



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

APPROVAL OF

**MATCH-E-BE-NASH-SHE-WISH BAND OF
POTTAWATOMI INDIANS
BUSINESS, AGRICULTURE, AND RESIDENTIAL
LEASING ORDINANCE**

The attached Business, Agriculture, and Residential Leasing Ordinance, submitted by the Match-E-Be-Nash-She-Wish-Band of Pottawatomi Indians (listed in the Federal Register, Vol. 86, No. 18 FR 7556 (January 29, 2021) as the Match-E-Be-Nash-She-Wish-Band of Pottawatomi Indians of Michigan), and prepared in accordance with the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012, consisting of 19 pages and adopted by the Match-E-Be-Nash-She-Wish-Band of Pottawatomi Indians Tribal Council on April 12, 2021, is hereby approved.

Dated: AUG 25 2021

A handwritten signature in blue ink, appearing to read "B. T. ...", written over a horizontal line.

Assistant Secretary – Indian Affairs
United States Department of the Interior

Pursuant to the authority delegated by 209 DM 8

**THE MATCH-E-BE-NASH-SHE-WISH BAND
OF POTTAWATOMI INDIANS OF MICHIGAN**

BUSINESS, AGRICULTURAL & RESIDENTIAL LEASING ORDINANCE

ARTICLE I. PURPOSE, SCOPE, AND DEFINITIONS

Section 1.01 Title

This Ordinance shall be known as the Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians Business, Agricultural & Residential Leasing Ordinance (hereinafter the “Ordinance”).¹

Section 1.02 Purpose

The Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians exercises jurisdiction over its reservation pursuant to its inherent sovereign authority and is responsible for the regulation of the use of its Tribal Lands. This Ordinance is intended to provide for the orderly administration of land use within the Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians Reservation.

Section 1.03 Findings and Declarations

The Tribal Council of the Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians, also known as the Gun Lake Tribe, (the “Tribe” or “Band”) finds and declares as follows:

- (a). The Tribe is a sovereign, federally recognized Indian tribe, and is organized under the Constitution of the Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians of Michigan adopted by the tribal citizens on June 19, 2000.
- (b). Pursuant to Article VI, Section 1 of the Constitution, the Tribal Council of the Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians (the “Tribal Council”) is the duly recognized governing body of the Tribe.
- (c). The Tribe exercises civil jurisdiction over its own lands, which include lands held in trust by the United States for the Tribe’s benefits.
- (d). The Tribe has the inherent sovereign authority to regulate the use of its lands, including leasing and activities conducted pursuant to a Lease.
- (e). On July 30, 2012, the President of the United States signed the Helping Expedite and Advance Tribal Homeownership Act (the “HEARTH Act”), P.L. 112-151; 126 Stat. 1150, which restored the inherent authority of tribal governments to regulate the leasing of Tribal Lands within the Tribe’s jurisdiction.

¹ Legislative History – Enacted by Tribal Council Resolution 21-1286 (April 22, 2021)

- (f). The laws of the United States preempt the taxation of tribal trust lands by other units of government.
- (g). This Ordinance is necessary to the orderly administration of leasing of the Tribe's lands, and the promotion of economic development on the Tribe's lands.

Section 1.04 **Scope and Effective Date**

- (a). This Ordinance will govern the leasing of Tribal Lands for business, residential and agricultural purposes. This Ordinance does not apply to lands held in fee by the Tribe, individually owned Indian lands or fractionated interests. Nothing in this Ordinance shall prohibit the Tribe from submitting a Lease to the United States Secretary of the Interior pursuant to 25 C.F.R. Part 162.
- (b). This Ordinance is effective on the date of its approval by the United States Secretary of the Interior and shall apply to all Leases executed in accordance with this Ordinance on or after the effective date.
- (c). Minor technical amendments may be made to these regulations with approval of Tribal Council. Major substantive changes require approval from the United States Secretary of the Interior.

Section 1.05 **Definitions**

For the purpose of this Ordinance, the terms set forth below shall have the following meanings:

- (a). "*Agricultural Land*" means Tribal Land or Government 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). "*Approving Entity*" means the Tribal Council of the Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians of Michigan, or duly designated tribal official or tribal department, consistent with Article VII, § 1(e) and 1(g) of the Tribe's Constitution.
- (c). "*Assignment*" means an agreement between a lessee and an assignee, whereby the assignee acquires all or some of the lessee's rights, and assumes all or some of the lessee's obligations, under a Lease.
- (d). "*Best Interest of the Tribe*" means the balancing of interests in order to maintain the Tribe's Mission Statement and attain sustainable economic gain, provide incentives to increase economic development, preserve and enhance the value of Tribal Lands, increase employment and jobs on Tribal Lands, and preserve the sovereignty of the Tribe.

- (e). “*Business Day*” means days that the Tribal Government is normally open for business; excludes federal holidays, holidays of the Tribe and planned Government closure.
- (f). “*Business Lease*” means an agreement between the Tribe (or Lessor) and a Lessee, whereby the Lessee is granted a right to possess Indian land, where a significant purpose of the possession is for the operation of a business, commercial enterprise, or other revenue-generating venture.
- (g). “*Business Site*” means any distinct parcel of Tribal Land or space that is designed or intended for use for business, economic development, commercial, charitable, educational, organizational, special purpose, or non-residential use.
- (h). “*Change in Land Use*” means the change in the primary activity conducted on the land or within a building, such as from agricultural to business, business to residential, commercial to industrial, or one industrial use to another, that significantly differs from the former use.
- (i). “*Day*” means calendar days.
- (j). “*Development Period*” means the time period from when a Lease is executed to when improvements are expected to be substantially completed.
- (k). “*Environmental Review Process*” means the process for conducting tribal environmental review to assess whether a proposed development or project as defined under this Ordinance and applicable Tribal law or regulations will have a positive or negative environmental impact.
- (l). “*Environmental Reviewer*” means an official from the Tribe’s Environmental Department or other official, entity or consultant as designated by the Tribal Council.
- (m). “*Executing Official*” means the Tribal Chairperson or other delegate authorized by the Approving Entity.
- (n). “*Final Determination*” means the Approving Entity’s final disposition of a Lease document or of enforcement action under of this Ordinance. A Final Determination may include a decision to take no action.
- (o). “*Holdover*” means circumstances in which a lessee remains in possession of the leased premises after the Lease term expires.
- (p). “*Human Environment*” means the connection between people and their environment.
- (q). “*Interested Party*” means any member of the Public, Lessee, Lessor, or potential Lessee or Lessor who is significantly impacted by any Final Determination under this Ordinance.
- (r). “*Lease*” means a written contract between the Tribe and a lessee, whereby the lessee is granted a right to possess Tribal Land, for a specified purpose and duration. The lessee's right to possess will limit the Indian landowners' right to possess the leased premises only to the extent provided in the lease.

- (s). “*Leasehold mortgage*” means a mortgage, deed of trust, or other instrument that pledges a lessee’s leasehold interest as security for a debt or other obligation owed by the lessee to a lender or other mortgagee.
- (t). “*Leasehold mortgagee*” means the holder of a Leasehold Mortgage.
- (u). “*Leasing Decision*” means the following type of Lease transactions that will be acted on by the Tribe: Lease issuance, Lease amendment or modification, subleasing, Lease Assignment or transfer and Residential leases.
- (v). “*Lessee*” means person or entity who has acquired a legal right to possess Tribal Land by a Lease under this Ordinance.
- (w). “*Lessor*” means the Tribe.
- (x). “*LTRO*” means the Land Titles and Records Office of the BIA.
- (y). “*Public*” for the purpose of Environmental Review Process, means any Tribal Member of the Tribe, any individual residing on lands owned by the Match-E-Be-Nash-She-Wish Band of Pottawatomí Indians, and any person or entity with the potential to be significantly affected by the Lease or Lease activity.
- (z). “*Significant Effect on the Environment*” means a substantial, or potentially substantial, adverse change or alteration in the environment involving a physical disturbance to the environment, including air, water, minerals, flora, fauna, ambient noise, cultural areas and objects.
- (aa). “*Space Lease*” means the Lease of a space within a facility or structure that already exists on Tribal Land, with the exception of Residential Leases.
- (bb). “*State*” means the State of Michigan.
- (cc). “*Sublease*” means a written agreement by which the Lessee grants to an individual or entity a right to possession no greater than that held by the lessee under the Lease.
- (dd). “*Sublessee*” means the holder of a Sublease.
- (ee). “*Trespass*” means any unauthorized occupancy, use of, or action on any Tribal Land.
- (ff). “*Tribal Court*” means the court of the Match-E-Be-Nash-She-Wish Band of Pottawatomí Indians.
- (gg). “*Tribal Land*” means any tract in which the surface estate is owned by the Tribe in Trust or Restricted Status, and includes such lands reserved for BIA administrative purposes.
- (hh). “*Tribal Member*” means an enrolled citizen of the Match-E-Be-Nash-She-Wish Band of Pottawatomí Indians.
- (ii). “*Tribe*” means the Match-E-Be-Nash-She-Wish Band of Pottawatomí Indians.
- (jj). “*Trust or restricted land*” means any tract held in Trust or Restricted Status by the United States for the benefit of the Tribe.
- (kk). “*Trust or Restricted Status*” means:

1. That the United States holds title to the tract in trust for the benefit of the Tribe; or
2. That the Tribe holds title to the tract but can alienate or encumber it only with the approval of the United States because of limitations in the conveyance instrument under Federal law or limitations in Federal law.

ARTICLE II. GENERAL PROVISIONS APPLICABLE TO ALL LEASES

Section 2.01 Sovereign Immunity

Except where expressly stated, nothing in this Ordinance shall be deemed to waive, limit, modify, or impair the Tribe's sovereign immunity from suit.

Section 2.02 Administration

Leases of the Tribe's surface estate shall be administered by the Tribal Council as Approving Entity. The Approving Entity, utilizing appropriate resources, shall be responsible for the review, approval, administration, and enforcement of all Leases on behalf of the Tribe.

Section 2.03 Environmental Review

All Leases considered under this Ordinance shall be subject to a process to identify and publicize the Significant Effects of a Lease on the environment. The Lessee or Sub-Lessee shall be responsible for compliance with this Section.

Unless exempted from this requirement under this Ordinance, Approving Entity shall not approve a Lease, nor shall the Executing Official sign a Lease, until the proposed Lessee has completed the Environmental Review Process under Article VI of this Ordinance

Section 2.04 Administrative Fees

The Tribe may charge an administrative fee for costs associated with issuing a Lease, Sublease, Assignment, amendment, Mortgage or other administrative transaction.

Section 2.05 Limitation of Rights

Nothing in this Ordinance should be construed as conferring a right upon any individual or entity to lease, possess, or use any particular parcel of Tribal Land.

Section 2.06 Enforcement and Violations

Leases and property interests must be enforced in accordance with this Section.

- (a). Tribal Council. Tribal Council as the Approving Entity or on its own initiative, or at the request of the Tribe or Lessee, may exercise the authority to enforce the terms

of any Lease or Sublease in accordance with its terms. Tribal Council may also petition the Tribal Court for an order to cancel or terminate any Lease where necessary to protect the health, safety, and welfare of the Tribe or its citizens, or when found to be in the Best Interests of the Tribe.

- (b). The United States. At the request of the Tribe, the United States Department of the Interior may enforce the provisions of, or cancel, any Lease executed under this Ordinance.
- (c). Harmful or Threatening Activity. If a Lessee or other party causes or threatens to cause immediate and significant harm to the premises, or undertakes unlawful conduct or illegal activity thereon, the Tribe may take appropriate emergency action.
- (d). Lessee or Lessor. Any Lessee or Lessor may petition the Tribal Court for an appropriate order to enforce the terms of any Lease or Sublease.
- (e). Holdovers and Trespass. Unless authorized by a Lease, a Holdover shall be deemed to be committing a Trespass. The Approving Entity may take reasonable action to prevent or remedy any Trespass in accordance with applicable Tribal law, including, but not limited to, seeking an appropriate order of the Tribal Court or working in concert with the Tribe's enforcement agency to remove from Tribal Land any individual, group, entity, or organization that is committing a Trespass.

Section 2.07 Conformity with Applicable Laws and Savings Clause.

In the event that the Tribal Court or a court of the United States determines that a provision in this Ordinance violates applicable tribal or federal law, the offending provision(s) shall be severed, and the remaining provision(s) of this Ordinance shall remain in effect.

Section 2.08 Environmental Monitoring

Environmental Monitoring. All Leases shall include authorization for Tribal Environmental staff, with adequate notice, to monitor the lands for invasive species, including but not limited to flora and insects, and develop and implement removal/eradication plans in partnership with the Lessee.

ARTICLE III. BUSINESS AND AGRICULTURAL LEASES

Section 3.01 Scope

This Article shall apply to Business Leases, Agricultural Leases, and Space Leases.

Section 3.02 Approval Required

All Leases subject to this Article, must be approved by the Approving Entity and signed by the Executing Official in order to be valid. Any Lease not approved by the Approving Entity pursuant to this Ordinance, or by the United States Department of the Interior pursuant to 25 C.F.R. Part 162, shall be void and unenforceable.

Section 3.03 **Required Lease Terms for All Leases**

All Leases subject to this Article must include the terms that address the following:

- (a). All terms required under Articles 2 and 3 of this Ordinance.
- (b). Parties to the Lease. All parties to the Lease must be fully and completely identified.
- (c). Property Description. All Leases must contain a description of the Business Site or Agricultural Land, subject to the Lease in a manner sufficient to identify the property. Such description may include a street address, a legal description, a description of metes and bounds, or any other method acceptable by the LTRO.
- (d). Purpose and Scope. All Leases must contain a general description of the scope of activities expected to be conducted under the Lease, including:
 1. Whether the Lease will include residences as part of a mixed-use development;
 2. Whether the Lease will be used for profit-seeking or non-profit activities;
 3. The nature of the business or activity to be conducted on the Business Site or Agricultural Land; and,
 4. Whether the Lessee intends to employ individuals, store materials, sell goods or services, ship goods or services from the site, or store or operate machinery on the site; and, if so, a description of the scope of these activities.
- (e). Term. All Leases must explicitly state the duration of the Lease term, including the effective date.
 1. The maximum initial term of any Business or Agricultural Lease under this Article shall be limited to a period of twenty-five (25) years.
 2. A Business Lease may permit two (2) renewals for additional periods of twenty-five (25) years; *provided*, notice of renewal is provided to Tribal Council at least ninety (90) Days prior to the renewal of the Lease unless the Lease provides for automatic renewal.
 3. If a Lease does not provide for automatic renewal, the Lease must specify:

- i. The time and manner in which the option must be exercised;
 - ii. That confirmation of the renewal will be submitted to the Approving Entity;
 - iii. Whether the consent of the Lessor is required for any renewal;
 - iv. Whether the Lessee must provide notice of the renewal to the Lessor and any Mortgagees;
 - v. Whether additional consideration is due upon the exercise of any renewal option or the start of a renewal term; and
 - vi. Any other conditions for renewal (e.g., that the Lessee cannot be in violation of the lease at the time of renewal).
- (f). Permitted Use. All Leases must expressly limit the use of a Business Site or Agricultural Land to uses consistent with the purpose of the Lease, as set forth in subsection (c) of this Section, and must expressly prohibit the Lessee from conducting unlawful conduct or illegal activities on the Business Site or Agricultural Land. Notwithstanding the previous sentence, a Lessee may alter or change the nature of any business on a Business Site, *provided*, the change or alternation does not constitute a Change in Land Use, provided:
1. The activities are consistent with the scope of use, as set forth in subsection (d) of this Section; and,
 2. The Lessee provides written notice to Approving Entity of a change in the nature of the business at least thirty (30) Days in advance.
- (g). Rent. All Leases must describe the requirements for payment of rent, including: the amount of rent required; due dates; interest (if any); address for recipient of payments or place at which payments are made; acceptable methods of payment; effective date of adjustments (if any); how adjustments are made and by who (if any); how disputes regarding adjustments (if any) are resolved; late fees or penalties (if any).
1. The Approving Entity, or any instrumentality of the Tribe, reserves the authority to determine fair compensation for a Business Lease or Agricultural Lease of Tribal Land in the Best Interests of the Tribe.
 2. Although not required, a Lease may provide for the periodic adjustment of the amount of rent based upon the fair retail value of the property if it were available for alienation. Fair retail value may be determined through an

appraisal, market study, or any other method generally acceptable in the lending industry. A Lease may not permit the adjustment of the rental amount more frequently than five (5) year intervals.

3. For a Lease that provides for rental payments directly to the Tribe, the Tribe shall provide documentation of the Lease payments to the BIA that are sufficient to enable the Secretary to discharge the trust responsibility of the United States under this Ordinance.

(h). Improvements. All Leases must describe:

1. Whether physical improvements, including type and location, may be constructed to the Business Site and responsibility for constructing;
2. The anticipated Development Period for physical improvements;
3. Any proposed physical improvements to be made during the term of the Lease both in writing and with the submission of a complete site plan and architectural plans, prepared by a duly licensed professionals, depicting all proposed improvements.
4. How proposed improvements meet or exceed any design standards, zoning or guidelines that may be adopted by the Tribe and provided to the Lessee;
5. Compliance with Tribal environmental protection ordinances and guidelines, including, but not limited to well head protection and emergency response plans;
6. Compliance with all applicable Tribal laws;
7. The ownership, type, and location of any physical improvements existing on the Business Site or Agricultural Land at the time of the Lease;
8. The party or parties responsible for operating, managing, maintaining, and removing any physical improvements on the Business Site; and,
9. Whether physical improvements to the Business Site may remain after the expiration of the Lease term, the process and responsibility for removal of any physical improvements at the expiration of the Lease term (if any), the ownership of any physical improvements at the conclusion of the Lease term, and whether the Tribe can waive removal of improvements and take possession of the permanent improvement.
10. If the area of the Lease are within an irrigation project or drainage district, the Lessee must pay all operation and maintenance charges that accrue during the term of the Lease.

- (i). **Materials.** All Leases must expressly state whether the activities conducted on the Business Site include the use or storage of materials which, if improperly handled, pose a risk of harm to the health, safety, and welfare of the Tribe and its members, or which pose a risk of harm to the environment.
- (j). **Tribal Preference.** All Leases must expressly state that the Lessee shall adhere to the Tribe's laws regarding preference in employment.
- (k). **Due Diligence and Disclosure.** All Leases must include provisions disclosing any known materials on the Business Site that pose a risk to human health or safety.
- (l). **Insurance.** All Leases must require the Lessee to carry appropriate levels of hazard and liability insurance during the term of the Lease. The amount of insurance required may vary, depending upon the nature of the Business Site; and, the Approving Entity may waive this requirement if it determines that such a waiver is in the Best Interest of the Tribe. The decision to grant or deny a waiver is not subject to appellate review under Article 5 of this Ordinance.
- (m). **Liability.** All Leases: (1) must require the Lessee to accept liability for activities that occur on the Business Site during the Lease term; (2) must expressly state whether the Tribe retains any liability for activities that occur on the Business Site or Agricultural Land; and (3) hold the United States and the Tribe harmless for any loss, liability or damages (including use, removal, storage, and transportation of hazardous materials, resulting from the Lessee's use or occupation of the Business Site or Agricultural Land).
- (n). **Performance Bond.**
 - 1. Unless waived in writing by the Tribe and signed by the Executing Official, in accordance with this Ordinance, the Lessee shall obtain a satisfactory performance bond in an amount sufficient to secure the contractual obligations of the Lease. So long as the premises of the Lease remains in Trust or Restricted status, the obligations of the Lessee (and any sureties) under such bond shall be enforceable by the United States. Such bond shall be for the purpose of securing the Lessee's contractual obligations under the Business Site Lease and may guarantee:
 - i. The annual Lease payment;
 - ii. The estimated development cost of improvements; and
 - iii. Any additional amount necessary to ensure compliance with the Lease.
 - 2. The Approving Entity may waive the bond requirement, or reduce the amount, if doing so is in the Best Interest of the Tribe. The Tribe shall maintain written records of waivers and reductions.
 - 3. The performance bond may be in one of the following forms:

- i. certificates of deposit issued by a federally insured financial institution authorized to do business in the United States;
 - ii. irrevocable letters of credit issued by a federally insured financial institution authorized to do business in the United States;
 - iii. negotiable Treasury securities; or
 - iv. surety bond issued by a company approved by the U.S. Department of the Treasury.
- (o) Unless otherwise provided by an action of the Tribal Council, all Leases approved under this Ordinance shall contain an express provision requiring the Lessee to submit to the civil jurisdiction of the Tribe, including the Tribal Court, for the Lessee's activities and actions on Tribal Land that relate to the Lease, or that threaten the health, safety, welfare, or political integrity of the Tribe.

Section 3.04 **Agricultural Leases**

- (a). Agricultural Leases shall incorporate appropriate stipulations or conservation plans, including any agricultural resource management plan, as may be developed or adopted by the Tribe.
- (b). Agricultural Leases shall require Lessees to manage land in accordance with any agricultural resource management plan, as may be developed or adopted by the Tribe and generally accepted best practices.
- (c). Agricultural Leases for lands in a well head protection area shall incorporate best management practices, including emergency response requirements, to protect the waters of the Tribe.
- (d). In the event the Lessee is a corporation or other legal entity, it shall provide documentation to show the Lease is enforceable against the corporation or other legal entity.

Section 3.05 **Review and Approval of Leases**

- (a). All Leases, and amendments thereto, subject to this Article must be approved by the Tribal Council as the Approving Entity and signed by the Executing Official.
- (b). A potential Lessee must provide the Tribe with a copy of the proposed Lease agreement or amendment at least sixty (60) Days prior to the proposed effective date of the Lease. The Approving Entity may waive the notice requirements in this paragraph for proposed Space Leases.
- (c). The Approving Entity must take action on all Business Leases within sixty (60) Days, unless it determines that one or more of the following apply:
 1. The Lease does not comply with the requirements of this Ordinance;

2. The Lease will result in Significant Effects;
 3. Applicable law prohibits the anticipated activities on the Business Site; or,
 4. The Lease threatens the health, safety, and welfare of the Tribe and its members, or the political integrity of the Tribe.
- (d). The Approving Entity may extend the 60-Day period if needed to complete the administrative review. The potential Lessee shall be notified in writing of a need to extend the review period. An estimate of additional time needed shall be included in the written notification.
- (e). The Approving Entity's Leasing Decision to approve or disapprove a Business Lease must be issued, in writing, to the proposed Lessee.
- (f). The Approving Entity's failure to act on a proposed Business Lease within sixty (60) Days (or as may be extended) of its submission creates a presumption that the Lease is denied and establishes a right to appellate review in the Tribal Court under Article 5 of this Ordinance.

Section 3.06 Subleases and Assignments

- (a). Subleases of Business Sites and Assignments of Business Sites do not require further approval of the Approving Entity; except, the Approving Entity may prohibit a Lessee from issuing a Sublease or Assignment pursuant to this Section.
- (b). All Subleases of Business Sites subject to this Ordinance must include the terms that address the following:
- i. All of the terms required under Section 3.03 Required Lease Terms; except, that a Lessor may not grant a waiver of the insurance requirements set forth in Section 3.3(K).
 - ii. Scope. All Subleases must include a provision that expressly states that the Sublease does not permit any activities or uses that are inconsistent with any superior Lease of the Business Site.
- (c). All Assignments involving Business Sites subject to this Ordinance must expressly state that the assignee may not undertake any activities or uses that are inconsistent with any Lease of the Business Site.
- (d). All Lessees must provide written notice to the Approving Entity of their intention to execute an Assignment or Sublease at least thirty (30) Days prior to the effective date of the Assignment or Sublease, including a copy of the proposed agreement. The Approving Entity may prohibit the Sublease or Assignment if it determines:

1. The Sublease or Assignment does not satisfy the requirements of this Section;
 2. The proposed activity conducted under a Sublease or Assignment is prohibited by applicable law;
 3. The proposed Sublessee or Assignee is indebted to the Tribe, or is involved in any threatened or pending litigation with the Tribe as an adverse party; or,
 4. If the Sublease or Assignment will result in Significant Effects.
- (e). The Leasing Decision by Approving Entity to prohibit a Sublease or Assignment from taking effect must be issued to the Lessee, in writing, on or before the effective date of the proposed Sublease or Assignment.
- (f). A Sublease or Assignment that does not satisfy the requirements of this Section is void and unenforceable.

Section 3.07 **Leasehold Mortgages**

- (a). Leasehold Mortgages of Business Sites are subject to approval by Approving Entity.
- (b). Lessees must provide written notice to Tribal Council of their intention to execute a Leasehold Mortgage at least ten (10) Days prior to the effective date of the Leasehold Mortgage, including a copy of the proposed Leasehold Mortgage agreement.
- (c). The Approving Entity must take action on all Leasehold Mortgages, unless it determines that one or more of the following apply:
1. The Leasehold Mortgage proceeds would be used for purposes unrelated to the Lease or Business Site;
 2. The Leasehold Mortgage attempts to encumber Tribal Land;
 3. The Leasehold Mortgage poses a substantial risk to the Tribe that a foreclosure action will be instituted against property on a Business Site; or,
 4. The Leasehold Mortgage threatens the health, safety, and welfare of the Tribe and its members, or the political integrity of the Tribe.

Section 3.08 **Recording**

Upon approval or effectiveness, the Tribe must cause all Business Leases, Subleases, Renewals, Assignments, amendments, and Leasehold Mortgages to be recorded with the LTRO with jurisdiction over the Tribe's land. Where required by a Leasehold Mortgagee, a Leasehold Mortgage must also be recorded with the appropriate Register of Deeds in the State.

Section 3.09 **Void Leases**

Any Lease document that is not executed in conformity with the requirements of this Article shall be void and unenforceable in the Tribal Court. Where a Lessee withholds material facts of which they were aware, or should have been aware, at the time a document is submitted to the Tribe, the Lease document shall be voidable in an action in the Tribal Court.

ARTICLE IV. RESIDENTIAL LEASES

Section 4.01 **Scope**

This Article shall apply to all Residential Leases, Leasehold Mortgages, and Assignments of Residential Leases of residential sites.

Section 4.02 **Approval Required**

All Residential Leases, Leasehold Mortgages, Assignments and encumbrances of Tribal Land used as a residence, must be approved by the Approving Entity and signed by the Executing Official in order to be valid. Any Residential Lease not approved by the Approving Entity pursuant to this Ordinance, or by the United States Department of the Interior pursuant to 25 C.F.R. Part 162, shall be void and unenforceable.

Section 4.03 **Required Lease Terms**

All Residential Leases subject to this Ordinance must include the terms that address the following:

- (a). All terms required under Article 2 of this Ordinance.
- (b). Parties to the Lease. All parties to the Lease must be fully and completely identified.
- (c). Property Description. All Leases must contain a description of the Residential Site subject to the Lease in a manner sufficient to identify the property. Such description may include a street address, a legal description, a description of metes and bounds, or any other method acceptable by the LTRO.
- (d). Term. All Leases must explicitly state the duration of the Lease term, including the effective date:

1. The maximum term of any Lease under this Article shall be limited to a period of seventy-five (75) years.
- (e). Permitted Use. All Leases must expressly limit the use of a Residential Site to uses consistent with a residence, and must expressly prohibit the Lessee from conducting business activities and activities inconsistent with use as a residence, except as permitted for mixed use pursuant to Article 3, or other illegal activities on the Residential Site.
- (f). Rent. All Leases must describe the requirements for payment of rent, including: the amount of rent required; due dates; interest (if any); address for recipient of payments or place at which payments are made; acceptable methods of payment; and late fees or penalties (if any):
1. The Tribe, or any instrumentality of the Tribe, reserves the authority to determine fair compensation for a Residential Lease of Tribal Land; and, the Tribe, or any instrumentality of the Tribe, may provide for the payment of nominal rent of one (1) dollar for a Residential Lease as determined in the Best Interest of the Tribe. The Tribe's determination of fair compensation for a Lease is presumed to be valid under tribal and federal law.
 2. Although not required, a Lease may provide for the periodic adjustment of the amount of rent based upon the fair market value of the property if it were available for alienation. A Lease must describe the requirements for payment of rent, including: the amount of rent required; due dates; interest (if any); address for recipient of payments or place at which payments are made; acceptable methods of payment; effective date of adjustments (if any); how adjustments are made and by who (if any); how disputes regarding adjustments (if any) are resolved; late fees or penalties (if any). Fair market value may be determined through an appraisal, market study, or any other method generally acceptable in the lending industry. A Lease may not permit the adjustment of the rental amount more frequently than five (5) year intervals.
 3. For a Lease that provides for rental payments directly to the Tribe, the Tribe shall provide documentation of the Lease payments to the BIA that are sufficient to enable the Secretary to discharge the trust responsibility of the United States under this Ordinance.
- (g). Improvements. All Leases must describe:
1. Whether the Lessee may construct physical improvements, including type, and location, to the Residential Site;

2. The ownership, type, and location of any physical improvements existing on the Residential Site at the time of the Lease;
 3. The party or parties responsible for maintaining any physical improvements on the Residential Site; and,
 4. Whether physical improvements to the Residential Site may remain after the expiration of the Lease term, the process for removal of any physical improvements at the expiration of the Lease term (if any), and the ownership of any physical improvements at the conclusion of the Lease term, and whether the Tribe can waive removal of improvements and take possession of the permanent improvement..
- (h). Disclosure. All Leases must include provisions disclosing any known materials on the Residential Site that pose a risk to human health or safety.
- (i). Insurance. All Leases must require the Lessee to carry appropriate levels of hazard and liability insurance during the term of the Lease. The amount of insurance required may vary, depending upon the nature of the Residential Site; and, the Approving Entity may waive this requirement if it determines that such a waiver is in the Best Interest of the Tribe. The decision to grant or deny a waiver is not subject to appellate review under Article 5 of this Ordinance.
- (j). Liability. All Leases must require the Lessee to accept liability for activities that occur on the Residential Site including holding the United States and the Tribe harmless for any loss, liability or damages (including use, removal, storage, and transportation of hazardous materials, resulting from the Lessee's use or occupation on the Residential Site).

Section 4.04 **Review and Approval of Leases**

- (a). All Residential Leases, Renewals, and amendments thereto, subject to this Ordinance must be approved by the Approving Entity.
- (b). A potential Lessee must provide the Approving Entity with a copy of the proposed Lease agreement or amendment at least thirty (30) Days prior to the proposed effective date of the Lease.
- (c). The Approving Entity must approve all Residential Leases within thirty (30) Days, unless it determines that one or more of the following apply:
 1. The Lease does not comply with the requirements of this Ordinance;
 2. The Residential Lease will result in Significant Effects;

3. The Lessee is prohibited by applicable law from residing on the Residential Site; or,
 4. The Lease threatens the health, safety, and welfare of the Tribe and its members, or the political integrity of the Tribe.
- (d). The Approving Entity's Leasing Decision to approve or disapprove a Residential Lease must be issued, in writing, to the proposed Lessee.
- (e). The Approving Entity's failure to act on a proposed Residential Lease within thirty (30) Days of its submission creates a presumption that the Lease is valid and establishes a right to appellate review in the Tribal Court under Article 5 of this Ordinance.

Section 4.05 **Subleases and Assignments**

- (a). Subleases of Residential Sites and Assignments do not require further approval of the Approving Entity; except, the Approving Entity may prohibit a Lessee from issuing a Sublease or Assignment pursuant to this Section.
- (b). All Subleases of Residential Sites subject to this Ordinance must include the terms that address the following:
1. All of the terms required under Section 4.03; except, that a Lessor may not grant a waiver of the insurance requirements set forth in Section 4.03(H).
 2. Scope. All Subleases must include a provision that expressly states that the Sublease does not permit any activities or uses that are inconsistent with any superior Lease of the Residential Site.
- (c). All Assignments involving Residential Sites subject to this Ordinance must expressly state that the assignee may not undertake any activities or uses that are inconsistent with any Lease of the Residential Site.
- (d). All Lessees must provide written notice to the Approving Entity of their intention to execute an Assignment or Sublease at least ten (10) Days prior to the effective date of the Assignment or Sublease, including a copy of the proposed agreement. The Approving Entity may prohibit the Sublease or Assignment if it determines:
1. The Sublease or Assignment does not satisfy the requirements of this Section;
 2. The proposed Lessee or Assignee under a Sublease or Assignment is prohibited by applicable law from residing on the Residential Site; or
 3. If the Sublease or Assignment will result in Significant Effects.

- (e). The Approving Entity's Leasing Decision to prohibit a Sublease or Assignment from taking effect must be issued to the Lessee, in writing, on or before the effective date of the proposed Sublease or Assignment.
- (f). A Sublease or Assignment that does not satisfy the requirements of this Section is void and unenforceable.

Section 4.06 **Leasehold Mortgages**

- (a). Leasehold Mortgages of Residential Sites are subject to approval by the Approving Entity.
- (b). Lessees must provide written notice to the Approving Entity of their intention to execute a Leasehold Mortgage at least ten (10) Days prior to the effective date of the Leasehold Mortgage, including a copy of the proposed Leasehold Mortgage agreement.
- (c). The Approving Entity must approve all Leasehold Mortgages, unless it determines that one or more of the following apply:
 - 1. The Leasehold Mortgage proceeds would be used for purposes unrelated to the Residential Lease or Residential Site;
 - 2. The Leasehold Mortgage attempts to encumber Tribal Land;
 - 3. The Leasehold Mortgage poses a substantial risk to the Tribe that a foreclosure action will be instituted against property on a Residential Site; or,
 - 4. The Leasehold Mortgage threatens the health, safety, and welfare of the Tribe and its members, or the political integrity of the Tribe.

Section 4.07 **Recording**

Upon approval or effectiveness, the Approving Entity must cause all documentation related to Residential Leases, Subleases, Assignments, amendments, and Leasehold Mortgages to be recorded with the LTRO with jurisdiction over the Tribe's land. Where required by a Leasehold Mortgagee, a Leasehold Mortgage must also be recorded with the appropriate Register of Deeds in the State.

Section 4.08 **Void Leases**

Any Lease document that is not executed in conformity with the requirements of this Article shall be void and unenforceable in the Tribal Court. Where a Lessee withholds material facts of which

they were aware, or should have been aware, at the time a document is submitted to the Approving Entity, the Lease document shall be voidable in an action in the Tribal Court.

ARTICLE V. APPEALS

Section 5.01 Tribal Court Review

An Interested Party may appeal Leasing Decisions issued under this Ordinance directly to the Tribal Court.

Section 5.02 Limited Waiver of Sovereign Immunity

The Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians waives its sovereign immunity from suit to the extent necessary to permit the Tribal Court to consider appeals under this section, and to provide equitable and non-monetary relief. This waiver of sovereign immunity does not authorize the Tribal Court to award damages, attorney fees, or other monetary relief to an appellant.

Section 5.03 Time for Appeal

An Interested Party must file an appeal of any Final Determination under this Ordinance to the Tribal Court within thirty (30) Days. An appeal filed after the expiration of thirty (30) Days following a Final Determination is not timely and may not be considered by the Tribal Court.

Section 5.04 Standard of Review

In conducting appeals from a Final Determination under this Ordinance, the Tribal Court shall determine whether the Final Determination included an adequate justification based upon the facts in the record; and, whether the Final Determination was arbitrary, capricious, or contrary to governing law.

All appeals are limited to the facts in the record at the time of the Final Determination, and relevant issues of law.

Section 5.05 Appeals are Final

All appeals reviewed by the Tribal Court are final.

ARTICLE VI. ENVIRONMENTAL REVIEW

Section 6.01 Significant Effects Statement.

At least 30 Days prior to requesting approval of a Lease under this Ordinance, the Lessee or Sub-Lessee shall submit a Significant Effects Statement to the Approving Entity and to the Environmental Reviewer assigned by Approving Entity. The Significant Effects Statement shall:

- (a). Describe the purpose for the Lease and set forth a summary of the proposed scope of activities to be conducted pursuant to the Lease.
- (b). Identify any known Hazardous Materials, Threats to Public Safety, or Cultural Resources on the parcel subject to the Lease. The Lessee has a duty to undertake practicable efforts to identify such materials and objects.
- (c). Describe the anticipated Significant Effects of the Lease, proposed improvements or proposed land use on the Human Environment and physical environment, including, but limited to, socio-economics, solid waste and well head protection areas, wetlands, endangered species and air quality.
- (d). Describe any activities or measures necessary or recommended to mitigate the Significant Effects.

Section 6.02 Public Notice.

Within five (5) Business Days, the Environmental Reviewer, following Tribal practices and procedures, shall provide the Public with copies, including, but not limited, to making copies available on the Tribe's publicly available website, of the Significant Effects Statement, along with a statement allowing members of the Public to submit comments on the Significant Effects Statement within 30 Days of Public Notice. The Environmental Reviewer may utilize the most effective means available to provide the Public with copies of each Significant Effects Statement in a manner intended to invite comment.

Section 6.03 Public Comments.

Within three (3) Business Days after the close of the public comment period, the Environmental Reviewer shall provide the Approving Entity and Lessee with copies of each comment received from the Public. The names of public commenters may be withheld. The Lessor may reply to any comments, and such responses shall be available for inspection by the Public, including, but not limited, to making the comments and responses available on the Tribe's publicly available website.

Section 6.04 Final Significant Effects Report.

Prior to, or contemporaneous with, the Approving Entity's Leasing Decision to approve or disapprove a Lease under this Ordinance, the Environmental Reviewer shall provide the Public, including, but not limited, to making the decision available on the Tribe's publicly available website, with a Final Significant Effects Report, which shall include:

- (a). A description of any known Hazardous Materials, Threats to Public Safety, Wetlands, or Cultural Resources on the parcel subject to the Lease.
- (b). A description of Significant Effects on the Environment.

- (c). A description of any activities or measures necessary or recommended to mitigate the Significant Effects on the Environment.
- (d). A summary of comments received from the Public, and any responses to the comments by the Lessor, Environmental Reviewer or Approving Entity.
- (e). A statement describing whether and how the Approving Entity considered any comment(s) from the Public.

Section 6.05 Duty to Explain.

- (a). In the event that the Approving Entity decides to disapprove a proposed Lease or Sublease based upon its Significant Effects on the Environment, the Approving Entity has a duty to provide the proposed Lessee with an explanation of the basis for the Leasing Decision. Such explanation must be in writing, but need not take on any particular form.
- (b). In the event that the Approving Entity decides to approve a proposed Lease or Sublease that will result in Significant Effects on the Environment, the Approving Entity has a duty to provide the Public with an explanation of the basis for the Leasing Decision. Such explanation must be in writing, but need not take on any particular form, including, but not limited, to making the explanation for the decision available on the Tribe's publicly available website.

Section 6.06 Categorical Exclusions; Exemptions.

- (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 subsection 6.06(b), are categorically excluded from the procedures set forth in Article VI:
 - 1. Approval of a Lease for residential use of an existing Housing Unit, include any associated improvements, access roads, and utilities;
 - 2. Approval of a Lease for five (5) acres or less of contiguous Trust Land for construction and residential use of a single structure of one dwelling units and any associated improvements, access roads, and utilities;
 - 3. Leases in which the activities conducted on the parcel will not change or enlarge the scope of prior uses of the parcel;
 - 4. Leases under which the parcel will be restored to a natural state;
 - 5. Leasehold mortgages, and Assignments; and,
 - 6. Space Leases.

- (b). Notwithstanding subsection 6.06(a), the Environmental Department shall follow the procedures set forth in Article VI if it determines that extraordinary circumstances exist under with the residential use of the Premises may, individually or cumulatively, have a Significant Effect on the Environment, including without limitation, as set forth below:
1. Substantial controversy on environmental grounds; or
 2. Presence of cultural resources or historic properties

Section 6.07 Federal Environmental Review.

If the Tribe carries out a project or activity funded by a Federal agency, the Tribe shall have the authority to rely on the NEPA process of the applicable Federal agency rather than any tribal Environmental Review Process under this Ordinance.

Section 6.08 Appellate Review.

An Interested Party may appeal a Lessee's or the Tribe's compliance with this Section pursuant to Article 5 of this Ordinance.

ARTICLE VII. MISCELLANEOUS

Section 7.01 Amendment

This Ordinance may be amended by Resolution of the Tribal Council at a duly called Tribal Council meeting. All substantive amendments to this Ordinance must be submitted to and approved by the Secretary.

Section 7.02 Severability

If any part of this Ordinance is invalidated by the Tribal Court (or any other court of competent jurisdiction after the exhaustion of all tribal remedies), all valid parts that are severable from the invalid part remain in effect. If a part of this Ordinance is invalid in one or more of its applications, that part remains in effect in all valid applications that are severable from the invalid applications.

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