



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

APPROVAL OF

**TULE RIVER INDIAN TRIBE OF THE TULE RIVER
RESERVATION, CALIFORNIA
LEASING ORDINANCE**

The attached Leasing Ordinance, submitted by the Tule River Indian Tribe (listed in the Federal Register, Vol. 86, No. 18 FR 7557 (January 29, 2021) as the Tule River Indian Tribe of the Tule River Reservation, California), and prepared in accordance with the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012, consisting of 55 pages and adopted by the Tule River Tribal Council on July 12, 2021 is hereby approved.

Dated: DEC 16 2021

A handwritten signature in blue ink, appearing to read "Bryan Newland".

Bryan Newland
Assistant Secretary – Indian Affairs
United States Department of the Interior

Pursuant to the authority delegated by 209 DM 8



Tule River Indian Tribe Leasing Ordinance

Ordinance # FY2020-11

TULE RIVER INDIAN TRIBE LEASING ORDINANCE
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CHAPTER 1

GENERAL

**CHAPTER 1.
GENERAL**

1-1 **Title.** This Ordinance shall be referred to as the Tule River Indian Tribe Leasing Ordinance.

1-2 **Introduction.** The Tribe is a sovereign federally recognized Indian tribal government. Pursuant to Article VI, Section 1(c), of the Constitution, the Tribal Council has the authority to promulgate and adopt tribal ordinances. The purpose of this Ordinance is to implement the voluntary, alternative leasing process available to the Tribe pursuant to 25 U.S.C. § 415, as amended by the HEARTH Act, for Business Leases, Residential Leases, WSR Leases and Agricultural Leases on Tribal Land.

1-3 **Authority.** This Ordinance is authorized by and subject to the HEARTH Act.

1-4 **Purpose.** The purpose and intent of this Ordinance is to:

- (a) Implement the HEARTH Act on Tribal Land;
- (b) Promote tribal sovereignty;
- (c) Streamline the leasing process;
- (d) Set forth the details of management and enforcement of Leases on Tribal Land;
- (e) Promote tribal control and self-determination over Tribal Land;
- (f) Promote and support self-sufficiency, homeownership, and social, health and welfare programs on Tribal Land; and
- (g) Increase business activity and employment on Tribal Land.

1-5 **Scope.** This Ordinance shall apply to all Leases within Tribal Land and to actions and decisions taken in connection with such Leases that would, in the absence of this Ordinance, require approval pursuant to 25 U.S.C. § 415(a), as amended. This Ordinance does not apply to individually-owned Indian lands (allotments), fee land, non-restricted fee land or any leases for the exploration, development or extraction of any mineral resources. This Ordinance does not apply or otherwise impact land use agreements entered into under other statutory authority including but not limited to tribal land assignments.

1-6 **Lease Administration.**

- (a) **Management.** Except where required otherwise by agreement or applicable law, the Lease Administrator shall manage all Leases pursuant to this Ordinance and the Lease Management Plan.

(b) **Administrative Fees.** The Tribe may charge administrative fees for costs associated with processing a Lease, Sublease, Assignment, amendment, Leasehold Mortgage or other administrative transaction permitted pursuant to this Ordinance.

(c) **Lease Approval.** Subject to the terms and conditions of this Ordinance, the Lease Administrator shall approve or disapprove of any proposed Lease, Sublease, Assignment, Leasehold Mortgage or other transactions permitted under this Ordinance.

(d) **Lease Execution.** All Leases, Subleases, Assignments, Leasehold Mortgages or other transactions permitted under this Ordinance and requiring signature shall be executed by a Tribal Representative.

(e) **Records.**

(1) **Recording.** The Lease Administrator shall cause the Lease and any amendments, Subleases, Assignments, Leasehold Mortgages, renewals, cancellations, and terminations to be recorded with the LTRO.

(2) **Payment Documentation.** For any Lease requiring payments to be made directly to the Tribe, the Lease Administrator shall provide the BIA with documentation of the Lease payments that is sufficient to enable the Secretary to discharge the trust responsibility of the United States.

(3) **Dissemination.** Leases, amendments, renewals or cancellations will be sent to the BIA Superintendent, Central California Agency, 650 Capitol Mall, Suite 8-500, Sacramento, CA 95814, or any other address designated by the BIA Superintendent.

(4) **Ownership.** Records of activities taken pursuant to this Ordinance are the property of the Tribe. Records compiled, developed or received by the BIA are the property of the United States.

(5) **Retention.** The Lease Administrator will preserve records related to this Ordinance for a reasonable period of time to adequately document essential transactions and furnish information necessary to protect the legal and financial rights of the Lease Administrator and persons directly affected by the Lease Administrator's activities herein.

1-7 **Definitions.** For purposes of this Ordinance, the capitalized terms set forth below shall have the following meanings (the meanings of defined terms shall be equally applicable to the singular and plural forms of the defined terms):

(a) "Agricultural land" means Tribal Land suited or used for the production of crops, livestock or other agricultural products, or land suited or used for a business that supports the surrounding agricultural community.

(b) “Agricultural Lease” means a lease of agricultural land for farming and/or grazing purposes.

(c) “Applicant” means the person, corporation or other legal entity that is seeking to enter into a Lease authorized by this Ordinance.

(d) “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.

(e) “Best Interest of the Tribe” means the balancing of interests in attaining the highest economic income, providing incentives to increase economic development, preserving and enhancing the value of the Tribe’s Land, increasing employment and jobs, and preserving the sovereignty of the Tribe.

(f) “BIA” means the Bureau of Indian Affairs within the United States Department of the Interior.

(g) “Bond” means security for the performance of certain Lease obligations, as furnished by the Lessee, or guarantee of such performance as furnished by a third-party surety.

(h) “Business Lease” means the same as Lease, but shall be limited to Leases for business or commercial activity, whether personal, corporate, or otherwise, with the object of profit, gain, benefit, or advantage, either directly or indirectly, wholly or in part. The definition of Business Lease includes Leases for the development of single-family or multi-family residential homes.

(i) “Categorically Excluded Activity” means a category of activities that have been determined not to have a Significant Effect on the Environment and therefore no Environmental Review Process is required, including the activities listed in Section 3-10(b) herein.

(j) “Constitution” means the Constitution and Bylaws of the Tule River Indian Tribe California, approved January 15, 1936, as amended January 26, 1974, and as may be further amended.

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

(l) “Determination of Categorical Exclusion” means a determination by the Environmental Reviewer that a proposed Lease transaction constitutes a Categorical Excluded Activity.

(m) “Determination of Significant Effect” means a determination by the Environmental Reviewer that a proposed Lease will have a Significant Effect on the Environment.

(n) “Development Period” means the time period from commencement of a Business Lease or a WSR Lease to when improvements are expected to be substantially completed.

(o) “Eligible Area” means Tribal Land.

(p) “Encumbrancer” means a person with a legal right or interest in Lessee’s property.

(q) “Environmental Assessment” means a concise public document disclosing and analyzing the environmental consequences of a proposed action, so that the Environmental Reviewer has sufficient evidence and analysis for determining whether to prepare or cause to be prepared a finding of no Significant Effect on the Environment, Determination of Categorical Exclusion, or a Determination of Significant Effect.

(r) “Environmental Review Process” means the process for conducting an environmental review to determine the environmental impact of every proposed Lease.

(s) “Environmental Reviewer” means the official from the Tribe’s Environmental Protection Office or other official designated by the Tribal Council.

(t) “Fair Annual Lease Value” means the most probable dollar amount a property should generate in a competitive and open market reflecting all conditions and restrictions of the specified Lease, including without limitation the term, Rent adjustment (if any) and revaluation, permitted uses, use restrictions, and expense obligations of the Lease, with the Lessee and Lessor each acting prudently and knowledgeably, and assuming consummation of a Lease as of a specified date and the passing of the leasehold from Lessor to Lessee under conditions whereby both the Lessee and Lessor are equally motivated to consummate the Lease under the particular market conditions. Fair Annual Lease Value may take into consideration all revenues (including without limitation taxes, fees and other benefits of value) which the Lease is likely to generate for the benefit of the Tribe, including without limitation increased business opportunities for related industries.

(u) “HEARTH Act” means the Helping Expedite and Advance Responsible Tribal Homeownership Act of 2012, P.L. 112-151, 126 Stat. 1150. (2012).

(v) “Holdover” means circumstances in which a Lessee remains in possession of the Leased Premises after the Lease term expires or has been cancelled or terminated.

(w) “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 Tribal Land and subject to a Lease approved under this this Ordinance.

(x) “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 pursuant to and in accordance with this Ordinance. Lessee’s right to possess will limit the Tribe’s right to possess the Leased Premises only to the extent provided in the Lease.

(y) “Lease Administrator” means the individual or entity selected by Tribal Council who has been delegated authority to manage the Lease application process, manage all Leases, and implement enforcement actions in accordance with this Ordinance on the Tribe’s behalf.

(z) “Lease Decision” means the decision of the Lease Administrator following completion of the Environmental Review Process with respect to approval of the issuance, amendment, Sublease or Assignment of a Lease.

(aa) “Lease Management Plan” means the plans or policies adopted by the Tribal Council regarding real estate management practices that address, among other things, accounting, collections, monitoring, enforcement, relief and remedies.

(bb) “Leased Premises” means that portion of the Tribe’s Lands that is subject to a Lease approved pursuant to this Ordinance.

(cc) “Leasehold Estate” means the possessory interest in Tribal Land established between a Lessor and a Lessee.

(dd) “Leasehold Mortgage” means a mortgage, a deed of trust or other instrument that pledges the Leasehold Estate of a Lessee as security for a debt or other obligation owed by the Lessee to a lender or other Mortgagee.

(ee) “Lessee” means a person, corporation or other legal entity that has acquired a legal right to possess Tribal Land by executing a Lease under this Ordinance.

(ff) “Lessor” means the Tribe.

(gg) “LTRO” means the BIA Land Titles and Records Office having administrative jurisdiction over the Leased Premises.

(hh) “Mortgagee” means any person, entity or governmental agency which lends under a Leasehold Mortgage, and includes any Designated Assignee, or other assignee thereof.

(ii) “Ordinance” means this Tule River Indian Tribe Leasing Ordinance.

(jj) “Permanent Improvement” means buildings, other structures, and associated infrastructure attached to the Leased Premises.

(kk) “Project” means any economic development activity on Tribal Land that is subject to a Lease.

(ll) “Proof of Service” means a sworn document signed by the person serving the notice stating the time and place of the service, the name of the person served, and the notice served.

(mm) “Public”, for the purpose of the Environmental Review Process, means any person or entity with the potential to be significantly affected by the Lease.

(nn) “Rent” means the money or compensation to be paid or consideration to be given by the Lessee under a Lease.

(oo) “Residential Lease” means the same as Lease, but shall be limited to Leases of undeveloped land or developed land, together with the Permanent Improvements thereon, for single-family residences and housing for public purposes.

(pp) “Secretary” means the Secretary of the Interior, United States Department of the Interior, or his or her authorized representative or designee.

(qq) “Significant Effect on the Environment” means a substantial adverse change in the environment, including without limitation land, water, minerals, flora, fauna, ambient noise, cultural areas, and objects or areas of historic, cultural, or aesthetic significance.

(rr) “Sublease” means a written agreement by which the Lessee grants to an individual or entity a right to possession of all or a portion of the Leased Premises no greater than that held by the Lessee under the Lease.

(ss) “Sublessee” means a person, corporation or other legal entity, to whom Tribal Land is subleased under a Sublease.

(tt) “TEIR” means a tribal environmental impact report.

(uu) “Treasury” means the United States Department of the Treasury.

(vv) “Tribal Council” means the Tribe’s elected governing body.

(ww) “Tribal Court” means the Tribe’s Court as established by Judicial Ordinance approved pursuant to Tribal Resolution FY2018-151, as may be amended.

(xx) “Tribal Land” means land within and outside of the exterior boundaries of the Tule River Indian Tribe Reservation held in Trust or Restricted Status by the United States for the benefit of the Tribe.

(yy) “Tribal Law” means the body of non-federal law that governs lands and activities under the jurisdiction of the Tribe, including without limitation ordinances, rules, regulations or other enactments by the Tribe, and any rulings of the Tribe’s court.

(zz) “Tribal Representative” means the Chairman of the Tribe or representative(s) of the Tribe lawfully designated in writing by the Tribal Council to take all necessary action with respect to the Leases, Subleases, and other leasing related actions, including but not limited to Assignments and amendments of the same.

(aaa) “Tribe” means the Tule River Indian Tribe and the agencies, entities, arms and enterprises of the Tribe, as appropriate either together or separately.

(bbb) “Trust or Restricted Status” means (1) that the United States holds title to the tract in trust for the benefit of a Tribe; or (2) that a 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.

(ccc) “Wind and Solar Resource Lease” or “WSR Lease” means the same as Lease, but shall be limited to Leases for possession of Tribal Land for the purpose of installing, operating, and maintaining instrumentation, facilities, and associate infrastructure, such as wind turbines and solar panels, to harness wind and/or solar energy to generate and supply electricity: (i) for resale on a for-profit or non-profit basis; (ii) to a utility grid serving the public generally; or (ii) to users within the local community (e.g., on and adjacent to a reservation).

(ddd) “Wind Energy Evaluation Lease” or “WEEL” means the same as Lease, but shall be limited to short-term Leases for possession of Tribal Land for the purpose of installing, operating, and maintaining instrumentation, and associated infrastructure, such as meteorological towers, to evaluate wind resources for electricity generation.

CHAPTER 2
BUSINESS LEASE REQUIREMENTS

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2-1 **Terms and Conditions.** Any Business Lease authorized by this Ordinance shall be governed by terms and conditions set forth in the Business Lease and the provisions of this Ordinance. The Lessee is responsible for understanding the terms and conditions set forth in the Business Lease.

2-2 **Term of Business Lease.** The term of a Business Lease shall not exceed twenty-five (25) years, except that a Business Lease may include two (2) options to renew, with each such renewal period not exceeding twenty-five (25) years (for a maximum Lease term of seventy-five (75) years). The option to renew must include: (a) the time and manner the option must be exercised or is automatically effective; (b) any additional consideration that will be due upon exercise of the option to renew; and (c) any other conditions for renewal.

2-3 **Lease Application.** An Applicant for a Business Lease is responsible for completing and submitting all documents required by this Ordinance. The Applicant shall submit a complete application to the Lease Administrator, which must include the following documents:

- (a) Any financial information deemed necessary to determine whether the Applicant can financially meet the obligations of the Business Lease and/or the conditions and requirements of this Ordinance;
- (b) Land description (including site survey with legal description, if available);
- (c) Description of proposed use;
- (d) Description of proposed Permanent Improvements, if any, including construction plans, schedules, costs and contractor information;
- (e) Environmental Review Process documents; and
- (f) Other documents as may be reasonably required.

2-4 **Mandatory Provisions of Business Leases.** A Business Lease must contain, at minimum, the following provisions:

- (a) A description of the tract or parcel of the Tribal Land, building or structure that is being leased (with reference to a public or private survey plan, if available) in terms sufficient to determine the location of the Leased Premises and meet recording requirements for the LTRO;
- (b) Identification and contact information for the parties to the Business Lease;

(c) Identification of the authorized uses compatible with the purpose of the Business Lease;

(d) Indemnification of the United States and Lessor;

(e) Term and effective date of the Business Lease, including any options to renew;

(f) Identification of the responsible party for ownership, construction, operation, maintenance, and management of Permanent Improvements, including removal of any Permanent Improvements in accordance with this Ordinance, if applicable;

(g) A provision providing that the Lessee will complete construction of any Permanent Improvements within the schedule approved by Lessor in writing and that changes to the schedule must be agreed upon in writing in advance of Lessee's failure to complete construction of any Permanent Improvements, if applicable;

(h) Payment and late payment requirements, including the party to receive the Rent, acceptable forms of payment, due date for payment, and late payment penalties, fees and interest;

(i) A provision that expressly includes the following language: "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"; and

(j) Due diligence, insurance and Bond requirements. If a Bond is required pursuant to this Ordinance, the Business Lease must state that the Lessee must obtain the consent of the surety for any legal instrument that directly affects the Lessee's obligations and liabilities;

(k) An obligation of the Lessee to comply with all applicable laws, including Tribal Law.

2-5 **Rent Compensation Amount.** The Fair Annual Lease Value for a proposed Business Lease shall be determined by an appraisal performed by a licensed appraiser utilizing a commonly accepted method of appraisal. Rent may be structured at a flat rate, flat rate plus a percentage of gross receipts, percentage of gross receipts or other market indicator. The requirement for an appraisal may be waived by the Tribal Council if the Tribal Council determines that an appraisal is not necessary and that such waiver is in the Best Interest of the Tribe.

(a) **Less than Fair Annual Lease Value.** Tribal Land may be leased at less than the Fair Annual Lease Value if:

- (1) Lessee is a religious organization, or an agency of a federal, state tribal or local government;
- (2) Lessee is an intertribal organization, consortium or entity serving the Tribe's community;
- (3) the purposes of subsidization are for the benefit of the Tribe;
- (4) the Business Lease is in the Development Period;
- (5) the Tribe is attempting to attract business development through market incentives; or
- (6) the Tribal Council determines the Business Lease is in the Best Interest of the Tribe.

(b) **Rent Adjustments.** The Lease Administrator may negotiate for and include a provision in the Business Lease for periodic review and adjustment of Rent. The Business Lease shall, if applicable, specify how Rent adjustments will be made, who will make such adjustments, when such adjustments will go into effect and how disputes shall be resolved.

2-6 **Bonds.** Unless waived, Bonds will be required in an amount that will reasonably assure performance of the contractual obligations under the Lease. The Bond or other security instrument must require the surety to provide notice to the Tribe at least sixty (60) days before canceling a Bond.

(a) **Purpose of Bonds.**

- (1) To guarantee a minimum of one (1) year's Rent unless the Lease contract provides that the annual Rent shall be paid in advance;
- (2) To guarantee the estimated construction cost of Permanent Improvements to be placed on the Tribal Land by the Lessee; or
- (3) To guarantee compliance with any additional contractual obligation, applicable environmental standards, and the general protection of the health, safety, and welfare of the Tribe.

(b) **Form of Bonds.** The obligation for a Bond may be fulfilled by an alternate security in the form of (i) an irrevocable letter of credit from a bank or equivalent financial institution, (ii) a certificate of deposit issued by a federally insured financial institution authorized to do business in the United States, (iii) negotiable Treasury securities or (iv) any alternative form of security that provides adequate protection for the Tribe, including but not limited to an escrow agreement with an assigned savings account.

(c) **Bond Waiver.** The requirement for Bonds may be reduced or waived by the Tribal Council, provided that the waiver or reduction is determined by the Tribal Council to be in the Best Interest of the Tribe. The waiver may be revoked at any time if the Tribal Council determines that the waiver or reduction of Bond requirements ceases to be in the Best Interest of the Tribe.

2-7 **Insurance.**

(a) Lessee shall provide proof of insurance necessary to protect the interests of the Lessor in amounts sufficient to protect all insurable Permanent Improvements on the Leased Premises.

(b) The insurance may include, but is not limited to, property, liability or casualty insurance or other insurance as provided in the Lease.

(c) The United States and the Tribe shall be additional insureds under any policy of insurance required by the Lease.

The Tribal Council may waive the insurance requirement(s) if the Tribal Council determines that a waiver is deemed in the Best Interest of the Tribe. The waiver may be revoked at any time if the Tribal Council determines that the waiver ceases to be in the Best Interest of the Tribe.

2-8 **Permanent Improvements.** All Business Leases that provide for the construction of Permanent Improvements shall do so at the Lessee's expense, unless otherwise provided for in the Lease. The Lessee must exercise due diligence to complete construction of any Permanent Improvements within the schedule approved by the Lease Administrator. When requested by the Lease Administrator, or otherwise required in the Lease, Lessee shall provide a written update of progress. Failure of the Lessee to complete construction within the schedule is a violation of the Lease and may lead to cancellation of the Lease.

(a) **Ownership and Disposition.** Leases must identify who will own, construct, operate, maintain, and manage any Permanent Improvements. Leases may specify under what conditions, if any, such Permanent Improvements may be conveyed to the Lessor. The Lease must indicate how each specific Permanent Improvement the Lessee constructs will be disposed of upon termination of the Lease. Such disposition may occur as follows:

(1) Remain on the Leased Premises upon expiration, cancellation, or termination of the Lease, in a condition satisfactory to the Lessor, and become the property of the Lessor;

(2) Be removed from the Leased Premises within a time period specified in the Lease, at the Lessee's expense, with the Leased Premises to be restored as closely as possible to the Leased Premises' condition before construction of the Permanent Improvements. In which case the Tribe must also be provided an option to take possession of

and title to the Permanent Improvements if they are not removed within the specified time period; or

(3) Be disposed of by other specified means.

(b) **Taxation.** Permanent Improvements may be subject to taxation by the Tribe.

(c) **Waiver.** The Tribal Council may waive the requirements of this Section 2-8 for Leases for religious, educational, recreational, cultural, or other public purposes, or if the Tribal Council determines that such a waiver is in the Best Interest of the Tribe.

2-9 **Subleases, Assignments, Amendments and Leasehold Mortgages.**

(a) Subleases, Assignments, amendments or Leasehold Mortgages of any Lease shall be by written consent of the Lessor and Lessee, unless otherwise provided herein.

(b) The effective date, term and option to renew, if any, shall be set forth in Subleases, Assignments, amendments or Leasehold Mortgages.

(c) The Lessee may authorize Subleases and Assignments, in whole or in part, without approval from the Lessor, so long as a copy of the Sublease or Assignment is provided to the Lessor at least ten (10) calendar days prior to execution of the Sublease or Assignment and the following conditions, where applicable, are satisfied and provided in the Lease:

(1) There is no event of default under the Lease or this Ordinance;

(2) Any restrictions and use limitations on the use of the Leased Premises shall continue to apply to any Sublessee or assignee;

(3) The proposed assignee or Sublessee submits a current financial statement to Lessor showing financial capacity to perform Lease obligations; and

(4) The Lessee shall not be relieved or released from any of its obligations under the Lease.

(d) The Lease may authorize a Leasehold Mortgage to a Mortgagee for purposes of financing development and Permanent Improvements to the Leased Premises subject to the approval of the Lessor.

If a sale or foreclosure of the Lessee's business or assets occurs and the Encumbrancer is also the purchaser, the Encumbrancer may assign the Lease without approval of the Lessor or Lessee, provided that the assignee agrees in writing to be bound by all of the terms and conditions of the

Lease. If the purchaser is a party other than the Encumbrancer, approval by the Lessor is required, and the purchaser must agree in writing to be bound by all of the terms and conditions of the Lease.

2-10 Enforcement.

(a) General. The Lease Administrator shall have all powers necessary and proper to enforce the Business Lease terms as well as laws, ordinances, regulations, rules, policies, and covenants consistent with the Lease Management Plan, which includes but is not limited to the power to enter the Leased Premises at any reasonable time, with or without notice, and to assess late payment penalties.

(b) Defaults. The Lease Administrator shall send violation notice(s) to the Lessee, and Lessee's sureties if applicable, within five (5) business days of determining that the Lease has been violated. The notice of violation to the Lessee must be provided by: (i) a person employed by the Tribe's Department of Public Safety or similar Tribal entity who is over 18 years of age (the person serving the notice of violation must sign a Proof of Service); or (ii) a nationally recognized mail carrier (such as FedEx or UPS). The notice of violation must specify the nature of the violation, including any interest accruals, penalty fees, enforcement fees, and administrative fees, and notify the Lessee of its obligations pursuant to this Section 2-10.

(1) Notice of Violation. Unless provided otherwise in the Lease, within ten (10) business days of the receipt of a notice of violation, the Lessee must:

(i) Cure the violation and notify the Lease Administrator in writing that the violation has been cured;

(ii) Dispute the determination that a violation has occurred and/or explain in writing why the Lease should not be cancelled; or

(iii) Request additional time in writing to cure the violation.

(2) Remedies for Violations of Lease Terms. The following remedies are available under this Ordinance:

(i) Invoke other negotiated remedies available under the Lease, including collecting on any available Bond;

(ii) Grant additional time in which to cure the violation;

(iii) Cancel the Lease;

(iv) Request that the BIA enforce the provisions of the Lease or to cancel the Lease; or

(v) Any combination of the remedies listed above.

(3) **Grant of Additional Time**. If the Lease Administrator decides to grant a Lessee additional time in which to cure a violation, the Lessee must proceed diligently to complete the necessary corrective actions within the specified time period from the date on which the extension is granted.

(c) **Lease Cancellation**. Unless the Lease provides otherwise, if the Lease Administrator decides to cancel the Lease, a cancellation notice shall be sent to the Lessee and Lessee's sureties within five (5) business days of that decision. The cancellation notice must be provided to the Lessee by: (i) a person employed by the Tribe's Department of Public Safety or similar Tribal entity who is over 18 years of age (the person serving the cancellation notice must sign a Proof of Service); or (ii) a nationally recognized mail carrier (such as FedEx or UPS). The cancellation notice will:

(1) Explain the grounds for cancellation;

(2) Notify the Lessee of the amount of any unpaid Rent, interest charges, penalty fees, or administrative fees due under the Lease;

(3) Notify the Lessee of its right to appeal; and

(4) Order the Lessee to vacate the property within thirty (30) calendar days of the date of receipt of the cancellation letter if the Lessee has not filed an appeal by the time the Lease Administrator sends the cancellation notice to Lessee.

A cancellation shall be effective thirty-one (31) calendar days after receipt of the cancellation letter. Unless the Tribal Court orders otherwise, the filing of an appeal shall not change the effective date of the cancellation. Pending the outcome of an appeal, Lessee shall make all requisite payments, as well as comply with the terms of the Business Lease.

(d) **Holdover**. If the Lessee remains in possession of the Leased Premises after the expiration, termination, or cancellation of a Business Lease, the Lease Administrator will treat the unauthorized use, including without limitation the failure to remove from the Tribal Land anything which the Lessee was under a duty to remove after the Lessee's legal right to remain on the Tribal Land ceased, as a trespass. The Tribe may take action to recover possession of the Leased Premises and pursue any additional remedies available under applicable law, which may include pursuing appropriate judicial action or seeking assistance from the BIA for resolution under federal law.

(e) **Trespass**. If a person occupies the Leased Premises without the Tribe's approval, the Tribe may pursue appropriate remedies, including without limitation the filing of a trespass action to regain possession under applicable Tribal Law.

(f) **Emergency Action for Harmful or Threatening Activities.** If a Lessee or other party causes or threatens to cause immediate and significant harm, including but not limited to unlawful or illegal activity, to the Leased Premises during the term of the Lease, the Tribe may take appropriate emergency action. Emergency action may include pursuing an appropriate judicial action.

2-11 **Appeals.**

(a) **Appeals.** The Lessee may appeal any determination of the Lease Administrator made pursuant to this Ordinance, within ten (10) business days of receipt of the Lease Administrator's determination. Appeals may be filed with the Tribal Court or other hearing body designated under Tribal Law. Such appeals may be effectuated by a written notice setting forth the basis for the appeal, a short statement indicating the nature and circumstances of the appeal, and a short statement indicating the remedy being sought.

(b) **Scope of Review.** The Tribal Court or other hearing body designated under Tribal Law shall review whether the Lease Administrator's determination was arbitrary, capricious, or an abuse of discretion; not supported by substantial evidence in the record; or otherwise not in accordance with applicable law. The decision of the Tribal Court or other hearing body designated under Tribal Law shall be final.

CHAPTER 3
RESIDENTIAL LEASE REQUIREMENTS

**CHAPTER 3.
RESIDENTIAL LEASE REQUIREMENTS**

3-1 **Term of Residential Lease.** The Lease may include one (1) or more options to renew, so long as the maximum term, including without limitation all renewals, does not exceed seventy-five (75) years. A Residential Lease must provide for a definite Lease term, state if there is an option to renew, and if so, provide for a definite time frame for the renewal period. The option to renew must include: (a) the time and manner the option must be exercised or is automatically effective; (b) any additional consideration that will be due upon exercise of the option to renew; and (c) any other conditions for renewal.

3-2 **Mandatory Provisions of Residential Leases.** All Residential Leases shall be in writing, and, at a minimum, contain the following:

(a) A description of the tract or parcel of Tribal Land or Housing Unit being leased (with reference to a public or private survey plan, if available) in terms sufficient to determine the location of the Leased Premises and meet recording requirements for the LTRO;

(b) The purpose of the Residential Lease and authorized uses of the Leased Premises;

(c) The parties to the Residential Lease;

(d) The effective date of the Residential Lease;

(e) The term of the Residential Lease in accordance with this Ordinance;

(f) Indemnification of the United States and Lessor;

(g) Identification of the general type and location of any Permanent Improvements and of the responsible party for constructing, owning, operating, maintaining, and managing any Permanent Improvements, in accordance with this Ordinance;

(h) Rent and other payment requirements, including Rent payment due dates, payee and places of payment, and any interest, in accordance with this Ordinance;

(i) Provisions addressing: (1) events constituting defaults of the Lessee, and remedies of the Lessor for the Lessee's defaults; (2) any penalties to be charged if the Lessee fails to make payments in a timely manner; (3) enforcement of the Residential Lease; (4) insurance and Bond requirements, if any; and (5) a right of the Lessor to regain possession and pursue appropriate remedies if the Lessee continues to occupy the Leased Premises after expiration or termination of the Residential Lease without authorization; and

(j) An obligation of the Lessee to comply with all applicable laws, including Tribal Law.

3-3 Rent and Payments.

(a) The Rent to be paid by the Lessee and the form of Rent or methodology of determining Rent shall be determined by the Lease Administrator based upon the Best Interest of the Tribe.

(b) For Residential Leases that are not “housing for public purposes,” periodic review and adjustment of the Rent shall be conducted at least every five (5) years. Rent adjustments may be authorized by the Lease Administrator following a periodic review by the Lease Administrator, and shall take effect on January 1st of the calendar year following the periodic review. The Tribal Council may waive this review if the Tribal Council determines that doing so is in the Best Interest of the Tribe. The Residential Lease shall, if applicable, specify how Rent adjustments will be made, who will make such adjustments, when such adjustments will go into effect and how disputes shall be resolved.

3-4 Permanent Improvements.

(a) The Lessee may construct Permanent Improvements on the Leased Premises on terms and conditions specified in the Residential Lease.

(b) Where a Residential Lease permits the construction of Permanent Improvements on the Leased Premises, the Residential Lease shall address and, to the extent and in the manner deemed appropriate by the Lease Administrator, provide specific terms and conditions and require the supply of documents regarding:

(1) A plan that describes the type and location of any Permanent Improvements to be built by the Lessee;

(2) The Lessee’s due diligence obligations to complete the Permanent Improvements, subject to default under the Residential Lease;

(3) Ownership of the Permanent Improvements, and procedures for any transfer of ownership during the term of the Residential Lease;

(4) Responsibility for operation, maintenance and management of the Permanent Improvements;

(5) Requirement for reasonable notice to the Tribe of the construction of any Permanent Improvements not described in the Residential Lease; and

(6) Whether the Permanent Improvements will remain on or be removed from the Leased Premises upon termination or expiration of the Residential Lease, and

if the Permanent Improvements are to be removed, the Lessee's obligations, if any, with regard to restoration and reclamation of the Leased Premises.

3-5 Assignment.

(a) An Assignment of a Residential Lease shall require the written authorization of the Lease Administrator, which may be given or withheld upon consideration of the Best Interest of the Tribe, provided, however, that no Assignment shall occur, and the Lease Administrator shall not consent to an Assignment, unless:

(1) There is no event of default under the Residential Lease and no violation of this Ordinance;

(2) Any restrictions and use limitations respecting the use of the Leased Premises shall continue to apply to any assignee;

(3) The assignee agrees in writing to comply with applicable laws, including without limitation Tribal Law;

(4) The assignee, if other than a Mortgagee of the Leasehold Estate, agrees in writing to assume all of the obligations and conditions of the Residential Lease;

(5) The Lessee shall be relieved and released from its obligations under the Residential Lease; and

(6) Any Mortgagee or surety of the Lessee has been notified and has consented, as may be required under the relevant Leasehold Mortgage documentation.

3-6 Amendment.

(a) Amendment of a Residential Lease shall require the written authorization of the Lease Administrator, which may be given or withheld upon consideration of the Best Interest of the Tribe.

(b) Any proposed amendment of a Residential Lease shall be subject to the same requirements set forth in this Ordinance as are applicable to a Residential Lease.

3-7 Leasehold Mortgages.

(a) A Leasehold Mortgage of any leasehold interest shall require the written authorization of the Lease Administrator, which may be given or withheld upon consideration of the Best Interest of the Tribe.

(b) The Residential Lease may authorize Leasehold Mortgages of the leasehold interest and must state the law governing foreclosure, and may set forth additional terms and conditions applicable to an authorized Leasehold Mortgage.

3-8 **Subleases.**

(a) **Requirements.** All Subleases, at a minimum, shall contain the following:

(1) A description of the Leased Premises in accordance with this Ordinance;

(2) The authorized uses of the Leased Premises, which shall be consistent with all use limitations and restrictions under the Residential Lease;

(3) The parties to the Sublease;

(4) The effective date of the Sublease;

(5) The term of the Sublease in accordance with this Ordinance;

(6) Identification of the general type and location of any Permanent Improvements and of the responsible party for constructing, owning, operating, maintaining, and managing any Permanent Improvements, in accordance with this Ordinance;

(7) Rent and other payment requirements, including Rent payment due dates, payee and places of Rent payment, the manner in which the required Rent payments are to be made, and any interest, in accordance with this Ordinance; and

(8) An obligation of the Sublessee to comply with all applicable laws, including without limitation Tribal Law.

(b) **Authorization.** All Subleases shall require the authorization of the Tribe, which may be obtained by:

(1) Receiving written authorization of the Lease Administrator, which may be given or withheld upon consideration of the Best Interest of the Tribe; or

(2) Satisfying the following requirements:

(i) The Sublease meets the minimum requirements of this Ordinance;

(ii) There exists no event of default under the Residential Lease and no violation of this Ordinance;

(iii) The Lessee shall not be relieved or released from any of its obligations under the Residential Lease; and

(iv) Any Mortgagee and any surety of the Lessee have been notified and have consented, as may be required under the relevant Leasehold Mortgage documentation.

3-9 Enforcement.

(a) **General.** The Lease Administrator shall have all powers necessary and proper to enforce the Residential Lease terms as well as laws, ordinances, regulations, rules, policies, and covenants consistent with the Lease Management Plan, which includes without limitation the power to enter the Leased Premises at any reasonable time, with or without notice, and to assess late payment penalties.

(b) **Notice of Violation.** If the Lease Administrator determines that a Residential Lease has been violated, a notice of violation shall be sent to Lessee within ten (10) business days of that determination. The notice of violation to the Lessee must be provided by: (i) a person employed by the Tribe's Department of Public Safety or similar Tribal entity who is over 18 years of age (the person serving the notice of violation must sign a Proof of Service); or (ii) a nationally recognized mail carrier (such as FedEx or UPS). The notice of violation must specify the nature of the violation, including any unpaid Rent, interest charge or late payment penalties, and notify the Lessee of its obligations pursuant to this Section 3-9.

(c) **Timeframe to Cure Violation.** Within ten (10) business days of receipt of the notice of violation, the Lessee must:

- (1) Cure the violation;
- (2) Dispute the determination that a violation has occurred or explain why the Residential Lease should not be cancelled; or
- (3) Request additional time to cure the violation.

(d) **Failure to Cure the Violation.** If the Lessee does not cure the violation within the time provided, the Lease Administrator will determine whether:

- (1) The Residential Lease should be cancelled;
- (2) The Lessee should be granted additional time to cure the violation. If additional time is granted, the Lessee must proceed diligently to complete the corrective action on the date required and notify the Lease Administrator when completed; or
- (3) To invoke any other remedies available to the Lessor under the Lease including collection of any Bond or deposit.

(e) **Lease Cancellation.** The Lease Administrator will request approval from the Tribal Council prior to cancelling a Residential Lease. If Tribal Council approves

cancellation of the Residential Lease, the Lease Administrator will send the Lessee a cancellation notice providing: (1) the grounds of the cancellation; (2) the amount of any unpaid Rent, interest charge or late payment penalties; and (3) order the Lessee to vacate the Leased Premises within thirty (30) calendar days after receiving the cancellation notice from the Lease Administrator. The cancellation notice must be provided to the Lessee by: (i) a person employed by the Tribe's Department of Public Safety or similar Tribal entity who is over 18 years of age (the person serving the cancellation notice must sign a Proof of Service); or (ii) a nationally recognized mail carrier (such as FedEx or UPS).

(f) **Appeal Rights.** Unless applicable law provides otherwise, all decisions and determinations made by the Lease Administrator or the Tribal Council pursuant to this Ordinance, or other Tribal Representative authorized to make decisions under this Ordinance, shall be final and non-appealable.

(g) **Holdover.** If the Lessee remains in possession of the Leased Premises after the expiration, termination, or cancellation of a Residential Lease, the Lease Administrator will treat the unauthorized use, including without limitation the failure to remove from the Tribal Land anything which the Lessee was under a duty to remove after the Lessee's legal right to remain on the Tribal Land ceased, as a trespass. The Tribe may take action to recover possession of the Leased Premises and pursue any additional remedies available under applicable law, which may include without limitation pursuing appropriate judicial action or seeking assistance from the BIA for resolution under federal law.

(h) **Trespass.** If a person occupies the Leased Premises without the Tribe's approval, the Tribe may pursue appropriate remedies, including without limitation the filing of a trespass action to regain possession under applicable Tribal Law.

(i) **Emergency Action for Harmful or Threatening Activities.** If a Lessee or other party causes or threatens to cause immediate and significant harm, including but not limited to unlawful or illegal activity, to the Leased Premises during the term of the Lease, the Tribe may take appropriate emergency action. Emergency action may include pursuing an appropriate judicial action.

3-10 **Residential Lease Environmental Review Process.**

(a) **General.** A Residential Lease shall not be executed until the Environmental Reviewer completes the Environmental Review Process by issuing a Determination of Categorical Exclusion, a finding of no Significant Effect on the Environment, or Determination of Significant Effect. Unless a categorical exclusion applies, the Environmental Reviewer shall be responsible for preparing an Environmental Assessment to identify and evaluate whether a proposed Residential Lease would have a Significant Effect on the Environment.

(b) Categorically Excluded Activities. The following activities have been determined not to have a Significant Effect on the Environment and therefore constitute Categorically Excluded Activities:

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

(2) Approval of a Lease for five (5) acres or less of contiguous Tribal Land for construction of a Housing Unit of one (1) to four (4) dwelling units, including any associated Permanent Improvements, access roads, and utilities; and

(3) Approval of Subleases where the activities authorized under the original Residential Lease will not materially change.

Where the Environmental Reviewer determines that a proposed Residential Lease constitutes a Categorically Excluded Activity, the Environmental Reviewer shall issue a Determination of Categorical Exclusion. Notwithstanding Section 3-10(b), the Environmental Reviewer shall follow the procedures set forth in Section 3-10(c) of this Ordinance if he/she determines that extraordinary circumstances exist under which the residential use of the proposed Leased Premises may, individually or cumulatively, have a Significant Effect on the Environment.

(c) Environmental Review. Unless a Categorically Excluded Activity applies, the Environmental Reviewer shall cause an Environmental Assessment to be developed to evaluate whether a proposed Lease will have a Significant Effect on the Environment. Following completion of the Environmental Assessment, the Environmental Reviewer will proceed as follows:

(1) No Significant Effect on the Environment. If the Environmental Reviewer 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 the order set forth below:

(i) A finding of no Significant Effect on the Environment shall be issued and posted for a minimum of fifteen (15) calendar days in a prominent, noticeable place in the offices of the Tribe and on a publicly accessible website.

(ii) If there is a substantial interest in holding a public meeting, it shall be held in a manner determined by the Lease Administrator to provide an opportunity for tribal citizens and Tule River Indian Tribe Reservation residents to comment in writing or verbally on the finding of no Significant Effect on the Environment.

(iii) Comments shall be reviewed and analyzed and a report shall be issued by the Environmental Reviewer responding to relevant and substantive comments, if any, regarding the finding of no Significant Effect on the Environment and including the final decision of the Environmental Review to issue a finding or no Significant Effect on the

Environment. The report shall be posted for a minimum of fifteen (15) calendar days in a prominent, noticeable place in the offices of the Tribe and on a publicly accessible website.

(2) Determination of Significant Effect on the Environment. If the Environmental Reviewer determines that the uses authorized by the proposed Lease may have a Significant Effect on the Environment, then the Environmental Reviewer shall cause the following to occur in the order set forth below:

(i) A draft TEIR that identifies and evaluates any Significant Effect on 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 offices of the Tribe and on a publicly accessible website, during which time the Environmental Reviewer shall accept comments on the draft TEIR ("comment period");

(ii) Following the comment period, if there is a substantial interest in holding a public meeting, it shall be held in a manner determined by the Lease Administrator to provide a final opportunity for tribal citizens and Tule River Indian Tribe Reservation residents to comment in writing or verbally on the draft TEIR. Comments will not be accepted after the conclusion of the meeting, unless the Lease Administrator in writing extends the period of time during which comments will be accepted;

(iii) Comments shall be reviewed and analyzed and a report by the Environmental Reviewer shall be issued responding to relevant and substantive comments, if any, on the draft TEIR and shall include the proposed conclusions of the Environmental Reviewer. The report and the proposed final TEIR shall be posted for a minimum of thirty (30) calendar days in a prominent, noticeable place in the offices of the Tribe and on a publicly accessible website.

A final TEIR providing a determination of the potential for any Significant Effect on the Environment associated with the uses authorized by the Lease, and proposed or recommended mitigation measures addressing any such impacts, shall be issued by the Environmental Reviewer, sent to the Lease Administrator for approval, and posted for a minimum of thirty (30) calendar days in a prominent, noticeable place in the offices of the Tribe and on a publicly accessible website.

CHAPTER 4

WSR LEASE and WEEL REQUIREMENTS

CHAPTER 4.
WSR LEASE AND WEEL REQUIREMENTS

4-1 **Terms and Conditions.** Any WSR Lease or WEEL, as applicable, authorized by this Ordinance shall be governed by terms and conditions set forth in the respective WSR Lease or WEEL and the provisions of this Ordinance. The Lessee is responsible for understanding the terms and conditions set forth in the respective WSR Lease or WEEL.

4-2 **Term of WSR Leases.** The term of a WSR Lease shall not exceed twenty-five (25) years, except that a WSR Lease may include two (2) options to renew, with each such renewal period not exceeding twenty-five (25) years (for a maximum WSR Lease term of seventy-five (75) years). The option to renew must include: (a) the time and manner the option must be exercised or is automatically effective; (b) any additional consideration that will be due upon exercise of the option to renew; and (c) any other conditions for renewal.

4-3 **Term of WEELs.** The term of a WEEL shall not exceed three (3) years, except that a WEEL may include one (1) option to renew, with such renewal period not exceeding three (3) years (for a maximum WEEL term of six (6) years). A WEEL may provide for an option period following the expiration of the WEEL term during which the Lessee and the Tribe may enter into a WSR Lease. Approval of a WEEL that contains an option to enter into a WSR Lease does not guarantee or imply approval of any WSR Lease.

4-4 **Lease Application.** An Applicant for a WSR Lease or WEEL, as applicable, is responsible for completing and submitting all documents required by this Ordinance. The Applicant shall submit a complete application to the Lease Administrator, which must include the following documents:

- (a) Any financial information deemed necessary to determine whether the Applicant can financially meet the obligations of the WSR Lease or WEEL, as applicable, and/or the conditions and requirements of this Ordinance;
- (b) Land description (including site survey with legal description, if available);
- (c) Description of proposed use;
- (d) Description of proposed Permanent Improvements, if any, including construction plans, schedules, costs and contractor information;
- (e) Environmental Review Process documents; and
- (f) Other documents as may be reasonably required.

4-5 **Mandatory Provisions of WSR Leases and WEELs.** All WSR Leases and WEELs must contain, at minimum, the following provisions:

(a) A description of the tract or parcel of the Tribal Land, building or structure that is being leased (with reference to a public or private survey plan, if available) in terms sufficient to determine the location of the Leased Premises and meet recording requirements for the LTRO;

(b) Identification and contact information for the parties to the WSR Lease or WEEL;

(c) Identification of the authorized uses compatible with the purpose of the WSR Lease or WEEL;

(d) Indemnification of the United States and Lessor;

(e) Term and effective date of the WSR Lease or WEEL, including any options to renew;

(f) Identification of the responsible party for ownership, construction, operation, maintenance, and management of Permanent Improvements, including removal of any Permanent Improvements in accordance with this Ordinance, if applicable;

(g) A provision providing that the Lessee will complete construction of any Permanent Improvements within the schedule approved by Lessor in writing and that changes to the schedule must be agreed upon in writing in advance of Lessee's failure to complete construction of any Permanent Improvements, if applicable;

(h) Payment and late payment requirements, including the party to receive the Rent, acceptable forms of payment, due date for payment, and late payment penalties, fees and interest;

(i) A provision that expressly includes the following language: "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"; and

(j) Due diligence, insurance and Bond requirements. If a Bond is required pursuant to this Ordinance, the WSR Lease or WEEL, as applicable, must state that the Lessee must obtain the consent of the surety for any legal instrument that directly affects the Lessee's obligations and liabilities.

(k) An obligation of the Lessee to comply with all applicable laws, including Tribal Law;

(l) For WEELs only, the following additional provisions: (1) a provision requiring Lessee to install testing and monitoring facilities within twelve (12) months after

the effective date of the WEEL or other period designated in the WEEL and consistent with the plan of development; (2) a provision requiring that if installation does not occur, or is not expected to be completed, within the time period specified in paragraph (k)(1) of this section, that the Lessee provide the Tribe with an explanation of good cause for any delay, the anticipated date of installation of facilities, and evidence of progress toward installing or completing testing and monitoring facilities; and (3) a provision specifying the ownership of any energy resource information the Lessee obtains during the WEEL term (unless otherwise specified in the WEEL, the energy resource information the Lessee obtains through the Leased activity becomes the property of the Tribe at the expiration, termination, or cancellation of the WEEL or upon failure by the Lessee to diligently install testing and monitoring facilities on the Leased Premises in accordance with this section);

(m) For WSR Leases only, the following additional provisions: (1) a provision requiring Lessee to commence installation of energy facilities within two (2) years after the effective date of the WSR Lease or consistent with a timeframe in the resource development plan; (2) a provision that if installation does not occur, or is not expected to be completed, within the time period specified in paragraph (l)(1) of this section, that the Lessee provide the Tribe with an explanation of good cause as to the nature of any delay, the anticipated date of installation of facilities, and evidence of progress toward commencement of installation; (3) a provision requiring Lessee to maintain all on-site electrical generation equipment and facilities and related infrastructure in accordance with the design standards in the resource development plan; (4) a provision requiring Lessee to repair, place into service, or remove from the site within a time period specified in the WSR Lease any idle, improperly functioning, or abandoned equipment or facilities that have been inoperative for a continuous period specified in the WSR Lease (unless the equipment or facilities were idle as a result of planned suspension of operations, for example, for grid operations or during bird migration season); and (5) a provision identifying who is responsible for (i) evaluating the Leased Premises for suitability; (ii) purchasing, installing, operating, and maintaining wind and solar equipment; (iii) negotiating power purchase agreements; and (iv) transmission.

4-6 **Rent Compensation Amount.** The Fair Annual Lease Value for a proposed WSR Lease or WEEL, as applicable, shall be determined by an appraisal performed by a licensed appraiser utilizing a commonly accepted method of appraisal. Rent may be structured at a flat rate, flat rate plus a percentage of gross receipts, percentage of gross receipts or other market indicator. The requirement for an appraisal may be waived by the Tribal Council if the Tribal Council determines that an appraisal is not necessary and that such waiver is in the Best Interest of the Tribe.

(a) **Less than Fair Annual Lease Value.** Tribal Land may be leased at less than the Fair Annual Lease Value if:

(1) Lessee is a religious organization, or an agency of a federal, state tribal or local government;

- (2) Lessee is an intertribal organization, consortium or entity serving the Tribe's community;
- (3) the purposes of subsidization are for the benefit of the Tribe;
- (4) the WSR Lease or WEEL, as applicable, is in the Development Period;
- (5) the Tribe is attempting to attract business development through market incentives; or
- (6) the Tribal Council determines the WSR Lease or WEEL, as applicable, is in the Best Interest of the Tribe.

(b) **Rent Adjustments.** The Lease Administrator may negotiate for and include a provision in the WSR Lease or WEEL, as applicable, for periodic review and adjustment of Rent. The WSR Lease or WEEL shall, if applicable, specify how Rent adjustments will be made, who will make such adjustments, when such adjustments will go into effect and how disputes shall be resolved.

4-7 **Bonds.** Unless waived, Bonds will be required in an amount that will reasonably assure performance of the contractual obligations under the Lease.

(a) **Purpose of Bonds.**

- (1) To guarantee a minimum of one (1) year's Rent unless the Lease contract provides that the annual Rent shall be paid in advance;
- (2) To guarantee the estimated construction cost of Permanent Improvements to be placed on the Tribal Land by the Lessee; or
- (3) To guarantee compliance with any additional contractual obligation, applicable environmental standards, and the general protection of the health, safety, and welfare of the Tribe.

(b) **Form of Bonds.** The obligation for a Bond may be fulfilled by an alternate security in the form of (i) an irrevocable letter of credit from a bank or equivalent financial institution, (ii) a certificate of deposit issued by a federally insured financial institution authorized to do business in the United States, (iii) negotiable Treasury securities or (iv) any alternative form of security that provides adequate protection for the Tribe, including but not limited to an escrow agreement with an assigned savings account.

(c) **Bond Waiver.** The requirement for Bonds may be reduced or waived by the Tribal Council, provided that the waiver or reduction is determined by the Tribal Council to be in the Best Interest of the Tribe. The waiver may be revoked at any time if

the Tribal Council determines that the waiver or reduction of Bond requirements ceases to be in the Best Interest of the Tribe.

4-8 Insurance.

(a) Lessee shall provide proof of insurance necessary to protect the interests of the Lessor in amounts sufficient to protect all insurable Permanent Improvements on the Leased Premises.

(b) The insurance may include, but is not limited to, property, liability or casualty insurance or other insurance as provided in the Lease.

(c) The United States and the Tribe shall be additional insureds under any policy of insurance required by the Lease.

The Tribal Council may waive the insurance requirement(s) if the Tribal Council determines that a waiver is deemed in the Best Interest of the Tribe. The waiver may be revoked at any time if the Tribal Council determines that the waiver ceases to be in the Best Interest of the Tribe.

4-9 Permanent Improvements. All WSR Leases and WEELs that provide for the construction of Permanent Improvements shall do so at the Lessee's expense, unless otherwise provided for in the Lease. The Lessee must exercise due diligence to complete construction of any Permanent Improvements within the schedule approved by the Lease Administrator. When requested by the Lease Administrator, or otherwise required in the Lease, Lessee shall provide a written update of progress. Failure of the Lessee to complete construction within the schedule is a violation of the Lease and may lead to cancellation of the Lease.

(a) **Ownership and Disposition.** Leases must identify who will own, construct, operate, maintain, and manage any Permanent Improvements. Leases may specify under what conditions, if any, such Permanent Improvements may be conveyed to the Lessor. The Lease must indicate how each specific Permanent Improvement the Lessee constructs will be disposed of upon termination of the Lease. Such disposition may occur as follows:

(1) Remain on the Leased Premises upon expiration, cancellation, or termination of the Lease, in a condition satisfactory to the Lessor, and become the property of the Lessor;

(2) Be removed from the Leased Premises within a time period specified in the Lease, at the Lessee's expense, with the Leased Premises to be restored as closely as possible to the Leased Premises' condition before construction of the Permanent Improvements. In which case the Tribe must also be provided an option to take possession of and title to the Permanent Improvements if they are not removed within the specified time period; or

(3) Be disposed of by other specified means.

(b) **Taxation.** Permanent Improvements may be subject to taxation by the Tribe.

(c) **Waiver.** The Tribal Council may waive the requirements of this Section 4-9 for Leases for religious, educational, recreational, cultural, or other public purposes, or if the Tribal Council determines that such a waiver is in the Best Interest of the Tribe.

4-10 **Subleases, Assignments, Amendments and Leasehold Mortgages.**

(a) Subleases, Assignments, amendments or Leasehold Mortgages of any Lease shall be by written consent of the Lessor and Lessee, unless otherwise provided herein.

(b) The effective date, term and option to renew, if any, shall be set forth in Subleases, Assignments, amendments or Leasehold Mortgages.

(c) The Lessee may authorize Subleases and Assignments, in whole or in part, without approval from the Lessor, so long as a copy of the Sublease or Assignment is provided to the Lessor at least ten (10) calendar days prior to execution of the Sublease or Assignment and the following conditions, where applicable, are satisfied and provided in the Lease:

(1) There is no event of default under the Lease or this Ordinance;

(2) Any restrictions and use limitations on the use of the Leased Premises shall continue to apply to any Sublessee or assignee;

(3) The proposed assignee or Sublessee submits a current financial statement to Lessor showing financial capacity to perform Lease obligations; and

(4) The Lessee shall not be relieved or released from any of its obligations under the Lease.

(d) The Lease may authorize a Leasehold Mortgage to a Mortgagee for purposes of financing development and Permanent Improvements to the Leased Premises subject to the approval of the Lessor.

If a sale or foreclosure of the Lessee's business or assets occurs and the Encumbrancer is also the purchaser, the Encumbrancer may assign the Lease without approval of the Lessor or Lessee, provided that the assignee agrees in writing to be bound by all of the terms and conditions of the Lease. If the purchaser is a party other than the Encumbrancer, approval by the Lessor is required, and the purchaser must agree in writing to be bound by all of the terms and conditions of the Lease.

4-11 **Enforcement.**

(a) **General.** The Lease Administrator shall have all powers necessary and proper to enforce the WSR Lease terms or WEEL terms as well as laws, ordinances, regulations, rules, policies, and covenants consistent with the Lease Management Plan, which includes but is not limited to the power to enter the Leased Premises at any reasonable time, with or without notice, and to assess late payment penalties.

(b) **Defaults.** The Lease Administrator shall send violation notice(s) to the Lessee, and Lessee's sureties if applicable, within five (5) business days of determining that the Lease has been violated. The notice of violation to the Lessee must be provided by: (i) a person employed by the Tribe's Department of Public Safety or similar Tribal entity who is over 18 years of age (the person serving the notice of violation must sign a Proof of Service); or (ii) a nationally recognized mail carrier (such as FedEx or UPS). The notice of violation must specify the nature of the violation, including any interest accruals, penalty fees, enforcement fees, and administrative fees, and notify the Lessee of its obligations pursuant to this Section 4-11.

(1) **Notice of Violation.** Unless otherwise stated in the Lease, within ten (10) business days of the receipt of a notice of violation, the Lessee must:

(i) Cure the violation and notify the Lease Administrator in writing that the violation has been cured;

(ii) Dispute the determination that a violation has occurred and/or explain in writing why the Lease should not be cancelled; or

(iii) Request additional time in writing to cure the violation.

(2) **Remedies for Violations of Lease Terms.** The following remedies are available under this Ordinance:

(i) Invoke other negotiated remedies available under the Lease, including collecting on any available Bond;

(ii) Grant additional time in which to cure the violation;

(iii) Cancel the Lease;

(iv) Request that the BIA enforce the provisions of the Lease or to cancel the Lease; or

(v) Any combination of the remedies listed above.

(3) **Grant of Additional Time.** If the Lease Administrator decides to grant a Lessee additional time in which to cure a violation, the Lessee must proceed diligently

to complete the necessary corrective actions within the specified time period from the date on which the extension is granted.

(c) **Lease Cancellation**. Unless otherwise provided for in the Lease, if the Lease Administrator decides to cancel the Lease, a cancellation notice shall be sent to the Lessee and Lessee's sureties within five (5) business days of that decision. The cancellation notice must be provided to the Lessee by: (i) a person employed by the Tribe's Department of Public Safety or similar Tribal entity who is over 18 years of age (the person serving the cancellation notice must sign a Proof of Service); or (ii) a nationally recognized mail carrier (such as FedEx or UPS). The cancellation notice will:

- (1) Explain the grounds for cancellation;
- (2) Notify the Lessee of the amount of any unpaid Rent, interest charges, penalty fees, or administrative fees due under the Lease;
- (3) Notify the Lessee of its right to appeal; and
- (4) Order the Lessee to vacate the property within thirty (30) calendar days of the date of receipt of the cancellation letter if the Lessee has not filed an appeal by the time the Lease Administrator sends the cancellation notice to Lessee.

A cancellation shall be effective thirty-one (31) calendar days after receipt of the cancellation letter. The filing of an appeal shall not change the effective date of the cancellation. Pending the outcome of an appeal, Lessee shall make all requisite payments, as well as comply with the terms of the WSR Lease or WEEL, as applicable.

(d) **Holdover**. If the Lessee remains in possession of the Leased Premises after the expiration, termination, or cancellation of a WSR Lease or WEEL, the Lease Administrator will treat the unauthorized use, including without limitation the failure to remove from the Tribal Land anything which the Lessee was under a duty to remove after the Lessee's legal right to remain on the Tribal Land ceased, as a trespass. The Tribe may take action to recover possession of the Leased Premises and pursue any additional remedies available under applicable law, which may include pursuing appropriate judicial action or seeking assistance from the BIA for resolution under federal law.

(e) **Trespass**. If a person occupies the Leased Premises without the Tribe's approval, the Tribe may pursue appropriate remedies, including without limitation the filing of a trespass action to regain possession under applicable Tribal Law.

(f) **Emergency Action for Harmful or Threatening Activities**. If a Lessee or other party causes or threatens to cause immediate and significant harm, including but not limited to unlawful or illegal activity, to the Leased Premises during the term of the Lease, the Tribe may take appropriate emergency action. Emergency action may include pursuing an appropriate judicial action.

4-12 **Appeals.**

(a) **Appeals.** The Lessee may appeal any determination of the Lease Administrator made pursuant to this Ordinance, within ten (10) business days of receipt of the Lease Administrator's determination. Appeals may be filed with the Tribal Court or other hearing body designated under Tribal Law. Such appeals may be effectuated by a written notice setting forth the basis for the appeal, a short statement indicating the nature and circumstances of the appeal, and a short statement indicating the remedy being sought.

(b) **Scope of Review.** The Tribal Court or other hearing body designated under Tribal Law shall review whether the Lease Administrator's determination was arbitrary, capricious, or an abuse of discretion; not supported by substantial evidence in the record; or otherwise not in accordance with applicable law. The decision of the Tribal Court or other hearing body designated under Tribal Law shall be final.

CHAPTER 5
AGRICULTURAL LEASES

**CHAPTER 5.
AGRICULTURAL LEASES**

5-1 **Terms and Conditions.** Any Agricultural Lease authorized by this Ordinance shall be governed by terms and conditions set forth in the Agricultural Lease and the provisions of this Ordinance. The Tribe may advertise Agricultural Land for agricultural leasing. Advertisement will provide prospective Lessees with notice of any Tribal Laws and policies along with the terms and conditions to be included in the Agricultural Lease. Bidding will occur pursuant to the Tribal Law. The Lessee is responsible for understanding the terms and conditions set forth in the Agricultural Lease.

5-2 **Term of Agricultural Lease .** The term of an Agricultural Lease shall not exceed twenty-five (25) years, except that an Agricultural Lease may include two (2) options to renew, with each such renewal period not exceeding twenty-five (25) years (for a maximum Lease term of seventy five (75) years). The option to renew must include: (a) the time and manner the option must be exercised or is automatically effective; (b) any additional consideration that will be due upon exercise of the option to renew; and (c) any other conditions for renewal.

5-3 **Lease Application.** An Applicant for an Agricultural Lease is responsible for completing and submitting all documents required by this Ordinance. The Applicant shall submit a complete application to the Lease Administrator, which must include the following documents:

- (a) Any financial information deemed necessary to determine whether the Applicant can financially meet the obligations of the Agricultural Lease and/or the conditions and requirements of this Ordinance;
- (b) Land description (including site survey with legal description, if available);
- (c) Description of proposed use;
- (d) Description of proposed Permanent Improvements, if any, including construction plans, schedules, costs and contractor information;
- (e) Environmental Review Process documents; and
- (f) Other documents as may be reasonably required.

5-4 **Mandatory Provisions of Agricultural Leases.** An Agricultural Lease must contain, at minimum, the following provisions:

- (a) A description of the tract or parcel of the Tribal Land, building or structure that is being leased (with reference to a public or private survey plan, if available) in terms sufficient to determine the location of the Leased Premises and meet recording requirements for the LTRO;

(b) Identification and contact information for the parties to the Agricultural Lease;

(c) Identification of the authorized uses compatible with the purpose of the Agricultural Lease;

(d) Indemnification of the United States and Lessor;

(e) Term and effective date of the Agricultural Lease, including any options to renew;

(f) Identification of the responsible party for ownership, construction, operation, maintenance, and management of Permanent Improvements, including removal of any Permanent Improvements in accordance with this Ordinance, if applicable;

(g) A provision providing that the Lessee will complete construction of any Permanent Improvements within the schedule approved by Lessor in writing and that changes to the schedule must be agreed upon in writing in advance of Lessee's failure to complete construction of any Permanent Improvements, if applicable;

(h) Payment and late payment requirements, including the party to receive the Rent, acceptable forms of payment, due date for payment, and late payment penalties, fees and interest;

(i) A provision that expressly includes the following language: "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";

(j) Due diligence, insurance and Bond requirements. If a Bond is required pursuant to this Ordinance, the Agricultural Lease must state that the Lessee must obtain the consent of the surety for any legal instrument that directly affects the Lessee's obligations and liabilities. Insurance requirements may include property, crop, liability and casualty insurance;

(k) An obligation of the Lessee to comply with all applicable laws, including Tribal Law;

(l) An obligation that farming and grazing operations be conducted in accordance with recognized principles of sustained yield management, integrated resource management planning, sound conservation practices, and other community goals as expressed in Tribal Law, leasing policies and agricultural resource management plans. Appropriate stipulations or conservation plans must be developed and incorporated in all Agricultural Leases.

5-5 **Rent Compensation Amount.** The Tribe will determine the Fair Annual Rental Value of the Agricultural Lease prior to approval, as determined by competitive bidding, appraisal, or any other appropriate valuation method. An Agricultural Lease may provide for the Lessee to assume certain cost share or other payment obligations that have attached to the land through previous farming and grazing operations so long as those obligations are specified in the Agricultural Lease and considered in any determination of Fair Annual Rental Value. The payments may be in fixed amounts or based on a share of the agricultural products generated by the Agricultural Lease or a percentage of income to be derived from the sale or such agricultural products.

(a) **Less than Fair Annual Lease Value.** Tribal Land may be leased at less than the Fair Annual Lease Value if:

- (1) Lessee is a religious organization, or an agency of a federal, state tribal or local government;
- (2) Lessee is an intertribal organization, consortium or entity serving the Tribe's community;
- (3) The purposes of subsidization are for the benefit of the Tribe;
- (4) The Tribe is attempting to attract business development through market incentives; or
- (5) The Tribal Council determines the Agricultural Lease is in the Best Interest of the Tribe.

(b) **Rent Adjustments.** The Lease Administrator may negotiate for and include a provision in the Agricultural Lease for periodic review and adjustment of Rent. The Agricultural Lease shall, if applicable, specify how Rent adjustments will be made, who will make such adjustments, when such adjustments will go into effect and how disputes shall be resolved.

5-6 **Bonds.** Unless waived, Bonds will be required in an amount that will reasonably assure performance of the contractual obligations under the Lease.

(a) **Purpose of Bonds.**

- (1) To guarantee a minimum of one (1) year's Rent unless the Lease contract provides that the annual Rent shall be paid in advance;
- (2) To guarantee the estimated construction cost of Permanent Improvements to be placed on the Tribal Land by the Lessee; or

(3) To guarantee compliance with any additional contractual obligation, applicable environmental standards, and the general protection of the health, safety, and welfare of the Tribe.

(b) **Form of Bonds.** The obligation for a Bond may be fulfilled by an alternate security in the form of (i) an irrevocable letter of credit from a bank or equivalent financial institution, (ii) a certificate of deposit issued by a federally insured financial institution authorized to do business in the United States, (iii) negotiable Treasury securities or (iv) any alternative form of security that provides adequate protection for the Tribe, including but not limited to an escrow agreement with an assigned savings account.

(c) **Bond Waiver.** The requirement for Bonds may be reduced or waived by the Tribal Council, provided that the waiver or reduction is determined by the Tribal Council to be in the Best Interest of the Tribe. The waiver may be revoked at any time if the Tribal Council determines that the waiver or reduction of Bond requirements ceases to be in the Best Interest of the Tribe.

5-7 Insurance.

(a) Lessee shall provide proof of insurance necessary to protect the interests of the Lessor in amounts sufficient to protect all insurable Permanent Improvements on the Leased Premises.

(b) The insurance may include, but is not limited to, property, liability or casualty insurance or other insurance as provided in the Lease.

(c) The United States and the Tribe shall be additional insureds under any policy of insurance required by the Lease.

The Tribal Council may waive the insurance requirement(s) if the Tribal Council determines that a waiver is deemed in the Best Interest of the Tribe. The waiver may be revoked at any time if the Tribal Council determines that the waiver ceases to be in the Best Interest of the Tribe.

5-8 **Permanent Improvements.** All Agricultural Leases that provide for the construction of Permanent Improvements shall do so at the Lessee's expense, unless otherwise provided for in the Lease. The Lessee must exercise due diligence to complete construction of any Permanent Improvements within the schedule approved by the Lease Administrator. When requested by the Lease Administrator, or otherwise required in the Lease, Lessee shall provide a written update of progress. Failure of the Lessee to complete construction within the schedule is a violation of the Lease and may lead to cancellation of the Lease.

(a) **Ownership and Disposition.** Leases must identify who will own, construct, operate, maintain, and manage any Permanent Improvements. Leases may specify under what conditions, if any, such Permanent Improvements may be conveyed to the Lessor. The Lease must indicate how each specific Permanent Improvement the Lessee

constructs will be disposed of upon termination of the Lease. Such disposition may occur as follows:

(1) Remain on the Leased Premises upon expiration, cancellation, or termination of the Lease, in a condition satisfactory to the Lessor, and become the property of the Lessor;

(2) Be removed from the Leased Premises within a time period specified in the Lease, at the Lessee's expense, with the Leased Premises to be restored as closely as possible to the Leased Premises' condition before construction of the Permanent Improvements. In which case the Tribe must also be provided an option to take possession of and title to the Permanent Improvements if they are not removed within the specified time period; or

(3) Be disposed of by other specified means.

(b) **Taxation.** Permanent Improvements may be subject to taxation by the Tribe.

(c) **Waiver.** The Tribal Council may waive the requirements of this Section 5-8 for Leases for religious, educational, recreational, cultural, or other public purposes, or if the Tribal Council determines that such a waiver is in the Best Interest of the Tribe.

5-9 **Subleases, Assignments, Amendments and Leasehold Mortgages.**

(a) Subleases, Assignments, amendments or Leasehold Mortgages of any Lease shall be by written consent of the Lessor and Lessee, unless otherwise provided herein.

(b) The effective date, term and option to renew, if any, shall be set forth in Subleases, Assignments, amendments or Leasehold Mortgages.

(c) The Lessee may authorize Subleases and Assignments, in whole or in part, without approval from the Lessor, so long as a copy of the Sublease or Assignment is provided to the Lessor at least ten (10) calendar days prior to execution of the Sublease or Assignment and the following conditions, where applicable, are satisfied and provided in the Lease:

(1) There is no event of default under the Lease or this Ordinance;

(2) Any restrictions and use limitations on the use of the Leased Premises shall continue to apply to any Sublessee or assignee;

(3) The proposed assignee or Sublessee submits a current financial statement to Lessor showing financial capacity to perform Lease obligations; and

(4) The Lessee shall not be relieved or released from any of its obligations under the Lease.

(d) The Lease may authorize a Leasehold Mortgage to a Mortgagee for purposes of financing development and Permanent Improvements to the Leased Premises subject to the approval of the Lessor.

If a sale or foreclosure of the Lessee's business or assets occurs and the Encumbrancer is also the purchaser, the Encumbrancer may assign the Lease without approval of the Lessor or Lessee, provided that the assignee agrees in writing to be bound by all of the terms and conditions of the Lease. If the purchaser is a party other than the Encumbrancer, approval by the Lessor is required, and the purchaser must agree in writing to be bound by all of the terms and conditions of the Lease.

5-10 Enforcement.

(a) **General.** The Lease Administrator shall have all powers necessary and proper to enforce the Agricultural Lease terms as well as laws, ordinances, regulations, rules, policies, and covenants consistent with the Lease Management Plan, which includes but is not limited to the power to enter the Leased Premises at any reasonable time, with or without notice, and to assess late payment penalties.

(b) **Defaults.** The Lease Administrator shall send violation notice(s) to the Lessee, and Lessee's sureties if applicable, within five (5) business days of determining that the Lease has been violated. The notice of violation to the Lessee must be provided by: (i) a person employed by the Tribe's Department of Public Safety or similar Tribal entity who is over 18 years of age (the person serving the notice of violation must sign a Proof of Service); or (ii) a nationally recognized mail carrier (such as FedEx or UPS). The notice of violation must specify the nature of the violation, including any interest accruals, penalty fees, enforcement fees, and administrative fees, and notify the Lessee of its obligations pursuant to this Section 5-10.

(1) **Notice of Violation.** Unless otherwise stated in the Lease, within ten (10) business days of the receipt of a notice of violation, the Lessee must:

(i) Cure the violation and notify the Lease Administrator in writing that the violation has been cured;

(ii) Dispute the determination that a violation has occurred and/or explain in writing why the Lease should not be cancelled; or

(iii) Request additional time in writing to cure the violation.

(2) **Remedies for Violations of Lease Terms.** The following remedies are available under this Ordinance:

- (i) Invoke other negotiated remedies available under the Lease, including collecting on any available Bond;
- (ii) Grant additional time in which to cure the violation;
- (iii) Cancel the Lease;
- (iv) Request that the BIA enforce the provisions of the Lease or to cancel the Lease; or
- (v) Any combination of the remedies listed above.

(3) **Grant of Additional Time**. If the Lease Administrator decides to grant a Lessee additional time in which to cure a violation, the Lessee must proceed diligently to complete the necessary corrective actions within the specified time period from the date on which the extension is granted.

(c) **Lease Cancellation**. Unless otherwise provided for in the Lease, if the Lease Administrator decides to cancel the Lease, a cancellation notice shall be sent to the Lessee and Lessee's sureties within five (5) business days of that decision. The cancellation notice must be provided to the Lessee by: (i) a person employed by the Tribe's Department of Public Safety or similar Tribal entity who is over 18 years of age (the person serving the cancellation notice must sign a Proof of Service); or (ii) a nationally recognized mail carrier (such as FedEx or UPS). The cancellation notice will:

- (1) Explain the grounds for cancellation;
- (2) Notify the Lessee of the amount of any unpaid Rent, interest charges, penalty fees, or administrative fees due under the Lease;
- (3) Notify the Lessee of its right to appeal; and
- (4) Order the Lessee to vacate the property within thirty (30) calendar days of the date of receipt of the cancellation letter if the Lessee has not filed an appeal by the time the Lease Administrator sends the cancellation notice to Lessee.

A cancellation shall be effective thirty-one (31) calendar days after receipt of the cancellation letter. The filing of an appeal shall not change the effective date of the cancellation. Pending the outcome of an appeal, Lessee shall make all requisite payments, as well as comply with the terms of the Agricultural Lease.

(d) **Holdover**. If the Lessee remains in possession of the Leased Premises after the expiration, termination, or cancellation of an Agricultural Lease, the Lease Administrator will treat the unauthorized use, including without limitation the failure to remove from the Tribal Land anything which the Lessee was under a duty to remove after the Lessee's legal right to remain on the Tribal Land ceased, as a trespass. The Tribe may

take action to recover possession of the Leased Premises and pursue any additional remedies available under applicable law, which may include pursuing appropriate judicial action or seeking assistance from the BIA for resolution under federal law.

(e) **Trespass**. If a person occupies the Leased Premises without the Tribe's approval, the Tribe may pursue appropriate remedies, including without limitation the filing of a trespass action to regain possession under applicable Tribal Law.

(f) **Emergency Action for Harmful or Threatening Activities**. If a Lessee or other party causes or threatens to cause immediate and significant harm, including but not limited to unlawful or illegal activity, to the Leased Premises during the term of the Lease, the Tribe may take appropriate emergency action. Emergency action may include pursuing an appropriate judicial action.

5-11 Appeals.

(a) **Appeals**. The Lessee may appeal any determination of the Lease Administrator made pursuant to this Ordinance, within ten (10) business days of receipt of the Lease Administrator's determination. Appeals may be filed with the Tribal Court or other hearing body designated under Tribal Law. Such appeals may be effectuated by a written notice setting forth the basis for the appeal, a short statement indicating the nature and circumstances of the appeal, and a short statement indicating the remedy being sought.

(b) **Scope of Review**. The Tribal Court or other hearing body designated under Tribal Law shall review whether the Lease Administrator's determination was arbitrary, capricious, or an abuse of discretion; not supported by substantial evidence in the record; or otherwise not in accordance with applicable law. The decision of the Tribal Court or other hearing body designated under Tribal Law shall be final.

CHAPTER 6
ENVIRONMENTAL REVIEW PROCESS FOR BUSINESS LEASES, WSR LEASES, WEELS
AND AGRICULTURAL LEASES

CHAPTER 6.

ENVIRONMENTAL REVIEW PROCESS FOR BUSINESS LEASES, WSR LEASES, WEELS AND AGRICULTURAL LEASES

6-1 Environmental Review Process for Business Leases, WSR Leases, WEELS and Agricultural Leases.

(a) **Scope.** The provisions of this Chapter 6 shall only apply to Business Leases, WSR Leases, WEELS and Agricultural Leases. The environmental review process for Residential Leases is as set forth in Chapter 3-10.

(b) **General.** The Lease Administrator shall not approve a Business Lease, Agricultural Lease, WSR Lease, or WEEL until the Environmental Reviewer completes the Environmental Review Process by issuing a Determination of Categorical Exclusion, a finding of no Significant Effect on the Environment, or a Determination of Significant Effect. Unless a categorical exclusion applies, the Environmental Reviewer shall cause the preparation of an Environmental Assessment to identify and evaluate whether a proposed Lease would have a Significant Effect on the Environment.

(1) **Threshold Determination.**

(i) **Categorical Exclusion for Equivalent Environmental Review.**

The Environmental Review Process shall not apply if a categorical exclusion applies to the Project and/or the Project is subject to an equivalent or more extensive environmental review as that required under this Ordinance. In such case, the Environmental Reviewer shall issue a Determination of Categorical Exclusion.

(ii) **Exemption for No Physical Development or Disturbance.**

The Environmental Review Process shall not apply if there is no new physical development or disturbance to the environment or where there is an existing Project and the activities authorized under the original Lease will not materially change. In such case, the Environmental Reviewer shall issue a Determination of Categorical Exclusion.

(iii) **Finding of No Significant Impact on the Environment.**

Unless a Determination of Categorical Exclusion is issued, the Environmental Reviewer shall cause the preparation of an Environmental Assessment to identify and evaluate whether a proposed Lease would have a Significant Effect on the Environment. Following the completion of the Environmental Assessment, the Environmental Reviewer will determine whether the Lease Decision will have a Significant Effect on the Environment. If the Environmental Reviewer determines the Lease Decision will not have a Significant Effect on the Environment, the Environmental Reviewer shall issue a finding of no Significant Effect on the Environment. If the Environmental Reviewer determines that the Lease Decision might be expected to have a Significant Effect on the Environment, the Environmental Review Process set forth in Section 6-1(c) will apply.

(c) Environmental Review Process.

(1) Unless a categorical exclusion applies or a Lease is otherwise not subject to the Environmental Review Process, the Lease Administrator shall cause preparation of a comprehensive and adequate TEIR analyzing any potential Significant Effect on the Environment of the proposed action; provided, however, that information or data which is relevant to a TEIR and is a matter of public record or is generally available to the Public, need not be repeated in its entirety in the TEIR, but may be specifically cited as the source for conclusions stated therein; and provided further, that such information or data shall be briefly described, that its relationship to the TEIR shall be indicated, and that the source thereof shall be reasonably available for inspection at a public place, including without limitation a publicly accessible website, or public building. The TEIR shall provide detailed information about any Significant Effect on the Environment which the Lease is likely to have, and shall include a detailed statement setting forth all of the following:

(i) A description of the physical environmental conditions in the vicinity of the Project (the environmental setting and existing baseline conditions), as they exist at the time the commencement of the TEIR;

(ii) Any Significant Effect on the Environment of the proposed Lease; and

(iii) In a separate section:

- a. Any Significant Effect on the Environment that cannot be avoided if the Lease is executed;
- b. Any Significant Effect on the Environment that would be irreversible if the Lease is executed; and
- c. Any mitigation measures proposed, recommended, or required to mitigate any Significant Effect on the Environment.

(2) In addition, the TEIR shall also contain a statement, if applicable, indicating the reasons for determining that various effects of the Lease on the environment off of the Tule River Reservation are not significant and consequently have not been discussed in detail in the TEIR. In the TEIR, the direct and indirect Significant Effect on the Environment shall be clearly identified and described, giving due consideration to both the short-term and long-term effects.

(d) Notice of Completion of Draft TEIR.

(1) Within thirty (30) calendar days following the completion of the draft TEIR, the Environmental Reviewer shall file a copy of the draft TEIR and a notice of

completion with the Lease Administrator. The notice of completion shall include all of the following information:

- (i) A brief description of the Project;
- (ii) The proposed location of the Project;
- (iii) An address where copies of the draft are available; and
- (iv) Notice of a period of thirty (30) calendar days during which the Lease Administrator will receive comments on the draft TEIR.

(2) During the Public comment period, a copy of the draft TEIR shall be available for Public review at the offices of the Tribe and on a publicly accessible website.

(3) To satisfy the requirement for Public notice and opportunity to comment, the Lease Administrator shall publish its notice of completion by at least one (1) of the procedures specified below:

(i) Publication of the Notice of Completion in a newspaper of general circulation in the area affected by the proposed Business Lease, with notice to the Public of the opportunity to comment on any Significant Effect on the Environment of the proposed action.

(ii) Posting of the notice of completion in the offices of the Tribe, the Environmental Reviewer's office, and to a publicly accessible website, with notice to the Public of the opportunity to comment on any Significant Effect on the Environment of the proposed action.

(e) **Response to Public Comments.** After the thirty (30) day comment period has ended, the Environmental Reviewer will review all comments received from the Public. Prior to the approval and execution of the Business Lease, Agricultural Lease, WSR Lease, or WEEL, as applicable, the Environmental Reviewer will issue a final TEIR which will: (1) provide responses to relevant and substantive Public comments on any Significant Effect on the Environment arising as a result of the proposed Project; (2) any proposed or recommended mitigation measures addressing any such impacts; and (3) the determination of the Environmental Reviewer regarding the potential impacts of the Lease Decision. Notice of availability of the Final TEIR will be published in a newspaper of general circulation in the area affected by the applicable Lease and posted in the offices of the Tribe and the Environmental Reviewer's office or posted to a publicly accessible website.

CHAPTER 7
MISCELLANEOUS PROVISIONS

CHAPTER 7.
MISCELLANEOUS PROVISIONS

7-1 **Sovereign Immunity.** All inherent sovereign rights of the Tribe as a federally recognized Indian tribal government with respect to provisions authorized in this Ordinance are hereby expressly reserved, including without limitation sovereign immunity from unconsented suit. Nothing in the Ordinance shall be deemed or construed to be a waiver of the Tribe's sovereign immunity from unconsented suit.

7-2 **Severability.** If any provision or clause of this Ordinance or the application thereof to any person or circumstance is deemed invalid or illegal under applicable Tribal Law or federal law, such provision shall be severed from this Ordinance and the remainder of this Ordinance shall remain in full force and effect.

7-3 **Governing Law.** Leases shall be governed by Tribal Law and federal law.

7-4 **Amendment.** This Ordinance may be amended by the Tribal Council at a duly called, noticed Tribal Council meeting. All substantive amendments to this Ordinance must be submitted to and approved by the Secretary to be effective. Minor technical and non-substantive amendments to this Ordinance may be made without BIA approval.

7-5 **Effective Date.** This Ordinance shall take effect upon adoption by the Tribal Council and approval by the Secretary.

Certification

As the Tule River Tribal Council for the Tule River Indian Tribe, we do hereby certify that at a duly called, noticed and convened Tribal Council meeting on [_____, 2021] at which a quorum was present, this Tule River Indian Tribe Leasing Ordinance was duly adopted by a vote of: _____ in favor, _____ opposed, and _____ votes abstaining.

William J. Garfield, Tribal Chairman

Neil Peyron, Vice Chairman

Carly Gomez, Secretary

Priscilla Santos, Treasurer

Felix Christman, Council Member

Gary G. Santos, Council Member

Joyce Carothers, Council Member

Zachary Janoko, Council Member

Harold Santos, Council Member