



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

APPROVAL OF

**AGUA CALIENTE BAND OF CAHUILLA INDIANS
ORDINANCE NO. 47, AMENDMENT NO. 1
TRIBAL BUSINESS LEASING ORDINANCE**

The attached Tribal Business Leasing Ordinance, submitted by the Agua Caliente Band of Cahuilla Indians (listed in the Federal Register, 79 FR 4749 (Jan. 29, 2014), as the Agua Caliente Band of Cahuilla Indians of the Agua Caliente Indian Reservation, California) prepared in accordance with the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012, consisting of 16 pages and adopted by the Agua Caliente Band of Cahuilla Indians' governing body on September 23, 2014, is hereby approved.

Dated: _____

9/23/14

Director, Bureau of Indian Affairs

Pursuant to the authority delegated by 230 DM 1.1



AGUA CALIENTE BAND OF CAHUILLA INDIANS
TRIBAL COUNCIL

JEFF L. GRUBBE CHAIRMAN • LARRY N. OLINGER VICE CHAIRMAN • VINCENT GONZALES III SECRETARY/TREASURER
ANTHONY J. ANDREAS III MEMBER • REID D. MILANOVICH MEMBER

AGUA CALIENTE BAND OF CAHUILLA INDIANS
ORDINANCE NO. 47 AMENDMENT NO. 1
TRIBAL BUSINESS LEASING ORDINANCE

September 2014

I. INTRODUCTION

A. Title. This Ordinance shall be entitled "Tribal Business Leasing Ordinance", an ordinance of the Agua Caliente Band of Cahuilla Indians.

B. Purpose. The purposes of this Ordinance are to:

1. Recognize the authority of the Agua Caliente Band of Cahuilla Indians ("Tribe"), by and through the Tribal Council or its' authorized designee to issue, review, approve, and enforce leases;
2. Promote self-determination, encourage economic self-sufficiency, and increase business activity and employment on lands of the Agua Caliente Band of Cahuilla Indians; and
3. Implement the Helping Expedite and Advance Responsible Tribal Home Ownership ("HEARTH") Act of July 30, 2013, P.L. 112-151, 25 U.S.C. Section 415(h), and this Ordinance; and
4. Inform prospective lessees of the nature, requirements, and process of leasing Tribal trust lands.

C. Authority and Delegation. The Agua Caliente Band of Cahuilla Indians Tribal Council (Tribal Council) is the legally recognized elected governing body of the Agua Caliente Band of Cahuilla Indians (Tribe), a federally recognized Indian tribe. This Ordinance is enacted under the inherent sovereign authority of the Tribe and pursuant to sections a, b, f, and i, of Article V, of the Constitution, as well as pursuant to any applicable delegations of federal authority to the Tribe for treatment as a state, or otherwise, under federal law.

D. Scope. This Ordinance shall apply only to leases of Tribal trust land for business purposes approved by the Tribe pursuant to 25 U.S.C. Section 415(h)(1). This Ordinance does not apply to mineral leases, leases on individually allotted land, or to existing or future leases entered into by the Tribe under 25 U.S.C. Section 415(a), nor does it apply to any lease with a term exceeding the maximum lease term authorized by 25 U.S.C. § 415(h). This Ordinance does not limit the ability of the Tribe and any prospective lessee to enter into a lease for a term not to exceed ninety-nine years as currently authorized under the provisions of 25 U.S.C. §415(a).



Ordinance No. 47, Amendment No. 1
Page 2 of 17

E. Definitions. As used in this Ordinance, the capitalized terms set forth below shall have the following meanings:

1. *"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 the Lessee's obligations under a lease.
2. *"Best Interest of the Tribe"* means the balancing of interests in order to attain the highest economic income, provide incentives to increase economic development, preserve and enhance the value of Tribal Trust Land, increase employment and jobs on the Tribal Trust Land, and preserve the sovereignty of the Tribe.
3. *"BIA"* means the Bureau of Indian Affairs, United States Department of the Interior.
4. *"Business Purpose"* means commercial or industrial purposes, including but not limited to retail, office, manufacturing, storage, bio-mass, waste-to-energy, residential development as authorized at 25 C.F.R. § 162.301(b), and single purpose or mixed use projects designed for use by any number of Lessees; as well as for religious, educational, recreational, cultural or other public purposes.
5. *"Cancellation"* means a BIA action to end a lease.
6. *"Development Period"* means the time period from lease approval to when improvements are expected to be substantially completed.
7. *"Economic Development Division"* means the Economic Development Division (EDD) of the Tribal Planning & Development Department, which is the governmental division that has the authority to perform the duties and responsibilities of the Lessor on behalf of the Tribe, which include but are not limited to: lease issuance, bond, lease amendment or modification, subleasing, lease assignment or transfer, and lease terminations.
8. *"Executing Official"* means the Tribal Council or its designee, who shall execute all leases of the Tribe and take all necessary and proper action on leases and lease documents.
9. *"Fair Market Rental"* means the amount of rental income that a Lease would most probably command in an open and competitive market utilizing a market analysis, appraisal or other appropriate valuation methods, or as determined by competitive bidding.
10. *"Holdover"* means circumstances in which a lessee remains in possession of the leased premises after the lease term expires.
11. *"Indian Land-Planning Commission"* means the commission established by tribal Ordinance No. 1.



Ordinance No. 47, Amendment No. 1
Page 3 of 17

12. *"Lease"* means a contract between the Lessor and a Lessee whereby the Lessee is granted a right to possess Tribal Trust Land for a Business Purpose and specified duration. The Lessee's right to possess will limit the Lessor's right to possess the leased premises only to the extent provided in the lease.
13. *"Lease Document"* means a document related to a contract between the Lessor and a Lessee whereby the Lessee is granted a right to possess Tribal Trust Land for a Business Purpose and specified duration including but not limited to: leases, subleases, amendments, assignments, leasehold mortgages, renewals, and cancellations.
14. *"Leasehold Mortgage"* means a mortgage, deed of trust, or any other instrument of encumbrance in which a Lessee pledges the Lessee's leasehold interest as security for a debt or other obligation owed by the Lessee to a lender or other mortgagee.
15. *"Lessee"* means a person or entity who has acquired a legal right to possess Tribal Trust Land by a lease pursuant to this Ordinance.
16. *"Lessor"* means the Tribe when it grants a lease.
17. *"LTRO"* means the Land Titles and Records Office of the Tribe, which is a BIA administrative function that has been contracted by the Tribe.
18. *"Major Tribal Action"* for the purposes of this Ordinance means final action by the Tribal Council to approve lease documents that expand or modify more than 25% of the area of a proposed Lease which has a Significant Effect on the Environment if such final action by the Tribal Council occurs on or directly affects Tribal Trust Lands. Major Tribal Action does not include such actions which are otherwise subject to environmental review under either federal or state law, or which are determined by the Tribal Council, by resolution, to be categorically exempt from environmental review under this Ordinance.
19. *"Public"* means the Membership of the Agua Caliente Band of Cahuilla Indians.
20. *"Significant Effect on the Environment"* means a substantial, or potentially substantial, adverse change in the environment, including land, air, water, minerals, flora, fauna, ambient noise, cultural areas and objects of historic, cultural or aesthetic significance.
21. *"Space Lease"* means a lease of space within existing facilities on Tribal Trust land that is not already leased, i.e. not subleases. A space lease typically is a short-term agreement for temporary use of a limited space for a limited purpose that does not convey an interest in Tribal Trust land, such as a rental of a hotel room or meeting space, use of a concession space for sales or promotion, or a transient use such as a restaurant, coffee shop, etc. within a larger Tribal facility.



Ordinance No. 47, Amendment No. 1
Page 4 of 17

22. *"Sublease"* means a written agreement by which the Lessee grants to an individual or entity a right to possession no greater than that held by the Lessee under a lease.
23. *"Termination"* means an action by the Tribe to end a Lease.
24. *"Tribe"* means the Agua Caliente Band of Cahuilla Indians.
25. *"Tribal Council"* means the duly elected governing body of the Tribe pursuant to its Constitution.
26. *"Tribal Trust Land"* means all lands of the Tribe over which the Tribe exercises governmental power and title to which is held in trust by the United States for the benefit of the Tribe.

II. LEASE REQUIREMENTS

A. Terms and Conditions. Leases shall be governed by the terms and conditions set forth in the Lease or Lease Document. The Lease terms and conditions may be modified only with the approval of the Tribal Council. The Lessee is responsible for understanding these terms and conditions.

B. Term. The term of all leases approved under this ordinance will not exceed that specified in 25 U.S.C. Section 415(h)(1)(A). Leases with initial terms of up to 99 years may be approved pursuant to the leasing authority in 25 U.S.C. § 415(a), which is a separate and distinct leasing process from the process contained in this ordinance.

C. Obtaining a Lease. Information on obtaining a Lease shall be available from the EDD. Leases shall be submitted to the EDD who shall manage the leasing process, working with other tribal officials and departments as necessary to ensure that the requirements of this ordinance are satisfied for each Lease. Once the requirements of this ordinance are satisfied for a Lease, the EDD shall present the lease documents for consideration and approval to the Executing Official.

1. All applicants for a Lease shall submit the following documents to the EDD:
 - a) Financial statements including but not limited to: business proforma and/or proposed operating budget;
 - b) Site survey and/or legal description, if applicable;
 - c) An environmental review that complies with Section H herein, if applicable; and
 - d) Other documents as may be required by the EDD.
2. All Leases shall contain, at a minimum, the following provisions:
 - a) Description of the tract, location, or parcel of the land being leased;



Ordinance No. 47, Amendment No. 1
Page 5 of 17

- b) The purpose of the Lease and authorized uses of the leased premises;
 - c) Identification of existing or proposed access easements and/or rights-of-way included in the Lease;
 - d) The parties to the Lease;
 - e) The term of the Lease;
 - f) Identification of the responsible party for constructing, owning, operating, and maintaining any improvements to the leased premises, including restoration or reclamation of the leased premises upon expiration, termination, or cancellation of the Lease if applicable;
 - g) Indemnification of United States and Lessor;
 - h) Payment requirements including but not limited to: Guaranteed Minimum Annual Rent, payment due date, interest, late charges, additional land rent, additional rent and rental adjustments;
 - i) Due diligence, insurance and bonding requirements;
 - j) A Non-binding Arbitration Clause if agreed upon by the parties to the Lease;
 - k) Acknowledgement of compliance with all applicable Tribal laws and regulations; and
 - l) Tribal Historic Preservation Office Certification when a Lease includes ground disturbance for construction purposes.
3. The Tribal Realty Division shall record lease documents with the Land Titles and Records Office having jurisdiction over the land. A copy of all leases, Subleases, Assignments, amendments, and renewal notices related to a Lease, Leasehold Mortgage, or Termination shall be provided to the BIA as required by 25 U.S.C. § 415(h)(6)(a). All such documents must specify their effective dates.
4. The Tribal Realty Division is responsible for maintaining all records of Leases and for disseminating recorded Lease Documents to the EDD, Tribal Planning Division, and the LTRO.
5. Records of activities taken pursuant to this Ordinance are the property of the Tribe. Records compiled, developed, or received by the Secretary are the property of the United States.



Ordinance No. 47, Amendment No. 1
Page 6 of 17

6. Unless the Lease states otherwise, a Lease may include, consistent with Tribal law, a provision to give Indian preference in hiring for employment purposes.

D. Space Leases. To the extent these leases require approval pursuant to federal laws and policies, Space Leases shall be reviewed and approved pursuant to this Ordinance.

E. Land Descriptions. Leases shall contain adequate site surveys and legal descriptions based on metes and bounds, rectangular or lot and block systems. Space Leases shall contain adequate descriptions of the location and square footage of the space being leased including reference to the Tribal tract where it is located and may include renderings, architectural drawings or other schematics to illustrate the location of the space.

F. Appraisal; Local Studies.

1. One of two methods of determining annual Fair Market Rental value shall be used:
 - a) The Fair Market Rental value shall be determined by an appraisal or equivalent procedure performed by the EDD utilizing the following data: improvement cost, replacement cost, earning capacity, sales and lease data of comparable sites or by similar methodology as approved by the EDD and deemed to be in the best interest of the Tribe. An appraisal log reporting the methods of appraisal and value of trust land shall be attached to every Lease; or
 - b) The Fair Market Rental value shall be determined by an appraisal performed by an MAI licensed appraiser. An appraisal log describing the method of appraisal and value of trust land shall be attached to every Lease.
2. The valuation of a Lease may be adjusted or waived to account for the value of infrastructure improvements to the leased premises by the Lessee or Lessor provided the value of those infrastructure improvements is quantified.

G. Fair Market Rental value.

1. No Lease shall be approved for less than the present Fair Market Rental value as set forth in the appraisal, except as follows:
 - a) The Lease is in the Development Period;
 - b) The EDD is providing an incentive for business to locate on Tribal Trust Lands, and must provide lease concessions, lease improvement credits, and lease abatements to attract such businesses; or
 - c) The EDD determines such action is in the Best Interest of the Tribe.



Ordinance No. 47, Amendment No. 1
Page 7 of 17

2. A Lease may be structured at a flat lease rate.
3. A Lease may be structured at a flat lease rate plus a percentage of gross receipts
4. A Lease may be structured based on a percentage of gross receipts, or based on a market indicator.
5. A Lease must specify the dates on which all payments are due.
6. A Lease must specify that the Lessee shall make payments directly to the EDD.
7. The Lease may provide for periodic review and such review may give consideration to the economic conditions, exclusive of improvement or development required by the contract or the contribution value of such improvements.
8. Leases may be amended to allow for lease rate adjustments.
9. The EDD shall keep written records of the basis used in determining the Fair Market Rental, as well as the basis for adjustments. These records shall be presented to the Lessee for its review and acceptance or non-acceptance and included in the Lease file.

H. Environmental Review Process.

1. The Tribal Planning and Development Department shall conduct an environmental review upon receipt of a Lease application as set forth in this Ordinance. This process is intended to comply with the environmental review requirements of the HEARTH Act ensuring that:
 - a) Any significant effects of the proposed action on the environment are identified and evaluated;
 - b) The Public is informed of and has a reasonable opportunity to comment on any proposed action as identified by the Tribe which results in a significant environmental impact as determined by the Tribe; and
 - c) The Tribe provides responses to relevant and substantive Public comments on such impacts before a Lease is approved.



Ordinance No. 47, Amendment No. 1
Page 8 of 17

2. The EDD shall not approve a lease until the proposed lease has been evaluated by the Tribal Planning and Development Department in accordance with the requirements of this Ordinance in order to identify and evaluate whether any significant impacts on the environment exist regarding the proposed action, or the Tribal Council has determined that the proposed Lease is not a Major Tribal Action. Leases approved and executed without an environmental review pursuant to this Ordinance shall be null and void.
3. When the Tribal Council determines initially that any proposed Lease will not result in a Major Tribal Action as defined herein, such lease shall not require further environmental review pursuant to this Ordinance. The Tribal Council may determine that further environmental review under this Ordinance is unnecessary when any of the following circumstances exist: (1) there is no significant change in the use of the lease premises under a new Lease; (2) after review, the Tribal Planning and Development Department determines that the lease site was previously the subject of an environmental review for a substantially identical leasing transaction; or (3) the lease site is located within the footprint of an existing Tribal building or other property for which an environmental review was already conducted, for example when considering a Space Lease.
4. When the Tribal Council has determined that the proposed Lease is not a Major Tribal Action or that it will not significantly impact the environment, the records regarding the environmental review which led to that determination will not be subject to the Public notice and comment process set forth herein, unless the Tribal Council determines that Public notice and comment is appropriate.
5. If the Tribal Council, on its own, or upon recommendation from the Tribal Planning and Development Department determines that the proposed Lease is subject to the environmental review process, the EDD may not render a final Leasing Decision until the Tribal Planning and Development Department completes the environmental review process in accordance with any applicable Tribal environmental regulations.
6. Unless an exemption applies or a Lease is otherwise not subject to the environmental review process as noted above, then, before the execution of any Lease hereunder, an environmental review shall be performed and a Tribal Environmental Document ("TED") shall be prepared by Planning and Development Department staff.



Ordinance No. 47, Amendment No. 1
Page 9 of 17

7. Before finalizing the TED, Tribal Planning and Development Department staff shall consult with and solicit comments from any federal, state and/or local agency which has jurisdiction by law or special expertise with respect to any potentially involved environmental impact ("preliminary consultation").
8. The TED shall include a recommended determination that the proposed action will or will not have a significant effect on the environment.
9. The Tribal Planning and Development Department shall submit to the Indian Land-Planning Commission the completed TED along with any written comments received after preliminary consultation.

Findings of No Significant Impact

10. If the TED indicates the proposed action will not significantly impact the environment, the Indian Land-Planning Commission shall give notice to the Public of the proposed action and intent to issue a determination that the proposed action will not significantly impact the environment. Such parties shall have a thirty-day period within which to submit written comments and request a public hearing. Any public hearing on such a determination shall be conducted no more than sixty days after public notice is given.
11. After receipt of written comments and a public hearing, if any is requested, the Indian Land-Planning Commission shall present the TED, preliminary recommended determination, a summary of comments received, and any response to those comments, to the Tribal Council, along with a final recommended determination.
12. Any party who submitted comments shall be given notice of the Indian Land-Planning Commission's recommended determination and the opportunity to be heard again before the Tribal Council.
13. Upon review of the TED, any comments and responses, and the Indian Land-Planning Commission's recommendation, the Tribal Council shall either:
 - a) Issue a Finding of No Significant Impact on the Environment; or
 - b) Require that a Tribal Environmental Impact Report (TEIR) be prepared.



Ordinance No. 47, Amendment No. 1
Page 10 of 17

14. If the Tribal Council issues a Finding of No Significant Impact on the Environment, no further action shall be required under this ordinance with respect to the proposed Lease, and the Lease may proceed.

Requirements for Leases Determined to Have Significant Impact on the Environment:

15. If the TED indicates the proposed action will significantly impact the environment, or if the Tribal Council otherwise directs, the Tribal Planning and Development Department shall prepare a draft TEIR concerning the proposed lease.
16. While preparing the draft TEIR, the Tribal Planning and Development Department staff shall consult with and solicit comments from any federal, state and/or local agency which has jurisdiction by law or special expertise with respect to any potentially involved environmental impact.
17. The draft TEIR and any written agency comments shall be forwarded to the Indian Land-Planning Commission, who shall give notice of the availability of the draft TEIR to the Public. Upon request, such parties shall be provided with a full copy of the draft TEIR. Such parties shall have a sixty-day period, from the date of notice, within which to submit written comments and request a public hearing. Any public hearing on a draft TEIR shall be conducted no more than ninety days after public notice is given.
18. After receipt of written comments and a public hearing, if any is requested, the Indian Land-Planning Commission shall provide its comments on the draft TEIR, and the Tribal Planning and Development Department shall prepare a final TEIR which takes into account, assesses, and responds to all comments received from the Indian Land-Planning Commission, any federal agency, and the public.
19. Upon completion of the final TEIR, notice shall be given to the Public of its availability. Any party who submitted comments shall be provided a copy of the final TEIR and the opportunity to be heard again before the Tribal Council.
20. The final TEIR shall be presented to the Tribal Council along with all written comments from the Indian Land-Planning Commission, any federal agency, and the public, and a



Ordinance No. 47, Amendment No. 1
Page 11 of 17

summary of comments given at any public hearing. The Tribal Council shall thoroughly consider the environmental effects, range of alternatives and mitigation measures discussed in the final TEIR and supporting documentation and any additional public comments received before issuing a Record of Decision and implementing its decision with respect to the proposed action.

I. Insurance.

1. A Lessee shall provide insurance necessary to protect the interests of the Lessor and in amounts sufficient to protect all insurable improvements on the premises.
2. The insurance may include, but is not limited to, property, liability or casualty insurance or other insurance as specified in the Lease.
3. The Lessor and the United States must be identified as additional insured parties.
4. The EDD may waive this requirement if the waiver is in the best interest of the Lessor. The waiver may be revoked at any time if the waiver ceases to be in the Lessor's best interest.

J. Performance Bond.

1. Unless waived in writing by the EDD in accordance with this Ordinance, the lessee shall obtain a satisfactory performance bond in an amount sufficient to secure the contractual obligations of the lease. Such bond shall be for the purpose of securing the Lessee's contractual obligations under the Lease and may guarantee:
 - a) The annual lease payment;
 - b) The estimated development cost of improvements; and
 - c) Any additional amount necessary to ensure compliance with the lease.
2. The performance bond may be in one of the following forms:
 - a) Certificates of deposit issued by a federally insured financial institution authorized to do business in the United States;
 - b) Irrevocable letters of credit issued by a federally insured financial institution authorized to do business in the United States;



Ordinance No. 47, Amendment No. 1
Page 12 of 17

- c) Negotiable Treasury securities; or
 - d) Surety bond issued by a company certified by the U.S. Department of the Treasury.
3. The EDD may waive the bond requirement, or reduce the amount, if doing so is in the best interest of the Tribe. The EDD shall maintain written records of waivers and reductions.

K. Improvements.

- 1. All Leases shall require the Lessee to exercise due diligence and best efforts to complete construction, and where applicable removal, of any improvements within the schedule specified in the lease.
- 2. Lessee, at Lessee's expense or as otherwise provided in the lease, may construct improvements under a lease if the lease specifies, or provides for the development of:
 - a) a plan that describes the type and location of any improvements to be built by the Lessee; and
 - b) A general schedule for construction of the improvements.
- 3. Lessee shall provide the EDD written justification as to the nature of any delay, the anticipated date of construction of the improvements, and evidence of progress toward commencement of construction.
- 4. When requested by the EDD or otherwise required in the lease, Lessee shall further provide the EDD, in writing, an updated schedule for construction.
- 5. Failure of the Lessee to comply with these requirements will be deemed a violation of the lease and may lead to termination of the lease pursuant to Chapter 5 of this Ordinance.
- 6. A Lessee may develop equity value in the improvements, and sell its interest in the Lease based on the equity value. The Tribe has a right of first refusal to purchase the interest.



Ordinance No. 47, Amendment No. 1
Page 13 of 17

7. In general, at the expiration, cancellation, or other termination of a lease, any improvements on the leased premises will become the property of the Lessor: however, the lease may specify otherwise by, e.g., allowing the Lessor to purchase the improvements at an earlier date allowing removal or sale of the improvements, including any related restoration or reclamation of the leased premises.
8. Improvements or possessory interests of a Lessee, Sublessee, or Assignee may be subject to taxation by the Tribe.

L. Subleases, Assignments, Amendments and Leasehold Mortgages.

1. Subleases, assignments, amendments or leasehold mortgages of any lease shall be by written consent of the EDD and Lessee, unless otherwise provided herein.
2. A lease may authorize subleases and assignments, in whole or in part, without written approval from the Tribe, provided a copy of the sublease or assignment is provided to the EDD and the following conditions, where applicable, are met and stated in the lease:
 - a) There is no event of default under the Lease or this Ordinance;
 - b) Any restrictions and use limitations on the use of the premises shall continue to apply to any subtenant or assignee;
 - c) The proposed assignee or sub lessee submits a current financial statement showing financial adequacy; and
 - d) The Lessee shall not be relieved or released from any of its obligations under the lease.
3. This Section 3.12(b) in no way relieves the parties from carrying out their duties under the lease, which may contain additional restrictions and conditions.
4. The lease may authorize leasehold mortgages to the leasehold interest for the purpose of financing to develop and improve the premises subject to written approval by the EDD.
5. If a sale or foreclosure of the Lessee's business or assets occurs and the Lender or Mortgagee is also the purchaser, the Lender or Mortgagee may assign the lease without written approval of the EDD or Lessee, provided the assignee agrees in writing to be bound by all the terms and conditions of the lease.



Ordinance No. 47, Amendment No. 1
Page 14 of 17

M. Taxes. Subject only to applicable Federal law, no fee, tax, assessment, levy or charge imposed by a State or political subdivision shall apply to Permanent Improvements, activities under any Lease, or the leasehold or possessory interest on Tribal Trust Land. The Tribe may impose its own taxes or other charges on the same pursuant to the Tribal Tax Code Ordinance and federal law.

N. Applicable Law. All Leases shall be governed by applicable Tribal and Federal law. The parties to the Lease may further provide for the application of any other body of law, such as California state law. The order of application shall be Federal, Tribal, and State law.

III. LEASE MANAGEMENT

A. Management. Except where required otherwise by agreement or applicable law, the EDD shall manage all leases pursuant to these regulations.

B. Administrative Fees. The EDD may charge administrative fees for costs associated with issuing a lease, sublease, assignment, amendment, mortgage or other administrative transaction.

IV. ENFORCEMENT

A. Generally. The EDD shall have all powers necessary and proper to enforce the lease terms, laws, ordinances, regulations, rules, policies, and covenants. This includes the power to enter the premises at a reasonable time, with or without notice, assess penalties, assess late payments, and retake possession.

B. Defaults.

1. If the EDD determines the Lessee is in default, the EDD shall send the Lessee a notice of default within a reasonable time following the determination. The notice of default shall be provided by certified mail, return receipt requested.
2. Within 10 days of receipt of the mailing, the Lessee shall:
 - a) Cure the default and notify the EDD in writing that the default has been cured; or
 - b) Dispute the EDD's determination that the lease is in default and explain why the lease should not be terminated.



Ordinance No. 47, Amendment No. 1
Page 15 of 17

3. The EDD will consider on a case by case basis requests for additional time to cure a default.

C. Remedies.

1. If the Lessee fails to cure the default within the prescribed period, the EDD may:
 - a) Terminate the lease pursuant to these regulations;
 - b) Grant an extension of time to cure the default;
 - c) Pursue other remedies, including execution on bonds or collection of insurance proceeds;
 - d) Any combination of remedies listed above; or
 - e) Any other remedy set forth in the lease
2. If the EDD terminates a Lease, the EDD shall send the Lessee a letter within a reasonable time period. The termination letter may be sent to the Lessee by certified mail, return receipt requested. The letter shall:
 - a) Explain the grounds for termination;
 - b) Notify the Lessee of unpaid amounts, interest charges or late payment penalties due under the lease;
 - c) Notify the Lessee of its right to appeal under this Ordinance; and
 - d) Order the Lessee to vacate the premises within 30 days of receipt of the termination letter, if an appeal is not filed by that time.
3. A termination shall become effective 31 days after Lessee's receipt of termination letter. The filing of an appeal shall not change the effective date of the termination. Pending the outcome of an appeal, the Lessee shall make all requisite payments, as well as comply with the terms of the lease.
4. If the EDD decides to grant an extension of time to cure a default, the Lessee shall proceed diligently to perform and complete the corrective actions within a reasonable time period.

D. Penalties. The lease shall specify the rate of interest to be charged if the Lessee fails to make payments in a timely manner. The lease shall identify additional late payment penalties. Unless the lease provides otherwise, interest charges and late payment penalties shall apply in the absence of any specific notice to the Lessee from the EDD, and the failure to pay such amount shall be treated as a breach of the lease.



Ordinance No. 47, Amendment No. 1
Page 16 of 17

E. Harmful or Threatening Activities. If a Lessee or other party causes or threatens to cause immediate and significant harm to the premises, or undertakes criminal activity thereon, the EDD may take appropriate emergency action.

F. Holdover. If a Lessee remains in possession after the termination, expiration, or cancellation of a lease, the EDD shall treat such occupation as a trespass. The EDD shall take action to recover possession and pursue additional remedies. Filing shall be pursuant to Tribal laws, or alternatively, the EDD may make a written request sent by certified mail to the BIA for resolution under any applicable federal laws.

G. Trespass. If a person occupies the premises without the EDD's approval, the EDD may pursue appropriate remedies, including the filing of a trespass action to regain possession under applicable Tribal and federal laws.

V. APPEALS

A. Appeals. The Lessee may appeal a determination of the EDD to the Chief Planning and Development Officer, within ten (10) days of the determination. Failure to meet this deadline will result in forfeiture of all appeal rights. Appeals may be filed with the Chief Planning and Development Officer as set forth in the lease management plan or policy.

Such appeals shall 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. If the decision on of the Chief Planning and Development Officer is challenged by the Lessee or interested party, the Tribal Council shall review whether the initial appeal determination was arbitrary, capricious, or an abuse of discretion; not supported by substantial evidence in the record; or otherwise, not in accordance with the law. The decision of the Tribal Council shall be final.

VI. SOVEREIGN IMMUNITY

A. Nothing in this Ordinance shall be deemed to waive the sovereign immunity of the Tribe or any of its enterprises, authorities, officers, agents, or employees.



Ordinance No. 47, Amendment No. 1
Page 17 of 17

VII. EFFECTIVE DATE; AMENDMENT

A. This Ordinance shall take effect upon its adoption by the Tribal Council and approval by the Secretary of the Interior. This ordinance shall be published once in a newspaper of general circulation in Riverside County within five (5) days of the adoption of this ordinance by the Tribal Council and approval by the Secretary of the Interior.

B. This Ordinance may be amended by a majority vote of the Tribal Council at a duly called Tribal Council meeting at which a quorum is present. All substantive amendments to this Ordinance must be submitted to and approved by the Secretary of the Interior.

BE IT ADOPTED AND ENACTED by the Tribal Council of the Agua Caliente Band of Cahuilla Indians, this 23rd day of September, 2014.

Not Present

Jeff L. Grubbe, Chairman



Larry N. Olinger, Vice-Chairman



Vincent Gonzales III, Secretary/Treasurer



Anthony J. Andreas III, Member



Reid D. Milanovich, Member

I, the undersigned, the Secretary-Treasurer of the Agua Caliente Band of Cahuilla Indians, hereby certify that the Tribal Council is composed of five members of whom 4, constituting a quorum, were present at a meeting whereof, duly called, noticed, convened and held on this 23rd day of September 2014; that the foregoing ordinance was duly adopted at such meeting by the affirmative vote of 3-0-0 and that said ordinance has not been rescinded or amended in any way.



Vincent Gonzales III, Secretary/Treasurer