review material of a highly technical nature dealing with land laws, regulations, and policies associated with the [Tribe/Nation]'s lands. Is responsible for explaining their purpose to staff, [Tribe/Nation], and the general public.
7. Operate in a manner sufficient for the issuance of Title Insurance policies by recognized title insurance companies.
8. Operate at all times in accordance within the provisions as described with in [Tribe/Nation Resolution] all LTRO specifications and all other rules, procedures, and appurtenant requirements.
9. Operate at all times to ensure accuracy, security, professionalism and to protect the original integrity of all of the [Tribe/Nation]'s legal comments of all residential, commercial, and governmental leasehold lands.
10. Work directly with tribal members, community leaders, legal department, abstract companies, and county register of deeds offices to record with accuracy all lands held by the [Tribe/Nation].
11. Work directly with title companies in performing Title Status Reports for clear title and record of all residential, commercial, and governmental leasehold land.
12. Work directly with the BIA to ensure accurate recoding of documents in compliance with federal law and regulations.

13. Review and revise documents on which a question or problem exists regarding its recording. Determine if the leasehold meets the recording requirements and communicate with the recording party to resolve discrepancies and/or returns for accurate recording of leasehold.
14. Considerable knowledge of housing, title search companies, and county recording requirements for residential, commercial, and governmental leasehold properties held by the [Tribe/Nation].
15. Other duties as assigned.

**QUALIFICATIONS:**

1. Bachelor's Degree is preferred. High School Diploma or equivalent; post-secondary coursework in real estate, legal secretary, administrative assistant, accounting or related field preferred or two (2) years experience in related field.
2. Background in tribal government helpful.
3. Able to maintain confidentiality and professional demeanor under all work circumstances.
4. Working knowledge of proper filing procedures.
5. Ability to organize and implement a complex filing system.
6. Work experience in an office setting.

**POSITION: LAND ACQUISITION SPECIALIST**  
**DEPARTMENT: LAND MANAGEMENT**  
**SALARY:**  
**SUPERVISOR: SEE ORGANIZATIONAL CHART**

**POSITION SUMMARY:**

The Land Acquisition Specialist will operate on as agent for the [Tribe/Nation] in the purchasing of real property. The Specialist will advise the [Tribe/Nation] on real estate market conditions in the area and assist the [Tribe/Nation] by supplying information on financing, valuation, home inspections, and community facilities and attributes. The Specialist will study property listings, accompany the authorized personnel to the property site, discuss conditions of sale, and draw up real estate contracts as well as perform other essential task that deal with the purchase of real propriety for the [Tribe/Nation].

**DUTIES AND RESPONSIBILITIES:**

1. Present purchase offers to sellers for consideration. Confer with escrow companies, lenders, home inspectors, and pest control operators to ensure that terms and conditions of purchase agreements are met before closing dates.
2. Prepare documents such as representation contracts, purchase agreements, closing statements, deeds and leases.
3. Coordinate property closings, overseeing signing of documents and disbursement of funds.
4. Compare a property with similar properties that have recently sold in order to determine its competitive market price.
5. Generate lists of properties that are compatible with [Tribe/Nation]'s needs and financial resources.
6. Arrange for title searches to determine whether there are clear property titles.
7. Inspect condition of premises, and arrange for necessary maintenance or notify the [Tribe/Nation] of maintenance needs.
8. Advise the [Tribe/Nation] on market conditions, prices, mortgages, legal requirements and related matters.
9. Evaluate mortgage options to help the [Tribe/Nation] obtain financing at the best prevailing rates and terms.
10. Review property listings, trade journals, and relevant literature, and attend conventions, seminars, and staff and association meetings in order to remain knowledgeable about real estate markets.
11. Contact utility companies for service hookups to the [Tribe/Nation]'s property.
12. Appraise properties to determine loan values.
13. Locate and appraise undeveloped areas for building sites, based on evaluations of area market conditions.



**QUALIFICATIONS:**

1. Bachelor's Degree is preferred. High School Diploma or equivalent; post-secondary coursework in real estate or two (2) years experience in related field.
2. Must be licensed by State/Tribe as a real estate salesperson or broker or able to obtain license within a two (2) year period.
3. Background in tribal government helpful.
4. Able to maintain confidentiality and professional demeanor under all work circumstances.
5. Working knowledge of proper filing procedures.
6. Ability to organize and implement a complex filing system.
7. Work experience in an office setting.

✓	DESCRIPTION	COMMENTS:
	<b>Checklist Initiated by:</b>	
	<b>Tribal Name:</b> Federally Recognized Tribal Name, If Differs from Above: Federal Register Confirming Recognized Tribal Name:	_____ FR Dated: _____
	<b>Scope</b> - Business, Ag., Residential, Recreational, Religious, Edu., Etc.:	
	<b>Tribal Cover Letter</b> - Addressed to BIA indicating name, title, and contact information for individuals the BIA may consult with regarding the proposed regulations.	Yes / No
	<b>Finalized Regulations</b> – No blanks, dates and signatures included.	Yes / No
	<b>Tribal Resolution(s)</b> - Any supporting Resolutions to the proposed regulations are provided to BIA with all necessary signatures.	Yes / No
	<b>REVIEW OF REGULATIONS</b> If Tribal regulations are consistent with 25 CFR Part 162 and provide for an environmental review process that meets requirements set forth in the Hearth Act (25 U.S.C. § 415(h), no additional requirements (also see National Policy Memo (NPM) dated Jan 18, 2013 and Mandatory Provisions 25 CFR 162.413)	
	<b>Defines the general terms used in the Regulations</b>	YES / NO
	<b>If the following key terms are used, the regulation defines each term substantially the same as 25 CFR 162, Subpart A</b> (Subpart A definitions are noted in following):	
	<b>Assignment</b> - “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 lease.”	Art./Sec. ____, Pg. ____.
	<b>Lease</b> – “means a written contract between Indian landowners and a lessee, whereby the lessee is granted a right to possess Indian land, for a specified purpose and duration. The lessee's right to possess will limit the Indian landowners' right to possess the leased premises only to the extent provided in the lease.”	Art./Sec. ____, Pg. ____.
	<b>Leasehold Mortgage</b> - 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.”	Art./Sec. ____, Pg. ____.
	<b>LTRO</b> – “means the Land Titles and Records Office of the BIA.”	Art./Sec. ____, Pg. ____.
	<b>Sublease</b> – “a written agreement by which the lessee grants to an individual or entity a right to possession no greater than that held by the lessee under the lease.”	Art./Sec. ____, Pg. ____.
	<b>Tribal Land</b> – “any tract, or interest therein, in which the surface estate is owned by one or more tribes in trust or restricted status, and includes such lands reserved for BIA administrative purposes. The term also includes the surface estate of lands held by the United States in trust for an Indian corporation chartered under section 17 of the Act of June 18, 1934 (48 Stat. 988; 25 U.S.C. 477).”	Art./Sec. ____, Pg. ____.
	<b>Trust or Restricted Land</b> – “any tract, or interest therein, held in trust or restricted status.”	Art./Sec. ____, Pg. ____.

✓	DESCRIPTION	COMMENTS:
	<b>Trust or Restricted Status</b> – “means (1) That the United States holds title to the tract or interest in trust for the benefit of one or more tribes or individual Indians; or  (2) That one or more tribes or individual Indians holds title to the tract or interest, but can alienate or encumber it only with the approval of the United States because of limitations in the conveyance instrument under Federal law or limitations in Federal law.”	Art./Sec. ____, Pg. ____.
	<b>Identifies to what land regulations apply</b> ( <u>Cannot</u> apply to individually owned land).	Type: _____ Art./Sec. ____, Pg. ____.
	<b>Defines what types of leases are covered by regulation</b> (May allow for permits and mortgages of leasehold interest. May <u>not</u> allow for mortgages of tribal land or address mineral leases.)	Art./Sec. ____, Pg. ____.
	<b>States effective date of regulations (date approved by SOI).</b>	Art./Sec. ____, Pg. ____.
	<b>States what laws, in addition to federal, may apply to leases.</b>	Art./Sec. ____, Pg. ____.
	<b>Identifies terms allowed, including any option(s) to renew:</b>	
	Business, wind resource, or solar resource - up to 25 years with an option to renew for up to two additional terms (each of which may not exceed 25 years), 25 U.S.C. 415 (h)(1)(A).	Art./Sec. ____, Pg. ____. Term: _____
	Public, religious educational, recreational, or residential leases - up to 75 years, 25 U.S.C. 415 (h)(1)(B).	Art./Sec. ____, Pg. ____. Term: _____
	<b>Provides process for obtaining a lease or related documents.</b>	Art./Sec. ____, Pg. ____.
	Is tribal approval required separate from tribal execution of lease?	Art./Sec. ____, Pg. ____.
	Identifies officials/entities authorized to approve/execute leases.	Art./Sec. ____, Pg. ____.
	Identifies whether lease documents (amendment, assignment, sublease, leasehold mortgage) may be completed without further tribal action (execution and/or approval).	Art./Sec. ____, Pg. ____.
	Provides timeline(s) for approval (not mandatory).	Art./Sec. ____, Pg. ____.
	<b>States supporting documentation required for a lease, including:</b>	YES / NO
	Lease.	Art./Sec. ____, Pg. ____.
	Plans of development or construction schedules required by tribe.	Art./Sec. ____, Pg. ____.
	Reports, surveys, site assessments needed to facilitate compliance with applicable tribal environmental, cultural resource, and land use requirements as appropriate.	Art./Sec. ____, Pg. ____.
	A restoration and reclamation plan, if required by tribe.	Art./Sec. ____, Pg. ____.
	<b>Requires each lease to:</b>	
	Describe the land being leased. Descriptions must be of sufficient detail to meet recording requirements for BIA's Land Title and Records Office (LTRO). See 25 CFR 150, Land Records and Title Documents.	Art./Sec. ____, Pg. ____.
	State the parties to the lease.	Art./Sec. ____, Pg. ____.
	State the term of the lease.	Art./Sec. ____, Pg. ____.

✓	DESCRIPTION	COMMENTS:
	State effective date of the lease (all leases or lease documents).	Art./Sec. ____, Pg. ____.
	State purpose of the lease and authorized uses of the leased premises.	Art./Sec. ____, Pg. ____.
	State how much rent/compensation is due.	Art./Sec. ____, Pg. ____.
	State when rent/compensation is due.	Art./Sec. ____, Pg. ____.
	State who receives rent/compensation.	Art./Sec. ____, Pg. ____.
	State what form of payment is acceptable.	Art./Sec. ____, Pg. ____.
	State whether any late payment charges or special fees apply.	Art./Sec. ____, Pg. ____.
	If the leased premises are within an Indian irrigation project or drainage district, lease must state the following: <i>"If the leased premises are within an Indian irrigation project or drainage district, except as provided by 25 CFR 171, the lessee must pay all operation and maintenance charges that accrue during the lease term. The lessee must pay these amounts to the appropriate office in charge of the irrigation project or drainage district."</i>	Art./Sec. ____, Pg. ____.
	State whether any due diligence requirements apply.	Art./Sec. ____, Pg. ____.
	State whether a performance bond is required.	Art./Sec. ____, Pg. ____.
	State any insurance requirements.	Art./Sec. ____, Pg. ____.
	<b>Regulation addresses, or requires leases to address:</b>	
	If permanent improvements may be constructed, ownership of improvements, responsibility for constructing, operating, maintaining, and managing improvements, and removal of improvements, if applicable	Art./Sec. ____, Pg. ____.
	Whether there will be rental reviews or adjustments, how and when they will be done, when any adjustments will be effective. and how disputes regarding adjustments will be resolved	Art./Sec. ____, Pg. ____.
	<b>Require parties to provide BIA with all leases and lease documents, except residential subleases, for recording in the LTRO.</b>	Art./Sec. ____, Pg. ____.
	<b>Establish a process for enforcing trespass and lease violations to include:</b>	
	Statement that BIA may, upon reasonable notice from the tribe and at BIA's discretion, enforce the provisions of, or cancel, a lease document.	Art./Sec. ____, Pg. ____.
	State whether or not negotiated remedies are allowed.	Art./Sec. ____, Pg. ____.
	A process for any cancellation or termination and establishing when they become effective	Art./Sec. ____, Pg. ____.
	<b>Tribal regulations may not allow tribes to make major substantive changes to the regulations without BIA approval. Minor technical amendments may be made without BIA approval.</b>	Addressed in regulation? Yes: Art./Sec. ____, Pg. ____ or No.
	<b>Environmental review process (25 U.S.C. 415 (h)(3)(ii); NPM, Par. 6):</b>	
	Identifies Tribal program that administers environmental review.	Art./Sec. ____, Pg. ____.
	Identifies Tribal positions that administer environmental review.	Art./Sec. ____, Pg. ____.
	Identifies and evaluates any significant effects of proposed action on the environment.	Art./Sec. ____, Pg. ____.

✓	DESCRIPTION	COMMENTS:
	<i>Suggested:</i> Identifies elements to be evaluated, i.e., air, water, cultural resources, socio-economics, etc.)	Art./Sec. ____, Pg. ____.
	Includes a process to ensure public informed on significant environmental impacts identified by the tribe.	Art./Sec. ____, Pg. ____.
	<i>Suggested:</i> Describes how public will be notified.	Art./Sec. ____, Pg. ____.
	Provides a reasonable opportunity for public comment on any significant environmental impacts identified by the tribe.	Art./Sec. ____, Pg. ____.
	<i>Suggested:</i> Identifies a time frame for comments.	Art./Sec. ____, Pg. ____.
	Ensures tribe provides responses to relevant and substantive public comments on environmental impacts prior to Tribal approval of lease.	Art./Sec. ____, Pg. ____.
	<i>Suggested:</i> Identifies a process for addressing comments.	Art./Sec. ____, Pg. ____.
	<i>Suggested:</i> Describes how documented (memo, report, etc.).	Art./Sec. ____, Pg. ____.
	<i>Suggested:</i> Defines key terms, i.e. public, & significant effect.	Art./Sec. ____, Pg. ____.
	<i>Suggested:</i> Identifies a time frame for review.	Art./Sec. ____, Pg. ____.
	<i>Suggested:</i> Describes any appeal process.	Art./Sec. ____, Pg. ____.
	<b>SELF-ASSESSMENT OF REGULATIONS (Complete 1 and 2 after regulations reviewed in entirety)</b>	
	1. Regulations consistent with 25 CFR Part 162. ( <u>Consistent</u> with BIA regulations, <u>not</u> a “meets and exceeds” standard; interpret in manner that maximizing deference given to tribe, NPM, Par. 5)	YES / NO
	2. Environmental review complies with requirements of Hearth Act.	YES / NO
	<b>OTHER COMMENTS</b>	

49

<sup>49</sup> Available at <http://www.bia.gov/WhoWeAre/BIA/OTS/HEARTH/index.htm>

## **APPENDIX**



# United States Department of the Interior

BUREAU OF INDIAN AFFAIRS  
Washington, D.C. 20240



IN REPLY REFER TO

## National Policy Memorandum

Bureau of Indian Affairs  
Office of the Director

Effective: JAN 16 2013  
Expires: 1 year from date  
of issuance

Number: NPM-TRUS-29

Title: Guidance for the Approval of Tribal Leasing Regulations under the HEARTH Act

### 1. Purpose

The purpose of this memorandum is to establish interim Indian Affairs (IA) policy for the review and approval of tribal leasing regulations under the HEARTH Act. This policy is an interim policy that will be revised and made permanent as part of the Indian Affairs Manual (IAM).

### 2. Scope

The HEARTH Act (Helping Expedite and Advance Responsible Tribal Homeownership) of 2012 makes a voluntary, alternative land leasing process available to tribes, by amending the Indian Long-Term Leasing Act of 1955, 25 U.S.C. § 415. The Act authorizes tribes to negotiate and enter into agricultural and business leases of tribal trust lands with a primary term of 25 years, and up to two renewal terms of 25 years each, without the approval of the Secretary of the Interior. The Act also authorizes tribes to enter into leases for residential, recreational, religious or educational purposes for a primary term of up to 75 years without the approval of the Secretary. The Act requires participating tribes to develop tribal leasing regulations, including an environmental review process, and to obtain the Secretary's approval of those regulations prior to entering into leases. The Act requires the Secretary to approve tribal regulations if the tribal regulations are consistent with the Department's leasing regulations at 25 CFR Part 162 and provide for an environmental review process that meets requirements set forth in the Act. No additional requirements for approval of tribal regulations may be imposed.

This policy applies to all employees of the Bureau of Indian Affairs (BIA) involved in the review and approval of tribal leasing regulations.

### 3. Policy

#12-43

New

To effectively provide consistent and objective review/approval of tribal leasing regulations, IA, in consultation with the Solicitor's Office, has established interim guidance for tribal leasing regulations and the tribal environmental review process. These criteria apply to all tribal leasing regulations submitted to Indian Affairs for Secretarial approval.

Once a tribe submits their leasing regulations for Secretarial approval, objective review/approval will facilitate the tribes managing their own long-term land leasing and making decisions on the expansion of housing and/or economic development on tribal lands.

#### **4. Process for Submission and Review of Tribal Regulations**

Tribal regulations should be submitted to the Deputy Bureau Director – Trust Services, BIA. On receipt of tribal regulations, the Deputy Bureau Director will notify the tribe of receipt of the regulations and of the date by which review of the regulations is expected to be completed. The Act requires that the Department complete its review and approve or disapprove the regulations within 120 days after the date on which the tribal regulations are submitted to the Secretary. Approval or disapproval decisions must be made in writing and a disapproval determination must identify the basis for the disapproval.

Upon receipt of tribal regulations, the Deputy Bureau Director and his staff shall use this guidance to conduct a preliminary review of the regulations in conjunction with the Solicitor's Office and identify any provisions that are inconsistent with BIA's leasing regulations. These provisions should be raised with the tribe as soon as possible.

#### **5. Guidance for Determining Consistency of Tribal Regulations with BIA Regulations**

The clear intent of the Act is to provide tribes with the opportunity to exercise their inherent sovereignty in drafting regulations to meet their particular needs and to expedite the leasing process. In determining whether tribal regulations are "consistent with" BIA-leasing regulations, "consistency" is to be interpreted in a manner that maximizes the deference given to the tribe. Congress expressly rejected a "meets and exceeds" standard during its final deliberations.

The following checklist is intended to guide BIA's review of tribal leasing regulations, while giving as much flexibility to tribes as possible. In general, tribal regulations should define key terms, establish the process for review/approval of tribal land lease documents, identify required lease elements, and address rental requirements. Tribal regulations should generally address the same issues as BIA's regulations, but tribes have flexibility to establish their own policies on these issues to meet their unique needs. For example, to be consistent with BIA leasing regulations, tribal leasing regulations must address whether bonding and insurance are required, but they need not actually require bonding or insurance. In interpreting this guidance, as much deference and flexibility should be given to tribes as possible.

**A. All tribal leasing regulations addressing **agricultural leasing** must:**

- Define terms used in the tribal regulations (e.g., "bond," "surety"):



- The definitions of “agricultural land,” “assignment,” “lease,” “mortgage,” “restricted land or status,” “sublease,” “tribal land,” and “trust land” must be substantially the same as those in 25 CFR 162, subpart B.
- The remaining definitions may differ from those in 25 CFR 162, subpart B.
- Not all terms defined in 25 CFR Part 162 need to be defined in tribal regulations, except that terms used in tribal regulations should be defined.
- Identify to what land the regulations apply
  - The regulations may **not** apply to individually owned land
- Define what types of leases are covered by the regulations (grazing, crop, etc.)
  - The regulations may also allow for permits
  - The regulations may allow for mortgages of the leasehold interest, but may **not** allow for mortgages of tribal land
  - The regulations may **not** address mineral leases
- Identify the effective date of the regulations
- State what laws apply to leases under the regulations, in addition to federal law
- Establish the process for obtaining a lease or lease document (amendment, assignment, sublease, leasehold mortgage) including:
  - Any timelines for approval, if desired
  - Whether tribal approval of leases or lease documents is required separate from tribal execution of leases or lease documents, for example, if a different entity/person executes a lease than approves a lease
  - The identity of officials/entities authorized to approve and/or execute leases
  - Whether any lease documents (amendment, assignment, sublease, leasehold mortgage) may be completed without further tribal action (execution and/or approval)
- Require lessees to manage land in accordance with any agricultural resource management plan developed by the tribe
- Require appropriate stipulations or conservation plans to be developed and incorporated in all agricultural leases
- State what documentation is required for a lease, including:
  - Lease:
  - Any reports, surveys, and site assessments needed to facilitate compliance with applicable tribal environmental, cultural resource, and land use requirements, as appropriate
- Identify allowable lease terms, including any options to renew
  - The HEARTH Act authorizes agricultural leases for 25 years with an option to renew for up to two additional terms, each of which may not exceed 25 years
  - A tribe may choose to shorten allowable lease terms, however, a tribe may not exceed a 25 year primary term with 2 additional 25 year renewal terms.
- Require leases to:

- Describe the land being leased
- State the term of the lease
- State what uses of the leased premises are authorized
- State how much rent/compensation is due, when it is due, who receives it, and what form of payment is acceptable, and whether any late payment charges or special fees apply
- If leased land is within an irrigation district, state the following:
  - “If the leased premises are within an Indian irrigation project or drainage district, except as provided by 25 CFR 171, the lessee must pay all operation and maintenance charges that accrue during the lease term. The lessee must pay these amounts to the appropriate office in charge of the irrigation project or drainage district.”
- State what performance bond and insurance requirements apply, if any
- Generally describe the type and location of any improvements to be constructed by the lessee
- Address, or require leases to address:
  - Ownership and removal of improvements, if applicable
  - Whether there will be rental reviews or adjustments, how and when they will be done, when any adjustments will be effective, and how disputes regarding adjustments will be resolved
- Address whether insurance is required
- Address whether performance bonding is required
- Require all leases and lease documents (amendments, assignments, subleases, and leasehold mortgages) to state the effective date of the document
- Require the parties to provide BIA with all leases and lease documents (amendments, assignments, subleases, and leasehold mortgages) for recording in the LTRO
- Establish the process for enforcing trespass and lease violations, including:
  - Stating that BIA, may, upon reasonable notice from the tribe and at BIA’s discretion, enforce the provisions of, or cancel a lease document
  - Stating whether negotiated remedies are allowed
  - Establishing a process for any cancellation or termination and establishing when they become effective
- Tribal regulations may not allow tribes to make major substantive changes to the tribal regulations without BIA approval. Minor technical amendments may be made without BIA approval.

**B. All tribal leasing regulations addressing residential, business, wind and solar resource, and other types of leasing (educational, recreational, public, and religious) must:**

- Define terms used in the regulations:
  - The definitions of “assignment,” “lease,” “leasehold mortgage,” “LTRO,” “sublease,” “tribal land,” “trust or restricted land,” “trust or restricted status” must be substantially the same as those in 25 CFR 162, subpart A
  - The remaining definitions may differ from those in 25 CFR 162, subpart A
  - Not all terms defined in 25 CFR Part 162 need to be defined in tribal regulations, except that terms used in tribal regulations should be defined. Identify to what land the regulations apply
- Identify to what land the regulations apply
  - The regulations may **not** apply to individually owned land
- Define what types of leases are covered by the regulations
  - The regulations may also allow for permits
  - The regulations may allow for mortgages of the leasehold interest, but may **not** allow for mortgages of tribal land
  - The regulations may **not** address mineral leases
- Identify the effective date of the regulations
- State what laws apply to leases under the regulations, in addition to federal law
- Establish the process for obtaining a lease or lease document (amendment, assignment, sublease, leasehold mortgage) including:
  - Any timelines for approval, if desired
  - Whether tribal approval of leases or lease documents is required separate from tribal execution of leases or lease documents, for example, if a different entity/person executes a lease than approves a lease
  - The identity of officials/entities authorized to approve and/or execute leases
  - Whether any lease documents (amendment, assignment, sublease, leasehold mortgage) may be completed without further tribal action (execution and/or approval)
- State what documentation is required for a lease, including:
  - Lease
  - Any plans of development or construction schedules required by the tribe.
  - Any reports, surveys, and site assessments needed to facilitate compliance with applicable tribal environmental, cultural resource, and land use requirements, as appropriate
  - A restoration and reclamation plan, if required by the tribe
- Identify allowable lease terms, including any options to renew
  - Public, religious, educational, recreational, or residential: up to 75 years
    - The HEARTH Act authorizes these types of leases up to 75 years. A tribe may choose to only authorize these types of leases for up to 50 years, for example. The regulations must identify the allowable lease terms.

- Business, wind resource, or solar resource: 25 years with an option to renew for up to two additional terms, each of which may not exceed 25 years
  - A tribe may shorten this lease term.
- Require leases to:
  - Describe the land being leased
  - State the term of the lease
  - State the purpose of the lease and authorized uses of the leased premises
  - State the parties to the lease
  - State how much rent/compensation is due, when it is due, who receives it, what form of payment is acceptable, and whether any late payment charges or special fees apply
  - If the leased premises are within an Indian irrigation project or drainage district, state the following: "If the leased premises are within an Indian irrigation project or drainage district, except as provided by 25 CFR 171, the lessee must pay all operation and maintenance charges that accrue during the lease term. The lessee must pay these amounts to the appropriate office in charge of the irrigation project or drainage district."
  - State what due diligence requirements apply, if any
  - State what performance bond and insurance requirements apply, if any
- Address, or require leases to address:
  - Whether permanent improvements may be constructed, ownership of improvements, responsibility for constructing, operating, maintaining, and managing improvements, and removal of improvements, if applicable
  - Whether there will be rental reviews or adjustments, how and when they will be done, when any adjustments will be effective, and how disputes regarding adjustments will be resolved
- Address whether insurance is required
- Address whether performance bonding is required
- Address whether due diligence requirements apply
- Require all leases and lease documents (amendments, assignments, subleases, and leasehold mortgages) to state the effective date of the document
- Require the parties to provide BIA with all leases and lease documents, except residential subleases, for recording in the LTRO
- Establish the process for enforcing trespass and lease violations, including:
  - Stating that BIA, may, upon reasonable notice from the tribe and at BIA's discretion, enforce the provisions of, or cancel a lease document
  - Stating whether negotiated remedies are allowed
  - Establishing a process for any cancellation or termination and establishing when they become effective

Tribal regulations may not allow tribes to make major substantive changes to the tribal regulations without BIA approval. Minor technical amendments may be made without BIA approval.

## **6. Guidance for Tribal Environmental Review Process**

The tribe's regulations must provide for an environmental review process that includes:

- The identification and evaluation of any significant effects of the proposed action on the environment, and
- A process for ensuring that—
  - The public is informed of, and has a reasonable opportunity to comment on, any significant environmental impacts of the proposed action identified by the Indian tribe; and
  - The Indian tribe provides responses to relevant and substantive public comments on any such impacts before the tribe approves the lease.

The regulations should also identify the program and individuals involved in the environmental review process. Although not required by the statute, and thus we will not disapprove tribal regulations on this basis, we also suggest that tribes consider:

- Defining key terms, such as "public" and "significant effect."
- Identifying elements of the environment to be evaluated (Air, water, cultural resources, socio-economics, etc.)
- Describing how the review will be documented (memo, report, checklist)
- Describing how the public will be notified
- Identifying a time frame for comments
- Identifying the process for addressing comments
- Describing any appeal process
- Identifying any time frames for review, if desired.

## **7. Authorities and Limitations**

Pursuant to the authority of the Secretary to fulfill the trust obligation of the United States to the applicable Indian tribe under federal law (including regulations), the Secretary may, upon reasonable notice from the applicable Indian tribe and at the discretion of the Secretary, enforce the provisions of, or cancel, any lease executed by the Indian tribe. The United States shall not be liable for losses sustained by any party to a lease executed pursuant to tribal regulations.

## **8. Roles and Responsibilities**

- A. Director, Bureau of Indian Affairs is responsible for the development of National Policy affecting Indian trust resources.

- B. Deputy Bureau Director, Field Operation is responsible for executive leadership and oversight of the Regional Directors and disseminating policy to them.
- C. Deputy Bureau Director - Office of Trust Services is responsible for reviewing and approving or returning the tribal leasing regulations package.
- D. Regional Directors are responsible for the protection and sound management of the resources held in trust by the United States for Indian tribes. Consistent and objective review and approval of tribal leasing regulations will facilitate the tribes managing their own long-term land leasing, and make decisions on expansion of housing and economic development on tribal lands.

## 9. Approval

---

Director, Bureau of Indian Affairs

Date