UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

APPROVAL OF

RESIDENTIAL LEASING ACT

The attached Residential Leasing Act, submitted by the [redacted] prepared in accordance with the Helping Expedite and Advance Responsible Tribal Home Ownership (HEARTH) Act of 2012, consisting of 16 pages and adopted by the [redacted] on the [redacted] is hereby approved.

Date: [redacted]

Kevin K. Washburn
Assistant Secretary – Indian Affairs
United States Department of the Interior

Pursuant to the authority delegated by 209 DM 8

RESIDENTIAL LEASING ACT

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CHAPTER 1

Short Title; Authority; Purpose; Applicability; Controlling Law; Severability; Effective Date; Amendment; and Definitions

Section 1.01 Short Title

This Act shall be known as the "Residential Leasing Act."

Section 1.02 Authority

The Tribal Council enacts this Act pursuant to the duties of the Tribal Council stated in Article IX, subsections 1(a), (c), and (d) of the Constitution and the legislative powers of the Tribal Council enumerated in Article IX, subsections 2(a) and (d), and (j) of the Constitution.

Section 1.03 Purpose

This Act shall be liberally interpreted and construed to implement the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012 ("HEARTH Act"), which amended 25 USC 415, by establishing a process under which the Lease of a Housing Unit or Band Land by the Band will not require the approval of the Secretary of the Interior if the Lease is executed under Band Law approved by the Secretary of the Interior. Nothing in this Act is intended to expand the authority or responsibility of the Secretary of the Interior beyond that provided for under applicable federal statutes or regulations.

Section 1.04 Applicability

(a) Except as excluded under subsection 1.04(b) below, or as contrary to applicable federal statutes or regulations, this Act shall apply:

(1) to all future Leases providing for the occupation or use of any Housing Unit for residential use; and

(2) to all future Leases providing for the occupation or use of any Band Land for residential use;

(b) This Act shall not apply:

(1) to any commercial or business lease; or

(2) to any lease of individually owned Indian allotted land in accordance with 25 U.S.C. 415(h)(2).

Section 1.05 Controlling Law

(a) To the extent that this Act 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 Act applies conflicts with this Act, this Act shall control.

Section 1.06 Severability

If a court of competent jurisdiction shall adjudge any provision of this Act, or the application thereof to any person or entity to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Act, which shall continue in full force and effect.

Section 1.07 Effective Date

This Act shall become effective as Band Law, for all purposes, on the date of enactment by the Tribal Council and approval by the Secretary of the Interior.

Section 1.08 Amendment

This Act may be amended by majority vote of the Tribal Council, provided that no major substantive amendment hereto shall be effective unless approved by the Secretary of the Interior in accordance with applicable federal laws or regulations.

Section 1.09 Definitions

For the purpose of this Act, the below terms are defined:

(a) "Act" means this Residential Leasing Act.

(b) "Assignment" means an agreement between a Lessee and an assignee, whereby the assignee acquires all or some of Lessee's rights, and assumes all or some of Lessee's obligations under a Lease.

(c) "Band" means the [redacted] a federally recognized Indian tribe.

(d) "Band Land" means any tract, or interest therein, in which the surface estate is owned by the Band in trust or restricted status, and includes such lands reserved for BIA administrative purposes and 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).

(e) "Band Law" means all acts, codes, ordinances, or other legislative action of the Band, along with all rulings of the Band's Tribal Court or Court of Appeals.

(f) "Constitution" means the Constitution of the Band.

(g) "Department of Housing" means the Band's Department of Housing.

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(h) "Department of Natural Resources" means the Band's Department of Natural Resources.

(i) "Designated Assignee" means any lender to which a Mortgagee has or may transfer or assign its interest in a Lease or Leasehold Mortgage.

(j) "Director" means the Director of the Department of Housing.

(k) "Government Manager" means the Band's Government Manager.

(l) "Housing Act" means the Band's Housing Act.

(m)"Housing Unit" means all or any portion of any house, home, building or other structure used as a residence by any person, which is located on Band Land subject to a Lease, to which this Act applies. Each Housing Unit is a type of "Single-family residence" as defined in 25 C.F.R. Section 162.103.

(n) "Interested Party" means 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 Band to Lease a Housing Unit or Band Land.

(o) "Lease" means a written contract between the Band and a Lessee, whereby the Lessee is granted a right to possess a Housing Unit or Band Land for residential use for a specified purpose and duration.

(p) "Lessee" means a person who has acquired a legal right to possess Band Land by executing a Lease of a Housing Unit or Band Land.

(q) "Leasehold Estate" means the possessory interest in Band Land established pursuant to a Lease between a Lessor and a Lessee.

(r) "Leasehold Mortgage" means a Mortgage, or other instrument that pledges the Leasehold Estate of Lessee as security for a debt or other obligation owed by the Lessee to a lender or other Mortgagee.

(s) "Lessor" means the legal, beneficial, or equitable owner of a Housing Unit or Band Land subject to a Lease, including the Band, and any heir, successor, executor, administrator, or assign of the Lessor.

(t) "Mortgage" means 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.

(u) "Mortgagee" means any person, entity or governmental agency which lends under a Leasehold Mortgage, and includes any Designated Assignee, or any heir, successor, executor, administrator, or assign thereof.

(v) "Mortgagor" means the Band or any person or entity who has executed a Leasehold Mortgage, including any heir, successor, executor, administrator, or assign thereof.

(w) "Open Meetings Act" means the Band's Open Meetings Act.

(x) "Permanent Improvements" means buildings, other structures, and associated infrastructure attached to the Premises.

(y) "Premises" means any portion of a Housing Unit or Band Land, as described in any Lease, and any common areas and grounds appurtenant thereto.

(z) "Significant Effect on the Environment" means a substantial, or potentially substantial, adverse change in the environment.

(aa) "Sublease" means a written agreement by which the Lessee grants a right to possession no greater than that held by the Lessee under the Lease.

(bb) "Tribal Council" means the governing body of the Band established pursuant to Article X of the Constitution.

CHAPTER 2

Approval of Lease; Requirements; Payment; and Recording

Section 2.01 Approval of Lease

(a) All Leases shall be subject to the approval of the Tribal Council in accordance with Band Law and the Constitution.

(b) All Leases shall be signed on behalf of the Band by the Director, or in his or her absence, the Government Manager.

(c) After the Secretary of the Interior approves this Act, all Leases which are approved and executed under this Section 2.01, shall be effective without federal approval under 25 U.S.C. 415, unless the Secretary of the Interior rescinds approval of this Act and reassumes responsibility for such approval.

(d) Any Lease which is approved and executed under this Section 2.01 shall refer to this Act as authority for its execution on behalf of the Band.

Section 2.02 Lease Requirements

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

(1) Describe the tract or parcel of Band Land being leased, or on which a Housing Unit being leased is located with reference to a public or private survey plan, if available, in terms sufficient to determine its 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, identify the general type and location of each improvement, and the responsibility for constructing, operating, maintaining, and managing Permanent Improvements during the Lease term, require reasonable notice to Lessor of the construction of any Permanent Improvement not described in the Lease and address the ownership and disposition of each improvement at the expiration or termination of the Lease;

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

(7) For Leases that are not "housing for public purposes" as defined in 25 C.F.R. 162.003, provisions for periodic review and adjustment of the rent by the Department of Housing at least every five (5) years, unless the Band determines in a Band certification or authorization that no such review is in the best interests of the Band;

(8) State the due diligence, performance bond and insurance requirements that apply, if any;

(9) State the process for amendment, which shall be only in writing signed by both parties, and with the consent of any Mortgagee;

(10) State the governing law, which may include Band Law 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, each of the required terms for Residential Leases set forth in 25 C.F.R. Part 162.313.

Section 2.03 Payment

For any Lease of Band Land requiring payments to be made to the Band, the Band shall provide the Secretary of the Interior with such documentation of the lease payments as the Secretary of the Interior may request to enable the Secretary of the Interior to discharge the trust responsibility of the United States with respect to the Premises.

Section 2.04 Recording

All Leases and amendments thereto shall be recorded at the Bureau of Indian Affairs Land Titles and Records Office with jurisdiction over the Band Land, provided that, to the extent

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required by a Mortgagee, a Lease shall also be recorded in the appropriate county register of deeds.

CHAPTER 3

Requirements for Approval; Categorical Exclusions; Environmental Review; and Purpose of Review

Section 3.01 Requirements for Approval

The Tribal Council shall not approve a Lease under subsection 2.01(a) of this Act unless:

(a) The Department of Natural Resources 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:

(1) Determined that the uses authorized by the Lease are included within a categorical exclusion stated in Section 3.02 and provided that determination in writing to the Tribal Council; or

(2) Issued a final decision after following the procedures set forth in Section 3.03; or

(b) The Department of Natural Resources has provided the Tribal Council with notice that the Band 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 following the procedures set forth in Section 3.03.

Section 3.02 Categorical Exclusions

(a) The Tribal Council 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 3.02(b), are categorically excluded from the procedures set forth in Section 3.03:

(1) Approval of a Lease for residential use of an existing Housing Unit, including any associated improvements, access roads and utilities; and

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

(b) Notwithstanding subsection 3.02(a), the Department of Natural Resources shall follow the procedures set forth in Section 3.03 if it determines that extraordinary circumstances exist under which the residential use of the Premises may, individually or cumulatively, have a Significant Effect on the Environment, including without limitation, as set forth below:

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(1) Substantial controversy on environmental grounds; or

(2) Presence of cultural resources or historic properties.

Section 3.03 Environmental Review

(a) Unless a categorical exclusion applies, the Department of Natural Resources 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 Department of Natural Resources determines that the uses authorized by proposed Lease will not have a Significant Effect on the Environment, then it shall cause the following to occur in the order set forth below:

(A) A finding of no significant impact shall to be issued and posted in accordance with subsection 1.09(a)(2) of the Open Meetings Act for a minimum of fifteen (15) calendar days;

(B) If there is a substantial interest in holding a meeting, a meeting shall be held to provide an opportunity for Band citizens and residents of Band Land to comment (both verbal and written) on the finding of no significant impact;

(C) Comments shall be reviewed and analyzed and a report shall be issued responding to relevant and substantive comments, if any, regarding the finding of no significant impact, which report shall be posted in accordance with subsection 1.09(a)(2) of the Open Meetings Act for a minimum of fifteen (15) calendar days; and

(D) Unless subsection 3.03(a)(2) applies, a final decision confirming that the uses authorized by the proposed Lease are expected to have no Significant Effect on the Environment shall be issued, forwarded to Tribal Council for approval and posted in accordance with subsection 1.09(a)(2) of the Open Meetings Act.

(2) If the Department of Natural Resources 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:

(A) A draft environmental review which identifies and evaluates any Significant Effect on the Environment of uses authorized by the proposed Lease shall be issued and posted in accordance with subsection 1.09(a)(2) of the Open Meetings Act for a minimum of thirty (30) calendar days;

(B) A meeting shall be held on the draft environmental review to provide an opportunity for Band citizens and residents of Band Land to comment (both verbal and written) on any Significant Effect on the Environment of the uses authorized by the proposed Lease;

(C) Comments shall be reviewed and analyzed and a report shall be issued responding to relevant and substantive comments, if any, on Significant Effect on the Environment of the uses authorized by the proposed Lease, which report shall be posted in accordance with subsection 1.09(a)(2) of the Open Meetings Act for a minimum of thirty (30) calendar days;

(D) A final environmental review describing the conclusions of the Department of Natural Resources on the issues and evidence gathered under this subsection 3.03(2) shall be issued and posted in accordance with subsection 1.09(a)(2) of the Open Meetings Act for a minimum of thirty (30) calendar days; and

(E) A final decision assessing the potential for any Significant Effect on the Environment associated with the uses authorized by the Lease shall be issued, forwarded to Tribal Council for approval and posted in accordance with subsection 1.09(a)(2) of the Open Meetings Act.

Section 3.04 Purpose of Review

(a) The purpose of this Chapter 3 is to establish an environmental review process that satisfies the requirements of 25 U.S.C. 415(h)(3)(B)(ii). Except as may otherwise be provided under federal law, the Band is not subject to the National Environmental Policy Act of 1969 ("NEPA"), 42 U.S.C. 4331 *et. seq.*) or its implementing regulations. Therefore, the Department of Natural Resources shall not be bound by NEPA or its implementing regulations in administering this Chapter 3.

(b) Notwithstanding subsection 3.04(a), pursuant to Section 105 of the Native American Housing Assistance and Self-Determination Act of 1996 ("NAHASDA") (25 U.S.C. 4101 et seq.) and its implementing regulations (42 C.F.R 1000.18 – 1000.24), the release of funds to the Band under NAHASDA is contingent upon compliance with NEPA and the HUD implementing regulations located at 24 C.F.R parts 50 and 58. Accordingly, although in implementing 25 U.S.C. 415(h) the Band is not subject to NEPA, or applicable regulations, compliance is required as set forth in NAHASDA and applicable regulations. The Department of Housing is responsible for ensuring compliance with this Chapter 3, NEPA and HUD implementing regulations as applicable.

CHAPTER 4

Approval of Sublease and Assignment; Requirements; and Recording

Section 4.01 Approval of Sublease and Assignment

(a) All Subleases and Assignments, other than to a Mortgagee, or the Designated Assignee pursuant to subsection 11.05(b)(2) of the Housing Act, shall be subject to the approval of the Tribal Council in a manner consistent with Band Law and the Constitution.

(b) All Subleases and Assignments which are subject to the approval of the Tribal Council

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shall be signed on behalf of the Band by the Director, or in his or her absence, the Government Manager.

(c) After the Secretary of the Interior approves this Act, all Subleases and Assignments which are approved and executed under this Section 4.01 shall be effective without federal approval under 25 U.S.C. 415, unless the Secretary of the Interior rescinds approval of this Act 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.

Section 4.02 Requirements

(a) A Lessee may sublease a Housing Unit or Band Land in accordance with Chapter 4 of this Act and Chapter 3 of the Housing Act.

(b) A Lessee may assign a Lease in accordance with Chapter 4 of this Act and Chapter 3 of the Housing Act.

(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.

Section 4.03 Recording

All Subleases and Assignments and amendments thereto shall be recorded at the Bureau of Indian Affairs Land Titles and Records Office with jurisdiction over the Band Land.

CHAPTER 5

Approval of Leasehold Mortgage; Requirements; and Recording

Section 5.01 Approval of Leasehold Mortgage

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

(b) After the Secretary of the Interior approves this Act, all Leasehold Mortgages which are authorized under this Section 5.01 shall be effective without federal approval under 25 U.S.C. 415, unless the Secretary of the Interior rescinds approval of this Act and reassumes responsibility for such approval.

Section 5.02 Requirements

A Lessee may grant a Leasehold Mortgage under Lease in accordance with Chapter 5 of this Act and Chapter 10 of the Housing Act.

Section 5.03 Recording

All Leasehold Mortgages and assignments, amendments and sales relating thereto shall be recorded at the Bureau of Indian Affairs Land Titles and Records Office with jurisdiction over the Band 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 6

Complaint; Form of Complaint; Informal Resolution; Decision; Appeal; and No Waiver of Sovereign Immunity

Section 6.01 Complaint

An Interested Party who has reasonable grounds to believe that the Band has failed to comply with this Act has the right to file a complaint under this Chapter.

Section 6.02 Form of Complaint

The complaint shall be in writing, signed by the Interested Party, describe the alleged noncompliance with this Act which is the subject of the complaint, state all relief requested and be addressed to the Government Manager.

Section 6.03 Informal Resolution

The Government Manager shall make reasonable efforts to resolve complaint informally, including but not limited to, attempting to schedule 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 Government Manager and the Interested Party.

Section 6.04 Decision

If a complaint is not resolved informally, the Government Manager shall issue a decision on the complaint, which shall be in writing, signed by the Government Manager. The Government Manager shall cause the decision to be delivered to the Interested Party no later than twenty (20) business days after receipt of the complaint. The decision of the Government Manager shall constitute a final decision of the Band.

Section 6.05 Appeal

In accordance with 25 U.S.C. 415(h)(8)(A), an Interested Party who has exhausted the Band remedies set forth in this Chapter 6, may submit a petition to the Secretary of the Interior, at such time and in such form as the Secretary of the Interior deems appropriate, to review the Band's compliance with this Act.

Section 6.06 No Waiver of Sovereign Immunity

Nothing in this Act shall be deemed to waive the sovereign immunity of the Band or any of its officials, employees or representatives.

LEGISLATIVE HISTORY

Residential Leasing Act, enacted [redacted]

[redacted]