



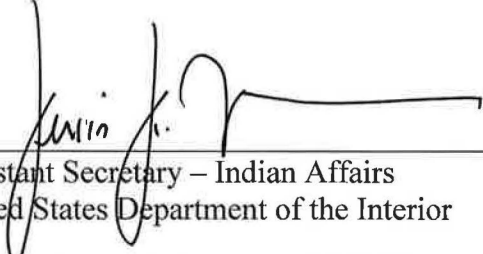
**UNITED STATES DEPARTMENT OF THE INTERIOR  
BUREAU OF INDIAN AFFAIRS**

**APPROVAL OF  
GILA RIVER INDIAN COMMUNITY  
LEASING REGULATIONS OF 2015**

---

The attached Gila River Indian Community Leasing Regulations of 2015, submitted by the Gila River Indian Community (listed in the Federal Register, 80 FR 1944 (Jan. 14, 2015) as the Gila River Indian Community of the Gila River Indian Reservation, Arizona), and prepared in accordance with the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012, consisting of 54 pages and adopted by the Gila River Indian Community on August 5, 2015, is hereby approved.

Dated: **NOV 20 2015** \_\_\_\_\_

  
\_\_\_\_\_  
Assistant Secretary – Indian Affairs  
United States Department of the Interior  
Pursuant to the authority delegated by 209 DM 8

## **GILA RIVER INDIAN COMMUNITY LEASING REGULATIONS OF 2015**

### **INDEX**

#### **Part A—General Provisions – Purpose, Definitions, and Scope**

- § 001 What is the authority for and purpose of these Regulations?
- § 002 How are these Regulations subdivided?
- § 003 What key terms do I need to know?
- § 004 To what land do these Regulations apply?

#### **When To Get a Lease**

- § 005 When do I need a Lease to authorize possession of Community Trust Land?
- § 006 To what types of land use agreements do these Regulations apply?
- § 007 To what Permits do these Regulations apply?
- § 008 Do these Regulations apply to existing Leases?

#### **How To Get a Lease**

- § 009 How do I obtain a Lease?
- § 010 What are the consent requirements for a Lease?

#### **Lease Administration**

- § 011 What laws apply to Leases approved under these Regulations?
- § 012 May a Lease contain a preference consistent with Community law for employment of tribal members?
- § 013 Will the Community comply with Community and federal laws in making Lease decisions?
- § 014 May a Lease contain a limited waiver of the Community's sovereign immunity?
- § 015 What taxes apply to Leases approved under these Regulations?
- § 016 May a Lease address access to the Leased Premises by roads or other infrastructure?
- § 017 May a Lease combine tracts?
- § 018 What if an individual or entity takes possession of or uses Community Trust Land without an approved Lease or other proper authorization?
- § 019 May the Community take emergency action if Community Trust Land is threatened?
- § 020 Who can answer questions about leasing?
- § 021 What documentation will be required to approve, administer, and enforce Leases?
- § 022 Are there any administrative fees payable in connection with a Lease?

#### **Part B—Agricultural Leases [Reserved]**

#### **Part C—Residential Leases [Reserved]**

#### **Part D—Commercial Leases - Commercial Leasing General Provisions**



- § 401 What types of Leases does this Part cover?  
§ 402 Is there a model Commercial Lease form?

### Lease Requirements

- § 403 How long may the term of a Commercial Lease run?  
§ 404 What must the Commercial Lease include if it contains an option to renew?  
§ 405 Are there mandatory provisions that a Commercial Lease must contain?  
§ 406 May Improvements be made under a Commercial Lease?  
§ 407 How must a Commercial Lease address ownership of Improvements?  
§ 408 How will the Community enforce removal requirements in a Commercial Lease?  
§ 409 What requirements for due diligence must a Commercial Lease include?  
§ 410 How must a Commercial Lease describe the Leased Premises?  
§ 411 May a Commercial Lease allow compatible uses?

### Monetary Compensation Requirements

- § 412 How much monetary compensation must be paid under a Commercial Lease of Community Trust Land?  
§ 413 How will the Fair Annual Lease Value be determined for a Commercial Lease and what is the purpose of the determination?  
§ 414 When are monetary compensation payments due under a Commercial Lease?  
§ 415 Must a Commercial Lease specify who receives monetary compensation payments?  
§ 416 What form of monetary compensation payment is acceptable under a Commercial Lease?  
§ 417 How may the compensation under a Commercial Lease be structured?  
§ 418 Will the Community notify a Lessee when a payment is due under a Commercial Lease?  
§ 419 Must a Commercial Lease provide for compensation reviews or adjustments?  
§ 420 What other types of payments are required under a Commercial Lease?

### Bonding and Insurance

- § 421 Must a Lessee provide a Bond for a Commercial Lease?  
§ 422 What forms of security are acceptable under a Commercial Lease?  
§ 423 What is the release process for a Bond under a Commercial Lease?  
§ 424 Must a Lessee provide insurance for a Commercial Lease?

### Approval

- § 425 What documents are required for execution of a Commercial Lease by the Community?  
§ 426 What is the approval process for a Commercial Lease?  
§ 427 When will a Commercial Lease be effective?

§ 428 Must a Commercial Lease Document be recorded?

Approval of Subleases, Assignments, Leasehold Mortgages, and Amendments

§ 429 What are the consent requirements for a Sublease, Assignment, Leasehold Mortgage, or amendment of a Commercial Lease?

Enforcement

§ 430 May the Community investigate compliance with a Commercial Lease?

§ 431 May a Commercial Lease provide for negotiated remedies if there is a Violation?

§ 432 What will the Community do about a Violation of a Commercial Lease?

§ 433 Will late payment charges or special fees apply to delinquent payments due under a Commercial Lease?

§ 434 How will payment rights relating to a Commercial Lease be allocated?

§ 435 What will the Community do if a Lessee remains in possession after a Commercial Lease expires or is terminated or cancelled?

§ 436 Will Bond requirements apply to cancellation decisions involving Commercial Leases?

§ 437 What happens if the Lessee abandons the Leased Premises?

**Part E—Solar Resource Leases**

General Provisions Applicable to Solar Resource Leases

§ 501 What types of Leases does this subpart cover?

§ 502 Who must obtain a SRL?

§ 503 What is the purpose of a SRL?

§ 504 How long may the term of a SRL run?

§ 505 What must the lease include if it contains an option to renew?

§ 506 Are there mandatory provisions a SRL must contain?

§ 507 May permanent improvements be made under a SRL?

§ 508 How must a SRL address ownership of permanent improvements?

§ 509 How will the Community enforce removal requirements in a SRL?

§ 510 What requirements for due diligence must a SRL include?

§ 511 How must a SRL describe the Leased Premises?

§ 512 May a SRL allow compatible uses?

§ 513 When are monetary compensation payments due under a SRL?

§ 514 May a SRL provide for non-monetary or varying types of compensation?

§ 515 What other types of payments are required under a SRL?

§ 516 Must a Lessee provide a Bond for a SRL?

§ 517 What forms of security are acceptable under a SRL?

§ 518 What is the release process for a Bond or alternative form of security under a SRL?

§ 519 Must a Lessee provide insurance for a SRL?

SRL Approval

§ 520 What documents are required for Community approval of a SRL?

§ 521 Must a SRL Lease Document be recorded?

#### *SRL Amendments*

§ 522 May the Parties amend a SRL?

§ 523 May a Lessee assign a SRL?

#### *SRL Subleases*

§ 524 May a Lessee sublease a SRL Lease?

§ 525 May a Lessee mortgage a SRL?

§ 526 What is the approval process for a Leasehold Mortgage of a SRL?

§ 527 When will an amendment, Assignment, Sublease, or Leasehold Mortgage of a SRL be effective?

§ 528 May the Community investigate compliance with a SRL?

§ 529 May a SRL provide for negotiated remedies if there is a Violation?

§ 530 Will late payment charges or special fees apply to delinquent payments due under a SRL?

§ 531 When will a cancellation of a SRL be effective?

§ 532 What will the Community do if a Lessee remains in possession after a SRL expires or is terminated or cancelled?

§ 533 What happens if the Lessee abandons the Leased Premises?

#### **Part F—Records**

§ 601 Who owns the records associated with these Regulations?

§ 602 How must records associated with these Regulations be preserved?

§ 603 How does the Paperwork Reduction Act affect these Regulations?

#### **Part G—Gila River Environmental Review Process**

§ 701 Purpose and Scope of this Part.

§ 702 Purpose and Scope of an environmental review statement and when it must be prepared.

§ 703 The GRER Process

**Part A—General Provisions**  
**Purpose, Definitions, and Scope**

**§ 001 What is the authority for and purpose of these Regulations?**

- (a) The purpose of these Regulations is to:
- (1) Recognize and give effect to the authority of the Community to issue Leases of, and Permits for, Community Trust Lands for residential, commercial, industrial, agricultural, communications, and other purposes, streamline the leasing and permitting process, and set forth the details on management and enforcement of Leases;
  - (2) Promote self-determination, encourage economic development and self-sufficiency, and increase commercial activity and employment opportunities, on land held in trust by the United States for the benefit of the Community; and
  - (3) Implement the *Helping Expedite and Advance Responsible Tribal Homeownership Act*, 25 USC §§ 415 et seq., P.L. 112-151 (2012) (or “HEARTH Act”);
- (b) Authority for these Regulations:
- (1) The HEARTH Act authorizes Federally-recognized Indian tribes, including the Community, to develop tribal regulations and issue Leases and Permits without the approval of the Secretary, provided such regulations are consistent with the Secretary’s regulations at 25 CFR §162 *et seq.*, and have been approved by the Secretary. According to the HR 112-427 (April 16, 2012), the Congress indicated that tribal regulations developed under the HEARTH Act need not be identical to the Secretary's regulations and may be tailored to “suit its business and cultural needs.”
  - (2) Article II of the Constitution provides that the jurisdiction of the Community extends to all lands within the Reservation and all lands thereafter acquired for the use and benefit of the Community. Article XV Sections 1(a) 4, 9, 13, 18 & 19 and Article XVI Sections 1 and 2 of the Constitution set forth the authority of the Community Council to adopt regulations governing leasing of Community Trust Lands.
  - (3) These Gila River Indian Community Leasing Regulations are adopted pursuant to, and satisfy the requirements of, the foregoing authorities, and thus are *tribal* regulations, and shall become effective upon Secretarial approval.

- (4) All substantive amendments to the Gila River Indian Community Leasing Regulations must be submitted to and approved by the Secretary before becoming effective.
  - (5) Non-substantive amendments, including amendments that are technical, clerical or administrative in nature, shall become effective upon Community Council approval.
- (c) At present, these Regulations do not cover agricultural, residential, or wind energy or mineral resource leases. Unless and until Parts addressing those forms of leasing transactions are adopted by the Community Council and approved by the Secretary as required by federal law, those forms of Lease will be subject to BIA approval under Part 162 of Title 25 of the Code of Federal Regulations.
- (d) At present, these Regulations do not cover leases having a total term of more than seventy-five (75) years, therefore any lease having a term of more than seventy-five (75) years will be subject to BIA approval under Part 162 of Title 25 of the Code of Federal Regulations.
- (e) These Regulations specify:
- (1) Conditions and authorities under which the Community will approve Leases of Community Trust Land;
  - (2) How to obtain Leases;
  - (3) Terms and conditions required in Leases; and
  - (4) How the Community administers and enforces Leases.
- (f) If any section, paragraph, or provision of these Regulations is stayed or held invalid, the remaining sections, paragraphs, or provisions of these Regulations remain in full force and effect.

#### **§ 002 How are these Regulations subdivided?**

These Regulations include multiple parts relating to:

- (1) General Provisions (Part A);
- (2) Agricultural Leases (Part B) [Reserved];
- (3) Residential Leases (Part C) [Reserved];
- (4) Commercial Leases (Part D);
- (5) Solar Resource Leases (Part E);

(6) Records (Part F); and

(7) Gila River Environmental Review Process (Part G)

**§ 003 What key terms do I need to know?**

“Applicant” means the Person that is seeking to enter into a Lease or secure a Permit authorized by these Regulations.

“Assignment” means an agreement between a Lessee and an assignee whereby the assignee acquires all of the Lessee’s rights and assumes all the Lessee’s obligations under a Lease.

“BIA” means the Bureau of Indian Affairs, U. S. Department of the Interior.

“Bond” means a security interest providing security for the performance of a duty or the payment of a debt, and furnished by the Lessee or by a third-party Surety.

“Categorical Exclusion” means a category of activities that have been determined not to have a Significant Effect on the Environment and therefore no Gila River Environmental Review Process is required.

“Commercial Lease” means any Lease of undeveloped or developed (together with the Improvements thereon) Community Trust Land and that are:

- (1) Leases for religious, educational, recreational, cultural, or other public purposes;
- (2) Commercial or industrial leases for retail, office, manufacturing, storage, biomass, waste-to-energy, or other business purposes; and
- (3) Commercial Space Leases.

“Commercial Space Lease” means a Lease of an area within a building, structure or facility located on Community Trust Land that is owned by the Community or a Community entity and is for any of the purposes described in (1) and (2) of the definition of Commercial Lease.

“Community” means the Gila River Indian Community.

“Community Court” means the trial and appellate courts of the Community, including a Supreme Court in the event that the Community establishes such a court.

“Community Law” means the body of law governing the land and activities occurring within the jurisdiction of the Community, including the Law and Order Code of the Community.

“Community Trust Land” means the surface estate of land or any interest therein held by the United States in trust for the Community; land held by the Community and subject to federal restrictions against alienation or encumbrance; land reserved for federal purposes; or land held by the United States in trust for a Community corporation chartered under Section 17 of the *Indian Reorganization Act*.

“Constitution” means the Constitution and Bylaws of the Gila River Indian Community of Arizona as adopted by the Gila River Indian Community on January 22, 1960 and approved by the Secretary of the Interior on March 17, 1960, as amended at any time.

“CPI-U” means the Consumer Price Index compiled and published by the United States Department of Labor, Bureau of Labor Statistics, designated “Consumer Price Index for all Urban Consumers, U.S. City Average, 1982-1984 = 100.”

“Day” means a calendar day commencing at 12:00 midnight local Phoenix, Arizona time.

“Development Period” means the time period from when a Lease is executed to when improvements on the Leased Premises are substantially completed.

“Economic Development Standing Committee” or “EDSC” means the Economic Development Standing Committee of the Gila River Indian Community Council.

“Environmental Assessment Form” or “EAF” means the form that an Applicant for a Lease or Permit must submit to the Natural Resources Standing Committee to allow the Natural Resources Standing Committee to identify and evaluate any Significant Effect on the Environment of approving a Lease or Permit.

“Fair Annual Lease Value” means the most probable dollar amount a property should bring in a competitive and open market reflecting all conditions and restrictions of the specified Lease including term, rental adjustment and revaluation, permitted uses, use restrictions, and expense obligations; the Lessee and Community each acting prudently and knowledgeably, and assuming consummation of a Lease as of a specified date and the passing of the leasehold from the Community to Lessee under conditions whereby:

- (1) Lessee and the Community are typically motivated;
- (2) Both parties are well informed or well advised, and acting in what they consider their best interests;
- (3) A reasonable time is allowed for exposure in the open market;
- (4) The rent payment is made in terms of cash in United States dollars, and is expressed as an amount per time period consistent with the payment schedule of the Lease; and



- (5) The rental amount represents the normal consideration for the property leased unaffected by special fees or concessions granted by anyone associated with the transaction.

“Gila River Environmental Review Process” or “GRER” means the environmental review process as described in Part G of these Regulations and any applicable Community Laws and regulations.

“Gila River Indian Community” or “Community” means the Gila River Indian Community, a federally recognized Indian tribe, and its instrumentalities and agencies.

“Gila River Indian Community Council” or “Community Council” means the Gila River Indian Community Council as established pursuant to the Constitution.

“Gila River Community Entity” or “Community Entity” means any:

- (1) Corporation or limited liability company organized under Community, state, or federal law, where the Community is the sole owner of said corporation or company;
- (2) Community governmental authority or agency; and
- (3) Community department or unit of government.

“HEARTH Act” means the Helping Expedite and Advance Responsible Tribal Homeownership Act, 25 USC §§ 415 et seq., P.L. 112-151 (2012).

“Improvement” means buildings, other structures, and associated infrastructure constructed or installed under the terms of a Lease to serve the purposes of the Lease.

“Lease” means a written agreement or contract between the Community and a Lessee, wherein the Lessee is granted a right to occupy or possess Community Trust Land for a specific purpose and duration.

“Lease Documents” means a Lease or Sublease, and any document of Assignment, amendment, Leasehold Mortgage, renewal, modification or cancellation of any Lease or Sublease.

“Leased Premises” means the Community Trust Land being leased to Lessee by the Community.

“Leasehold Mortgage” means a mortgage, deed of trust, or other instrument or agreement that creates a security interest in, or otherwise pledges a Lessee’s leasehold interest as security for a debt or other obligation owed by the Lessee.

“Lessee” means a Person to whom Community Trust Land is leased under a Lease.

“LTRO” means the Land Title and Records Office of the BIA.

“Mortgagee” means the holder of a Leasehold Mortgage.

“Natural Resources Standing Committee” or “NRSC” means the Natural Resources Standing Committee of the Gila River Indian Community Council.

“Permit” means a written agreement between the Gila River Indian Community and the Applicant, other than a Lease, whereby the Applicant is granted a revocable use privilege to use Community Trust Land for a specified purpose and for a specified period of time.

“Permittee” means a Person who has acquired a legal right of use to Community Trust Land by a Permit under these Regulations.

“Person” means an individual, corporation, limited liability company, partnership, joint venture, association, firm, joint stock company, trust, unincorporated association or other legal entity.

“Public” means all enrolled members of the Community.

“Reservation” means the Gila River Indian Reservation.

“Secretary” means the Secretary of the Interior, U.S. Department of the Interior, or authorized representative.

“Significant Effect on the Environment” means a substantial adverse change in the environment, including land, air quality, water, minerals, flora, fauna, ambient noise, areas of critical habitat, and objects or areas of historic, cultural, or aesthetic significance.

“Solar Resource Lease” or “SRL” means a Lease that authorizes possession of Community Trust Land for the purpose of installing, operating, and maintaining instrumentation, facilities, and associated infrastructure, such as solar panels, to harness 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 (iii) to users within the local community (e.g., on and adjacent to Community Trust Land).

“Sublease” means a written agreement by which the Lessee grants a Person a right of possession to the Leased Premises no greater than that held by the Lessee under a Lease.

“Surety” means one who guarantees the performance of another.

“Trespass” means any unauthorized occupancy, use of, or action on any Community Trust Land.

“Uniform Standards of Professional Appraisal Practice” means the standards promulgated by the Appraisal Standards Board of Appraisal Foundation to establish requirements and procedures for professional real property appraisal practice.

“Violation” means a failure to take an action, including payment of compensation, when required by the Lease, or to otherwise not comply with a term of the Lease. This definition applies for purposes of these Regulations regardless of how “violation” or “default” is defined in the Lease.

#### **§ 004 To what land do these Regulations apply?**

- (a) These Regulations apply solely to Community Trust Land.

#### **When to Get a Lease**

#### **§ 005 When do I need a Lease to authorize possession of Community Trust Land?**

- (a) Except as provided in § 005(b). Any Person seeking to take possession of Community Trust Lands for a purpose covered by these Regulations must obtain a Lease from the Community prior to taking possession of the land or any portion of the land.
- (b) You do not need a Lease to possess Community Trust Land if:
  - (1) You are the Community; or
  - (2) If you receive Community Council authorization to manage specific Community Trust Land, which shall include the Wild Horse Pass Development Authority and the Gila River Indian Community Utility Authority or a 25 U.S.C. 477 corporate entity that may hereafter be formed by the Community, that manages or has the power to manage the Community trust land directly under its federal charter or under a tribal authorization (not under a Lease from the Community). You must record documents in accordance with § 428.
  - (3) These regulations require, and you obtain, a Permit pursuant to § 007.

#### **§ 006 To what types of land use agreements do these Regulations apply?**

- (a) These Regulations apply to Leases of Community Trust Lands entered into under the HEARTH Act.
- (b) These Regulations do not apply to:
  - (1) Land use agreements entered into under other statutory authority, such as the following:

This part does not apply to:	which are covered by:
(i) Contracts or agreements that encumber tribal land under	25 U.S.C. 81, 25 CFR part 84
(ii) Traders' licenses	25 CFR part 140
(iii) Timber contracts	25 CFR part 163
(iv) Grazing permits	25 CFR part 166
(v) Rights-of-way	25 CFR part 169
(vi) Mineral leases, prospecting permits, or mineral development agreements	25 CFR parts 211, 212, 213, 225, 226, 227
(vii) Tribal land assignments and similar instruments authorizing uses of tribal land	tribal laws

- (2) Leases of water rights associated with Community Trust Land, except to the extent the use of water rights is incorporated in a Lease of the land itself, or where the Lessee will be authorized to utilize Community water through a Water Use Agreement.
- (3) The following leases, which do not require Community approval, except that you must record these leases in accordance with § 428:
  - (i) A lease of Community Trust Land by a 25 U.S.C. 477 corporate entity under its charter to a third party for a period not to exceed 25 years; and
  - (ii) A lease of Community Trust Land under any future act of Congress that may hereafter be enacted authorizing leasing without BIA approval.

#### **§ 007 To what Permits do these Regulations apply?**

- (a) Permits for the use of Community Trust Land do not require approval under these Regulations; however, you must fulfill the following requirements:
  - (1) Ensure that permitted activities comply with all applicable environmental and cultural resource laws; and
  - (2) Submit all Permits to the appropriate Community office to allow them to maintain a copy of the Permit in their records. If the Community determines within ten (10) Days of submission that the document does not meet the definition of "Permit" and grants a legal interest in Indian land, the Community will notify you that a Lease is required under these Regulations.

- (b) The following table provides examples of some common characteristics of Permits versus Leases:

Permit	Lease
Does not grant a legal interest in Community Trust Land	Grants a legal interest in Community Trust Land
Shorter term	Longer term
Limited use	Broader use with associated infrastructure
Permittee has non-possessory right of access	Lessee has right of possession, ability to limit or prohibit access by others
Community may terminate at any time	Community may terminate under limited circumstances

**§ 008 Do these Regulations apply to existing Leases?**

- (a) These regulations govern Leases entered on and after the effective date of these Regulations.
- (b) These regulations shall not be construed to affect the terms and conditions of Leases existing prior to the effective date of these Regulations and having a term that extends beyond the effective date of these Regulations.

How to Get a Lease

**§ 009 How do I obtain a Lease?**

Information on obtaining Leases shall be available from the Community's Office of General Counsel, the Pima Leasing & Financing Corporation, and the Community's Department of Land Use Planning.

**§ 010 What are the approval requirements for a Lease?**

Prior to the execution of a Lease by the Governor of the Community or his or her designee, the Lease must be approved by a majority of the Community Council by resolution. All decisions of the Community Council regarding Leases governed by these Regulations are final and non-appealable.

Lease Administration

**§ 011 What laws will apply to Leases approved under these Regulations?**

- (a) In addition to these Regulations themselves, Leases approved under these Regulations:

- (1) Are subject to Community Law, including these Regulations;
  - (2) Are subject to applicable federal laws and any specific federal statutory requirements that are not incorporated in these Regulations; and
  - (3) Are not subject to State law or the law of any political subdivision.
- (b) All Leases shall provide that disputes shall be resolved pursuant to Community Law. Nothing in these Regulations shall be construed to waive the Community's sovereign immunity or the sovereign immunity enjoyed by any Community entity.

**§ 012 May a Lease contain a preference consistent with Community Law for employment of tribal members?**

A Lease may include a provision, consistent with Community Law, requiring the Lessee to give a preference to qualified Community members, based on their membership in, and political affiliation with, the Community.

**§ 013 Will the Community comply with Community Law and federal law in making Lease decisions?**

Unless contrary to federal law, the Community will comply with Community Laws in making decisions regarding Leases, including Community Laws regulating activities on Leased Premises under Community jurisdiction, including, but not limited to, Community Laws relating to land use, environmental protection, and historic or cultural preservation.

**§ 014 May a Lease contain a limited waiver of the Community's sovereign immunity?**

A Lease may include a provision, consistent with Community Law, which provides a limited waiver of the Community's sovereign immunity for the limited purpose of permitting the parties to the Lease to commence arbitration, enforce arbitration, and enforce an arbitration decision or award in accordance with 25 USC §415(f).

**§ 015 What taxes apply to Leases approved under these Regulations?**

- (a) Subject only to applicable federal law, Improvements, without regard to ownership of those Improvements, are not subject to any fee, tax, assessment, levy, or other charge imposed by any State or political subdivision of a State. Improvements may be subject to taxation by the Community under applicable Community Law.
- (b) Subject only to applicable federal law, activities under a Lease conducted on the Leased Premises are not subject to any fee, tax, assessment, levy, or other charge (e.g., business use, privilege, public utility, excise, gross revenue taxes) imposed

by any State or political subdivision of a State. Activities may be subject to taxation by the Community under the Community's Tax Ordinance.

- (c) Subject only to applicable federal law, the leasehold or possessory interest is not subject to any fee, tax, assessment, levy, or other charge imposed by any State or political subdivision of a State. Leasehold or possessory interests may be subject to taxation by the Community under the Community's Tax Ordinance.

**§ 016 May a Lease address access to the Leased Premises by roads or other infrastructure?**

A Lease may address access to the Leased Premises by roads or other infrastructure, as long as the access complies with applicable statutory and regulatory requirements, including 25 CFR part 169. Roads or other infrastructure within the Leased Premises do not require compliance with 25 CFR part 169 during the term of the Lease, unless otherwise stated in the Lease.

**§ 017 May a Lease combine tracts?**

The Community may approve a Lease that combines multiple tracts of Community Trust Land into a unit for the efficient administration of Community Trust Land.

**§ 018 What if an individual or entity takes possession of or uses Community Trust Land without an approved Lease or other proper authorization?**

If an individual or entity takes possession of, or uses, Community Trust Land without a Lease and a Lease is required, the unauthorized possession or use is a Trespass. The Community may take action to recover possession, including eviction, on its own behalf and pursue any additional remedies available under applicable law, including referring the matter to BIA to take action required or permitted under federal law.

**§ 019 May the Community take emergency action if Community Trust Land is threatened?**

- (a) The Community may take appropriate emergency action if there is a natural disaster or if an individual or entity causes or threatens to cause immediate and significant harm to Community Trust Land. Emergency action may include judicial action seeking immediate cessation of the activity resulting in or threatening the harm, or involving BIA pursuant to the terms and limitations of federal law.
- (b) The Community will make reasonable efforts to notify all parties with a legal interest in the Lease before and after taking emergency action. In all cases, the Community will notify all parties with a legal interest in the Lease after taking emergency action by actual or constructive notice.

**§ 020 Who can answer questions about leasing?**



A prospective Lessee may contact the Office of General Counsel, the Pima Leasing & Financing Corporation, and the Department of Land Use Planning and Zoning for answers to questions about the leasing process.

**§ 021 What documentation will be required to approve, administer, and enforce Leases?**

- (a) All Applicants for Commercial or Solar Resource Leases of Community Trust Land shall submit the following documents to the Community, in a form and in a manner acceptable to the Community:
  - (1) financial statement;
  - (2) organizational documents;
  - (3) site survey and legal description;
  - (4) Environmental Assessment Form;
  - (5) archaeological clearance from the Gila River Indian Community Cultural Resources Management Program; and
  - (6) any other documents that may be required by the Community.
- (b) Upon request, the Applicant must make appropriate records, reports, or information available for the Community's inspection and duplication. The Community will keep confidential any information that is marked confidential or proprietary and will exempt it from public release to the extent allowed by Community Law.
- (c) Records of activities taken pursuant to these Regulations are the property of the Community.

**§ 022 Are there any administrative fees payable in connection with a Lease?**

The Community may charge administrative fees for costs associated with issuing, approving or recording a Lease, Sublease, Permit, Assignment, Mortgage or Lease amendment, or for any other administrative transaction related to the foregoing, and to cover administrative costs incurred by the Community in undertaking lease compliance activities associated with Violations or in the collection of the debt, if compensation is not paid in the time and manner required, which shall be in addition to the late payment charges that must be paid to the Community under the Lease. These administrative fees will be paid by the lessee, assignee, sublessee, or permittee to cover the Community's costs in preparing or processing the documents and administering the lease. The Community shall charge reasonable administrative fees for review of lease documents, taking into account the size, complexity, or novelty of the documents to be reviewed and considering whether any costs will be incurred by the Community for services of outside

legal counsel or other consultants in conducting such reviews. Upon approval of these Regulations, the Community Council will adopt an administrative fee schedule setting for the fees to be charged by the Community for the costs associated with reviewing, issuing, approving or recording a Lease, Sublease, Permit, Assignment, Mortgage or Lease amendment, or for any other administrative transaction related to the foregoing. Such administrative fees may be reviewed and revised periodically by the Community in its discretion.

### **Part B—Agricultural Leases [Reserved]**

### **Part C—Residential Leases [Reserved]**

### **Part D—Commercial Leases**

#### **Commercial Leasing General Provisions**

#### **§ 401 What types of Leases does this Part cover?**

- (a) This Part D includes Regulations governing Commercial Leases.
- (b) A Commercial Lease is mandatory for any business or industry operating from a permanent structure or fixed location, advertising itself as being open to the public, collecting rent or money from vendors, or conducting other business, industrial, or manufacturing activities, unless otherwise provided by Community Law. Failure to comply with this section shall be addressed pursuant to Community Law.
- (c) Leases covered by this Part may authorize the construction of single-purpose or mixed-use projects designed for use by any number of Lessees or occupants.
- (d) Variations in these Part D Regulations applicable to a Commercial Space Lease are identified in the relevant provisions.

#### **§ 402 Is there a model Commercial Lease form?**

There is no model Commercial Lease form because of the need for flexibility in negotiating and writing Commercial Leases; however, the Community may:

- (a) Provide other guidance, such as checklists and sample Lease provisions, to assist in the Lease negotiation process; and
- (b) Develop standard Lease provisions or Lease forms that conform to the requirements of these Regulations and are mandatory in the absence of a waiver by the Community.

### Lease Requirements

#### **§ 403 How long may the term of a Commercial Lease run?**

- (a) Except as provided in § 403(c), the term of a Commercial Lease shall not exceed twenty-five (25) years except that any Commercial Lease may include an option to renew for up to two (2) additional terms, each of which may not exceed twenty-five (25) years. If the Commercial Lease provides that the Lessee has an option to renew, the Lessee shall notify the Community of its intent to renew no earlier than eighteen (18) months, and no later than twelve (12) months, before the Commercial Lease term is due to expire.
- (b) A Commercial Lease may not be extended by holdover.
- (c) The term of a Commercial Lease for public, religious, educational, or recreational purposes shall not exceed seventy-five (75) years.

#### **§ 404 What must the Commercial Lease include if it contains an option to renew?**

- (a) If the Commercial Lease provides for an option to renew, it must specify:
  - (1) The time and manner in which the option must be exercised or is automatically effective;
  - (2) Whether Community consent to the renewal is required;
  - (3) That the Lessee must provide notice of the renewal to the Office of General Counsel and the Pima Leasing & Financing Corporation;
  - (4) That the Lessee must provide notice of the renewal to any Sureties and Mortgagees;
  - (5) The additional consideration, if any, that will be due upon the exercise of the option to renew or the start of the renewal term; and
  - (6) Any other conditions for renewal (e.g., that the Lessee not be in Violation of the Commercial Lease at the time of renewal).
- (b) The Community will cause any renewal of a Commercial Lease to be recorded pursuant to § 428.

#### **§ 405 Are there mandatory provisions that a Commercial Lease must contain?**

- (a) All Commercial Leases must identify:
  - (1) The tract or parcel of land being leased;

- (2) The purpose of the Commercial Lease and authorized uses of the Leased Premises;
  - (3) The parties to the Commercial Lease;
  - (4) The term of the Commercial Lease, including the effective date;
  - (5) The ownership of Improvements and the responsibility for constructing, operating, maintaining, and managing Improvements under § 407;
  - (6) Payment requirements and late payment charges, including interest;
  - (7) Due diligence requirements under § 409 (unless the Commercial Lease is for religious, educational, recreational, cultural, or other public purposes);
  - (8) Insurance requirements under § 424; and
  - (9) Bonding requirements under § 421. If a Bond is required, the Commercial Lease must state that the Lessee must obtain the consent of the Surety for any legal instrument that directly affects their obligations and liabilities.
- (b) Where a Lessee's representative or a duly-authorized representative of the Community executes a Commercial Lease on behalf of the Community or Lessee, the Commercial Lease must identify the respective authority under which each representative is acting.
- (c) All Commercial Leases must include provisions establishing the following:
- (1) The obligations of the Lessee and its Sureties to the Community are also enforceable by the United States, so long as the land remains in trust or restricted status;
  - (2) There must not be any unlawful conduct, creation of a nuisance, illegal activity, or negligent use or waste of the Leased Premises;
  - (3) The Lessee must comply with all applicable laws, ordinances, rules, regulations, and other legal requirements under § 011;
  - (4) If historic properties, archeological resources, human remains, or other cultural items not previously reported are encountered during the course of any activity associated with the Commercial Lease, all activity in the immediate vicinity of the properties, resources, remains, or items will cease and the Lessee will contact the Tribal Historic Preservation Officer and the Community to determine how to proceed and appropriate disposition;

- (5) The Community has the right, at any reasonable time during the term of the Commercial Lease and upon reasonable notice, in accordance with § 430, to enter the Leased Premises for inspection and to ensure compliance; and
  - (6) The Community may, at its discretion, treat as a Violation any failure by the Lessee to cooperate with the Community's request to make appropriate records, reports, or information available for the Community's inspection and duplication.
- (d) Unless the Lessee would be prohibited by law from doing so, the Commercial Lease must also contain the following provisions:
- (1) The Lessee holds the United States and the Community harmless from any loss, liability, or damages resulting from the Lessee's use or occupation of the Leased Premises; and
  - (2) The Lessee indemnifies the United States and the Community against all liabilities or costs relating to the use, handling, treatment, removal, storage, transportation, or disposal of hazardous materials, or the release or discharge of any hazardous material from the Leased Premises that occurs during the Lease term, regardless of fault, with the exception that the Lessee is not required to indemnify the Community for liability or cost arising from the Community's negligence or willful misconduct.

#### **§ 406 May Improvements be made under a Commercial Lease?**

The Lessee may construct Improvements under a Commercial Lease if the Commercial Lease specifies, or provides for the development of:

- (a) A plan that describes the type and location of any Improvements to be constructed by the Lessee; and
- (b) A general schedule for construction of the Improvements, including dates for commencement and completion of construction.

#### **§ 407 How must a Commercial Lease address ownership of Improvements?**

- (a) Improvements shall become the property of the Community, unless otherwise provided for in the Commercial Lease.
- (b) A Commercial Lease must specify who will own any Improvements the Lessee constructs during the Commercial Lease term and may specify under what conditions, if any, Improvements may be conveyed to the Community during the Commercial Lease term.

- (c) If the Improvements are specified in the Commercial Lease as being the property of the Lessee, the Commercial Lease must indicate whether each specific Improvement the Lessee constructs will:
  - (1) Remain on the Leased Premises, upon the expiration, cancellation, or termination of the Commercial Lease, in a condition satisfactory to the Community, and become the property of the Community;
  - (2) Be removed within a time period specified in the Commercial Lease, at the Lessee's expense, with the Leased Premises to be restored as closely as possible to their condition before construction of the Improvements; or
  - (3) Be disposed of by other specified means.
- (d) A Commercial Lease that requires the Lessee to remove the Improvements must also provide the Community with an option to take possession of and title to the Improvements if the improvements are not removed within the specified time period.
- (e) A Commercial Lease that requires the Lessee to remove the Improvements shall require the Lessee to post a Bond in an amount sufficient to cover the costs of removing the Improvements and remediating the Leased Premises and restoring the Leased Premises to its original condition.

**§ 408 How will the Community enforce removal requirements in a Commercial Lease?**

- (a) Where the Lessee is required to remove Improvements and fails to do so at such time or within such period as may be specified in the Commercial Lease, the Community may take appropriate enforcement action to ensure removal of the Improvements and restoration of the Leased Premises at the Lessee's expense.
- (b) The Community may collect and hold the Bond until removal and restoration are completed.

**§ 409 What requirements for due diligence must a Commercial Lease include?**

- (a) If Improvements are to be constructed, the Commercial Lease must include due diligence requirements that require the Lessee to complete construction of any Improvements within the schedule specified in the Commercial Lease or general schedule of construction, and a process for changing the schedule by mutual consent of the parties. If construction does not occur, or is not expected to be completed, within the time period specified in the Commercial Lease, the Lessee must provide the Community with an explanation of good cause as to the nature of any delay, the anticipated date of commencement or completion of construction of the Improvements, and evidence of progress toward commencement and completion of construction.

- (b) Failure of the Lessee to comply with the due diligence requirements of the Commercial Lease is a Violation and may lead to cancellation of the Commercial Lease under § 432.
- (c) The Community may waive the requirements in its sole discretion.
- (d) The requirements of this section do not apply to Commercial Leases for religious, educational, recreational, cultural, or other public purposes.

**§ 410 How must a Commercial Lease describe the Leased Premises?**

- (a) Commercial Leases other than Commercial Space Leases shall contain site surveys and legal descriptions based on metes and bounds, rectangular, or lot and block systems, to the standards required by the Community's Department of Land Use Planning & Zoning and in such form and detail as required by the Community and be of sufficient detail to meeting recording requirements for the LTRO. If such surveys are not available or the land cannot be so described, the Commercial Lease must include one or more of the following in such form and detail as is acceptable to the Community's Department of Land Use Planning & Zoning:
  - (1) A legal description;
  - (2) A survey-grade global positioning system description; or
  - (3) Another description prepared by a registered land surveyor that is sufficient to identify the Leased Premises.
- (b) Commercial Space Leases shall contain an adequate description of the Leased Premises including the fixtures, equipment, and actual square footage to be leased in the facility or building.

**§ 411 May a Commercial Lease allow compatible uses?**

A Commercial Lease may provide for the Community to use, or authorize others to use, the Leased Premises for other uses compatible with the purpose of the Commercial Lease and consistent with the terms of the Commercial Lease. Any such use or authorization by the Community will not reduce or offset the monetary compensation for the Commercial Lease.

*Monetary Compensation Requirements*

**§ 412 How much monetary compensation must be paid under a Commercial Lease of Community Trust Land?**

- (a) A Commercial Lease of Community Trust Land may allow for any payment amount negotiated by the Community, and the Lease need not require that a



valuation be obtained in accordance with § 413 upon a Community Council authorization expressly stating that:

- (1) The negotiated compensation is satisfactory to the Community Council; and
  - (2) The Community Council waives valuation and accepts such negotiated compensation.
- (b) The Community may require that, prior to discussion of compensation to be required under the Commercial Lease, a determination for Fair Annual Lease Value for the Leased Premises be obtained in accordance with § 413. After obtaining the Fair Annual Lease Value, the Community may negotiate any payment subject to approval by the Community Council pursuant to § 412(a).
- (c) In the absence of a negotiated compensation approved by the Community Council pursuant to § 412(a), the Community will require that the Lease provide for the Fair Annual Lease Value based on a valuation in accordance with § 413.

**§ 413 How will the Fair Annual Lease Value be determined for a Commercial Lease and what is the purpose of the determination?**

- (a) The Fair Annual Lease Value shall be determined by one of the following methods, as determined by the Community:
- (1) an appraisal performed by the Community utilizing the following data: improvement cost, replacement cost, earning capacity, sales and lease data of comparable sites; or
  - (2) an appraisal performed by a licensed appraiser utilizing the Uniform Standards of Professional Appraisal Practice or commonly accepted method of appraisal; or
  - (3) competitive bidding;

provided, however, that the Community may waive the foregoing requirements for a Commercial Space Lease if there was an appraisal conducted on the building or facility in which the Leased Premises are located within the last twenty-four (24) months or if the Community has retained a third party broker to be responsible for the lease-up and ongoing management of the building or facility in which the Leased Premises are located.

In the event the Fair Annual Lease Value is determined by appraisal, an appraisal log describing the method of appraisal and value of the relevant Community Trust Land shall be attached to the Commercial Lease.

- (b) No Commercial Lease will be approved by the Community for less than the Fair Annual Lease Value as set forth in the appraisal or as established by a third party broker retained by the Community in the case of a Commercial Space Lease, except where:
  - (1) the Lessee is in the Development Period or, in the case of a Commercial Space Lease, the building or facility containing the Leased Premises is in the lease-up period (within twenty-four (24) months prior to scheduled substantial completion); and
  - (2) the Community determines that providing lease concessions, lease improvement credits, or lease abatements is required as an incentive for the Lessee to locate on the Reservation.
- (c) Where the Community performs the appraisal or causes an appraisal to be performed, the Lessee shall reimburse the Community for all costs associated with performing or causing such appraisal to be performed. In the event, the Community determines that the appraisal provided by the Lessee is inadequate, the Community may, in its sole discretion, perform or cause a new appraisal to be performed. Lessee shall be reimburse the Community for all costs associated with the review of the appraisal and the conduct of the new appraisal.

**§ 414 When are monetary compensation payments due under a Commercial Lease?**

- (a) A Commercial Lease must specify the dates on which all payments are due.
- (b) Unless the Commercial Lease provides otherwise, payments may not be made or accepted more than one year in advance of the due date.
- (c) Payments are due at the time specified in the Commercial Lease, regardless of whether the Lessee receives an advance billing or other notice that a payment is due.

**§ 415 Must a Commercial Lease specify who receives monetary compensation payments?**

- (a) For all Commercial Leases Lessee shall make payments directly to the Community and provide the following:
  - (1) The Commercial Lease must include provisions for proof of payment upon BIA's request.
  - (2) The Lessee must send direct payments to the parties and addresses specified in the Commercial Lease, unless the Lessee receives notice of a change of ownership or address.

- (3) Unless the Commercial Lease provides otherwise, compensation payments may not be made payable directly to anyone other than the Community.
- (4) Direct payments must continue through the duration of the Commercial Lease.

**§ 416 What form of monetary compensation payment is acceptable under a Commercial Lease?**

- (a) The form of payment must be acceptable to the Community.
- (b) The preferred method of payment is electronic funds transfer payments. The Community will also accept:
  - (1) Money orders;
  - (2) Certified checks; or
  - (3) Cashier's checks.
- (c) The Community will not accept cash or foreign currency.
- (d) The Community will accept third-party checks only from financial institutions or federal agencies.

**§ 417 How may the compensation under a Commercial Lease be structured?**

A Commercial Lease may be structured to include:

- (a) a flat lease rate;
- (b) a flat lease rate plus a percentage of gross receipts, if the Leased Premises are for a retail business located in a shopping center or mall;
- (c) a lease rate based on a percentage of gross receipts, or based on a market indicator;
- (d) alternative forms of compensation, including but not limited to, in-kind consideration; or
- (e) varying types of compensation at specific stages during the term of the Commercial Lease, including but not limited to a flat lease rate during construction and a percentage of gross receipts during the operation period.

**§ 418 Will the Community notify a Lessee when a payment is due under a Commercial Lease?**

The Community may issue invoices to the Lessee in advance of the dates on which payments are due under a Commercial Lease. The Lessee's obligation to make these payments in a timely manner will not be excused if invoices are not issued, delivered, or received.

**§ 419 Must a Commercial Lease provide for compensation reviews or adjustments?**

- (a) A Commercial Lease shall provide for annual rent adjustments based on the CPI-U, or such comparable official index published by the Bureau of Labor Statistics or by successor or similar government agency as agreed to by the Community and Lessee exercising their reasonable business judgment.
- (b) The Lease shall provide for periodic review of the rent provisions at least every five (5) years. Such review shall include an appraisal of the Leased Premises which shall give consideration to the economic conditions, exclusive of improvements or development required by the Lease or the contribution value of such improvements. A Lessee may request a waiver of, or modification to, the requirement that an appraisal of the Leased Premises be conducted every five (5) years throughout the term of the Lease. Such a request shall be made to the Community in writing and accompanied by a written justification for such a waiver of this appraisal requirement. An appraisal of the Leased Premises shall be required prior to the Lessee's exercise of any option for a renewal term provided for under the terms of the Commercial Lease.
- (c) Any rent adjustment shall be incorporated in the Lease by amendment.
- (d) The Community shall keep written records of the basis used in determining the Fair Annual Lease Value, as well as the basis for adjustments, and shall provide a copy of such records to the Lessee upon written request.

**§ 420 What other types of payments are required under a Commercial Lease?**

- (a) The Lessee may be required to pay additional fees, taxes, and assessments associated with the use of the land, as determined by the Community, except as provided in § 015. The Lessee must pay these amounts to the appropriate office at the Community.
- (b) If the Leased Premises are within an Indian irrigation project or drainage district, except as otherwise provided in part 171 of Title 25 of the C.F.R., the Lessee must pay all operation and maintenance charges that accrue during the Commercial Lease term. The Lessee must pay these amounts to the appropriate office in charge of the irrigation project or drainage district. The Community will treat failure to make these payments as a Violation.

*Bonding and Insurance*

**§ 421 Must a Lessee provide a Bond for a Commercial Lease?**

The Lessee must provide a Bond, except as provided in paragraph (e) of this section.

- (a) The Bond must be in an amount sufficient to secure the contractual obligations of Lessee, including:
  - (1) No less than:
    - (i) The highest annual rental specified in the Commercial Lease, if compensation is paid annually; or
    - (ii) If the compensation is not paid annually, another amount established by the Community;
  - (2) Full coverage of the estimated development and construction cost of any Improvements required to be made by Lessee;
  - (3) The operation and maintenance charges for any land located within an irrigation project; and
  - (4) The restoration and reclamation of the Leased Premises to their condition at the start of the term of the Commercial Lease or some other specified condition.
- (b) The Bond or alternative form of security must be deposited with and made payable to the Community, and may not be modified without the approval of the Community.
- (c) The Community may require that the Surety provide any supporting documents needed to show that the Bond or alternative form of security will be enforceable, and that the Surety will be able to perform the guaranteed obligations.
- (d) The Bond or alternative form of security must require the Surety to provide notice to the Community at least sixty (60) Days before canceling the Bond or modifying the security. This will allow the Community to notify the Lessee of Lessee's obligation to provide a substitute Bond or alternative form of security and require collection of the Bond or security before the cancellation date. Failure to provide a substitute Bond or acceptable alternative form of security is a Violation.
- (e) The Community may waive the requirement for a Bond or alternative form of security, or reduce the amount of the Bond or security required, if:

- (1) The Commercial Lease is for religious, educational, recreational, cultural, or other public purposes; or
- (2) The Community determines, in its sole discretion, that the requirement for a Bond or alternative form of security is not warranted.

Any request to waive the requirement for a Bond or alternative form of security or to reduce the amount of the Bond or security shall be made in writing by the Lessee and be accompanied by written justification for such a waiver or reduction. The Community shall maintain written records of all waivers and reductions of Bonds or security.

**§ 422 What forms of security are acceptable under a Commercial Lease?**

- (a) The Community will accept a Bond only in one of the following forms:
  - (1) Certificates of deposit issued by a federally insured financial institution authorized to do business in the United States;
  - (2) Irrevocable letters of credit issued by a federally insured financial institution authorized to do business in the United States;
  - (3) Negotiable Treasury securities; or
  - (4) Surety bonds issued by a company approved by the U.S. Department of the Treasury.
- (b) The Community may accept an alternative form of security approved by the Community Council that provides adequate protection for the Community, including but not limited to an escrow agreement and assigned savings account.
- (c) All forms of Bonds must, if applicable:
  - (1) Indicate on their face that the Community's approval is required for redemption;
  - (2) Be accompanied by a statement granting full authority to the Community to make an immediate claim upon or sell them if the Lessee violates the Commercial Lease;
  - (3) Be irrevocable during the term of the Bond; and
  - (4) Be automatically renewable during the term of the Commercial Lease.
- (d) The Community will not accept cash bonds.

**§ 423 What is the release process for a Bond under a Commercial Lease?**

- (a) Upon expiration, termination, or cancellation of the Commercial Lease, the Lessee may ask the Community in writing to release the Bond.
- (b) Upon receiving a request under paragraph (a) of this section, the Community will:
  - (1) Confirm whether the Lessee has complied with all obligations under the Commercial Lease; and
  - (2) Release the Bond to the Lessee, unless the Community determines that the Bond must be retained pending completion by Lessee of such obligations or that the Bond must be redeemed to fulfill the obligations of the Lessee.

**§ 424 Must a Lessee provide insurance for a Commercial Lease?**

Except as provided in paragraph (d) of this section, a Lessee must provide insurance necessary to protect the interests of the Community and in the amount sufficient to protect all insurable Improvements on the Lease Premises.

- (a) The insurance coverage shall include property, crop, liability, business interruption and casualty insurance, as appropriate, and such other coverage as may be required depending on the Community's interests to be protected.
- (b) Both the Community and the United States must be identified as additional insured parties.
- (c) The insurance shall be provided by a nationally accredited insurance company with a financial strength rating of at least "A" or equivalent, and authorized to do business in the state of Arizona.
- (d) The Community may waive or modify any requirement for insurance if the Community determines, in its sole discretion, that such waiver or modification is warranted.

**Approval**

**§ 425 What documents are required for execution of a Commercial Lease by the Community?**

The following documents will be required to obtain execution of a Commercial Lease by the Community:

- (a) A Commercial Lease executed by the Lessee that meets the relevant requirements of these Regulations;
- (b) The Community Council's resolution or other Community Council authorization for the Lease and, if applicable, meeting the requirements of §§ 412(a), 417(b),



and 419(a), or a separate signed certification meeting the requirements of §§ 417(b) and 419(a));

- (c) A valuation, if required under § 412 or § 413;
- (d) Proof of insurance, if required under § 424;
- (e) A Bond, if required under § 421;
- (f) Opinion of the Office of General Counsel that the proposed use is in conformance with applicable Community Law, if required by the Community;
- (g) Environmental and archeological reports, surveys, and site assessments as needed to facilitate compliance with applicable federal and tribal environmental and land use requirements, including any documentation prepared under § 021 or required under Part G;
- (h) A restoration and reclamation plan (and any subsequent modifications to the plan), if appropriate;
- (i) Where the Lessee is not an entity owned and operated by the Community, documents that demonstrate the technical capability of the Lessee or Lessee's contractors or agents to construct, operate, maintain, and complete the proposed project and the Lessee's ability to successfully design, construct, or obtain the funding for a project similar to the proposed project, if appropriate;
- (j) A preliminary plan of development that describes the type and location of any Improvements the Lessee plans to construct and a schedule showing the tentative commencement and completion dates for those improvements, if appropriate;
- (k) A legal description of the land under § 410;
- (l) Information to assist the Community's evaluation of the factors in these Regulations; and
- (m) If the Lessee is a corporation, limited liability company, partnership, joint venture, or other legal entity, except a Community entity, information such as organizational documents, certificates, filing records, and resolutions, that demonstrates that:
  - (1) The representative that has executed the Commercial Lease has authority to do so;
  - (2) The Commercial Lease will be enforceable against the Lessee; and
  - (3) The legal entity is in good standing and authorized to conduct business in the State of Arizona.

**§ 426 What is the approval process for a Commercial Lease?**

- (a) No Commercial Lease shall be approved more than twenty-four (24) months prior to the proposed commencement of the term of the Commercial Lease.
- (b) Before the Community Council approves a Commercial Lease, it must:
  - (1) Review the Commercial Lease and supporting documents and required consents;
  - (2) Identify potential environmental impacts and ensure compliance with all applicable environmental laws, land use laws, and ordinances;
  - (3) Assure that adequate consideration has been given to the factors in 25 U.S.C. 415(a) and (h); and
  - (4) Require any Commercial Lease modifications or mitigation measures necessary to satisfy any requirements of these Regulations, including Part G, and any other federal or tribal land use requirements.

**§ 427 When will a Commercial Lease be effective?**

- (a) A Commercial Lease, upon approval by the Community Council and execution by all parties to the Commercial Lease, will be effective:
  - (1) as of a specified date on which the obligations between the parties to the Commercial Lease are triggered; or
  - (2) if no alternative effective date is specified, as of the date of the Commercial Lease; or
  - (3) if the Commercial Lease is not dated and no alternative effective date is specified, upon the first date that approval of the Community Council and signature by all parties to the Commercial Lease all have occurred.

**§ 428 Must a Commercial Lease Document be recorded?**

- (a) The Community shall record all Lease Documents with the:

Bureau of Indian Affairs  
Pima Agency Offices  
PO Box 8-104  
N. Main St., Bldg. #4  
Sacaton, AZ 85147

- (b) The Community is responsible for disseminating recorded Lease Documents to the Lessee and to appropriate Community offices and officials.
- (c) A copy of each Lease Document shall be sent for information purposes only to the Superintendent, Pima Agency, Bureau of Indian Affairs, Box 8, Sacaton, Arizona 85247, pursuant to 25 U.S.C. § 415 et seq.

Approval of Subleases, Assignments, Leasehold Mortgages, and Amendments

**§ 429 What are the consent requirements for a Sublease, Assignment, Leasehold Mortgage, or amendment of a Commercial Lease?**

- (a) Subject only to paragraphs (b) and (c) of this section, Subleases, Assignments, Leasehold Mortgages, and amendments of any Commercial Lease shall require the written agreement of the Community, Lessee, and any Sureties or Mortgagees.
- (b) A Commercial Lease may authorize Lessee to enter into Subleases, in whole or in part, without approval of the Community, provided that such Sublease shall not relieve Lessee from carrying out its obligations to Community under the Lease, and that a copy of the executed Sublease is provided to the Community within thirty (30) Days of execution.
- (c) A Commercial Lease may authorize Lessee to assign, transfer, or amend a Lease, in whole or in part, without approval of the Community, provided that such Assignment, transfer, or amendment shall not relieve Lessee from carrying out its obligations to the Community under the Lease, and that a copy of the executed Assignment, transfer, or amendment is provided to the Community within thirty (30) Days of execution.
- (d) A Commercial Lease may authorize Leasehold Mortgages of the Lessee's leasehold interest with the prior written approval of the Community for the purpose of securing a line of credit to develop and improve the Leased Premises. If a sale or foreclosure occurs and the Mortgagee is the purchaser, the Mortgagee may assign the Commercial Lease without approval of the Community or Lessee, provided the assignee agrees in writing to be bound by all the terms and conditions of the Commercial Lease. If the purchaser is a party other than the Mortgagee, prior written approval of the Community is required and will not unreasonably be withheld where the purchaser is creditworthy and otherwise capable of performing its obligations under the Commercial Lease and the purchaser agrees in writing to be bound by all the terms and conditions of the Commercial Lease.

Enforcement

**§ 430 May the Community investigate compliance with a Commercial Lease?**

- (a) The Community may enter the Leased Premises at any reasonable time, upon reasonable notice, and consistent with any notice requirements under applicable Community Law and applicable Lease Documents, to protect the interests of the Community and to determine if the Lessee and any Sublessee is in compliance with the requirements of the Commercial Lease and any applicable sublease.
- (b) If a Lessee or a Sublessee causes or threatens to cause immediate and significant harm to the Leased Premises, or undertakes criminal activity thereon, the Community may take appropriate emergency action, which includes securing judicial relief.

**§ 431 May a Commercial Lease provide for negotiated remedies if there is a Violation?**

- (a) A Commercial Lease of Community Trust Land may provide either or both parties with negotiated remedies in the event of a Violation, including, but not limited to, the power to terminate the Commercial Lease.
- (b) The parties must notify any Surety or Mortgagee of any Violation that may result in termination and the termination of a Commercial Lease.
- (c) A Commercial Lease may provide that Violations will be addressed by a process established by the Community, and that Lease disputes will be resolved by a Community Court or through an alternative dispute resolution method.

**§ 432 What will the Community do about a Violation of a Commercial Lease?**

- (a) Enforcement:
  - (1) The Community shall have all powers necessary and proper to enforce the terms of a Commercial Lease and related laws, ordinances, regulations, rules, policies, and covenants. This authority shall include the power to enter the Leased Premises at a reasonable time, with or without notice, to assess penalties, and to assess late payments.
  - (2) The Community may request the BIA to assist in enforcement of Commercial Leases and these Regulations.
- (b) Violations:
  - (1) If the Community determines the Lessee or a Sublessee has committed a Violation, the Community shall send the Lessee or Sublessee a notice of the Violation within a reasonable time of the determination. The notice of Violation may be provided by certified mail, return receipt requested.
  - (2) Within ten (10) Days of delivery, the Lessee or Sublessee shall:

- (i) Cure the Violation and notify the Community in writing that the Violation has been cured;
    - (ii) Dispute the Community's determination of the existence of a Violation and explain why the Commercial Lease should not be canceled; or
    - (iii) Request additional time to cure the Violation.
  - (3) A Lessee or Sublessee may dispute the Community's determination that a Violation of the Commercial Lease exists pursuant to the dispute resolution provisions of the Commercial Lease.
- (c) Remedies:
- (1) If the Lessee or Sublessee fails to cure the Violation within the prescribed time period, the Community may:
    - (i) Cancel the Commercial Lease pursuant to these Regulations;
    - (ii) Grant the Lessee or Sublessee an extension of time to cure the Violation;
    - (iii) Pursue other remedies, including execution on Bonds or collection of insurance proceeds; or
    - (iv) Any combination of remedies listed above.
  - (2) If the Community cancels the Lease or Sublease, the Community shall send the Lessee or Sublessee a cancellation letter within a reasonable time period. The cancellation letter may be sent to the Lessee or Sublessee by certified mail, return receipt requested. The cancellation letter shall:
    - (i) Explain the grounds for cancellation;
    - (ii) Notify the Lessee or Sublessee of unpaid amounts, interest charges, late payment penalties and other administrative fees associated with Lease compliance activities due under the Commercial Lease or Sublease and pursuant to §022 herein; and
    - (iii) Order the Lessee or Sublessee to vacate the premises within thirty (30) Days of delivery of the cancellation letter, if Lessee or Sublessee does not invoke the dispute resolution provisions in accordance with the Commercial Lease before the expiration of the thirty (30) Day period.

- (3) A cancellation shall become effective thirty-one (31) Days after delivery. If the Lessee invokes the dispute resolution procedures in the Lease, the effective date of cancellation shall not change. Pending the outcome of any dispute resolution proceedings, the Lessee or Sublessee shall make all requisite payments, as well as comply with the terms of the Commercial Lease.
- (4) If the Community decides to grant an extension of time to the Lessee or Sublessee so that the Lessee or Sublessee may cure the Violation, the Lessee or Sublessee shall proceed diligently to perform and complete the corrective actions prior to the expiration of the time extension.

**§ 433 Will late payment charges or special fees apply to delinquent payments due under a Commercial Lease?**

The Commercial Lease shall specify the rate of interest and any additional late payment penalties to be assessed against the Lessee if the Lessee fails to make payments in a timely manner. 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 Community, and the failure to pay such amounts shall be treated as a breach of the Lease. If the Commercial Lease is silent as to rate of interest, late payment penalties, or special fees, the Community will assess charges and fees in the amounts set forth in Appendix A hereto.

**§ 434 How will payment rights relating to a Commercial Lease be allocated?**

The Commercial Lease may allocate rights to payment for insurance proceeds, Trespass damages, condemnation awards, settlement funds, and other payments between the Community and the Lessee. If not specified in the Commercial Lease, insurance policy, order, award, judgment, or other document, the Community or Lessee will be entitled to receive these payments.

**§ 435 What will the Community do if a Lessee remains in possession after a Commercial Lease expires or is terminated or cancelled?**

- (a) If a Lessee remains in possession after the expiration or cancellation of a Commercial Lease, the Community shall treat such occupation as a Trespass.
- (b) If a Lessee remains in possession of the Leased Premises after the expiration of a Commercial Lease and the Commercial Lease includes provisions permitting the Lessee to remain in possession of the Leased Premises during the period of time that a new Commercial Lease is being negotiated, then the Commercial Lease shall govern the holdover tenancy and it shall not be considered a Trespass under these Regulations.
- (c) In the event of Trespass by Lessee, the Community shall take action to recover possession and pursue additional remedies. Any such filing shall be pursuant to

Community Law, or the Community may petition the BIA for resolution under federal laws.

**§ 436 Will Bond requirements apply to cancellation decisions involving Commercial Leases?**

- (a) Any Bond required to ensure Lessee's performance of its obligations shall remain in force pending conclusion of dispute resolution proceeding invoked by Lessee in response to a cancellation notice from the Community, and shall cover damage to the Community from deferring any action pending such proceedings in the event Lessee is unsuccessful.
- (b) The Commercial Lease may provide that, in the event no Bond is in place covering the general performance obligations of Lessee, a Bond may be required in the case of Lessee's dispute of a cancellation notice. Such Bond shall be in an amount reasonably estimated to cover damage to the Community from deferring any action pending such proceedings in the event Lessee is unsuccessful.

**§ 437 What happens if the Lessee abandons the Leased Premises?**

If a Lessee abandons the Leased Premises, the Community will treat the abandonment as a Violation. The Commercial Lease may specify a period of non-use after which the Leased Premises will be considered abandoned.

**Part E—Solar Resource Leases**

*General Provisions Applicable to Solar Resource Leases*

**§ 501 What types of Leases does this part cover?**

- (a) Part E covers Solar Resource Leases.
- (b) If the generation of electricity is solely to support a use approved under a Commercial Lease for the same parcel of land, then the installation, operation, and maintenance of instrumentation, facilities, and associated infrastructure are governed by Subpart D as appropriate.

**§ 502 Who must obtain a SRL?**

- (a) Except as provided in §501(b) and 25 CFR §162.501(b), anyone seeking to possess Community Trust Land to conduct activities associated with the development of solar resources must obtain a SRL.
- (b) Solar resource activities conducted by the Community on Community Trust Land does not need an SRL under this subpart.

**§ 503 What is the purpose of a SRL?**

A SRL authorizes a Lessee to possess Community Trust Land to conduct activities related to the installation, operation, and maintenance of solar energy resource development projects.

**§ 504 How long may the term of a SRL run?**

A SRL must provide for a definite term, state if there is an option to renew, and if so, provide for a definite term for the renewal period. The maximum term of SRL may not exceed fifty (50) years (consisting of an initial term not to exceed twenty-five (25) years and one renewal not to exceed twenty-five (25) years).

**§ 505 What must the SRL include if it contains an option to renew?**

- (a) If the SRL provides for an option to renew, the SRL must specify:
  - (1) The time and manner in which the option must be exercised or is automatically effective;
  - (2) Whether Community consent to the renewal is required;
  - (3) That the Lessee must provide notice of the renewal to the Office of General Counsel and the Pima Leasing & Financing Corporation;
  - (4) That the Lessee must provide notice of the renewal to any Sureties and Mortgagees;
  - (5) The additional consideration, if any, that will be due upon the exercise of the option to renew or the start of the renewal term; and
  - (6) Any other conditions for renewal (e.g., that the Lessee not be in Violation of the SRL at the time of renewal)
- (b) SRL renewals will be recorded in the LTRO.

**§ 506 Are there mandatory provisions a SRL must contain?**

- (a) All SRLs must identify:
  - (1) The tract or parcel of land constituting the Leased Premises;
  - (2) The purpose of the SRL and authorized uses of the Leased Premises;
  - (3) The parties to the SRL;



- (4) The term of the SRL, including the effective date;
  - (5) The ownership of permanent improvements and the responsibility for constructing, operating, maintaining, and managing, SRL equipment, roads, transmission lines and related facilities;
  - (6) Who is responsible for evaluating the Leased Premises for suitability; purchasing, installing, operating, and maintaining SRL equipment; negotiating power purchase agreements; and transmission;
  - (7) Payment requirements and late payment charges, including interest;
  - (8) Due diligence requirements, under § 510;
  - (9) Insurance requirements, under § 519; and
  - (10) Bonding requirements under § 516. If a Bond is required, the SRL must state that the Lessee must obtain the consent of the Surety for any legal instrument that directly affects their obligations and liabilities.
- (b) Where a representative executes a SRL on behalf of a Lessee, the SRL must identify the Lessee being represented and the authority under which such action is taken.
- (c) All SRLs must include the following provisions:
- (1) The obligations of the Lessee and its Sureties to the Community are also enforceable by the United States, so long as the land remains in trust or restricted status;
  - (2) There must not be any unlawful conduct, creation of a nuisance, illegal activity, or negligent use or waste of the Leased Premises;
  - (3) The Lessee must comply with all applicable laws, ordinances, rules, regulations, and other legal requirements;
  - (4) If historic properties, archeological resources, human remains, or other cultural items not previously reported are encountered during the course of any activity associated with the SRL, all activity in the immediate vicinity of the properties, resources, remains, or items will cease and the Lessee will contact the Tribal Historic Preservation Officer, who will determine how

to proceed and appropriate disposition;

- (5) The Community has the right, at any reasonable time during the term of the SRL and upon reasonable notice, in accordance with § 528, to enter the Leased Premises for inspection and to ensure compliance; and
  - (6) The Community may, at its discretion, treat as a Violation any failure by the Lessee to cooperate with a Community request to make appropriate records, reports, or information available for Community inspection and duplication.
- (d) Unless the Lessee would be prohibited by law from doing so, the SRL must also contain the following provisions:
- (1) The Lessee holds the Community and the United States harmless from any loss, liability, or damages resulting from the Lessee's use or occupation of the Leased Premises; and
  - (2) The Lessee indemnifies the Community and the United States against all liabilities or costs relating to the use, handling, treatment, removal, storage, transportation, or disposal of hazardous materials, or the release or discharge of any hazardous material from the Leased Premises that occurs during the term, regardless of fault, with the exception that the Lessee is not required to indemnify the Community for liability or cost arising from the Community's negligence or willful misconduct.

#### **§ 507 May permanent improvements be made under a SRL?**

A SRL must provide for the installation of a facility and associated infrastructure of a size and magnitude necessary for the generation and delivery of electricity. These facilities and associated infrastructure are considered permanent improvements. A resource development plan must be submitted for approval with the SRL under § 520(h).

#### **§ 508 How must a SRL address ownership of permanent improvements?**

- (a) A SRL must specify who will own any permanent improvements the Lessee installs during the term and may specify under what conditions, if any, permanent improvements the Lessee constructs may be conveyed to the Community during the term. In addition, the SRL must indicate whether each specific permanent improvement the Lessee installs will:
  - (1) Remain on the Leased Premises upon the expiration, termination, or cancellation of the SRL, in a condition satisfactory to the Community

and become the property of the Community;

- (2) Be removed within a time period specified in the SRL, at the Lessee's expense, with the Leased Premises to be restored as closely as possible to their condition before installation of the permanent improvements; or
  - (3) Be disposed of by other specified means.
- (b) A SRL that requires the Lessee to remove the permanent improvements must also provide the Community with an option to take possession of and title to the permanent improvements if the improvements are not removed within the specified time period.

**§ 509 How will the Community enforce removal requirements in a SRL?**

- (a) The Community may take appropriate enforcement action to ensure removal of the permanent improvements and restoration of the premises at the Lessee's expense before or after expiration, termination, or cancellation of the SRL.
- (b) The Community may collect and hold the Bond until removal and restoration are completed.

**§ 510 What requirements for due diligence must a SRL include?**

- (a) A SRL must include due diligence requirements that require the Lessee to:
  - (1) Commence installation of energy facilities within two (2) years after the effective date of the SRL or consistent with a timeframe in the resource development plan;
  - (2) If installation does not occur, or is not expected to be completed, within the time period specified in paragraph (a)(1) of this section, provide the Community 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) Maintain all on-site electrical generation equipment and facilities and related infrastructure in accordance with the design standards in the resource development plan; and
  - (4) Repair, place into service, or remove from the site within a time period specified in the SRL any idle, improperly functioning, or abandoned equipment or facilities that have been inoperative for a continuous period specified in the SRL (unless the equipment or facilities were idle as a result of planned suspension of operations, for example, for grid

operations).

- (b) Failure of the Lessee to comply with the due diligence requirements of the SRL is a Violation and may lead to cancellation of the SRL under § 432.

**§ 511 How must a SRL describe the Leased Premises?**

- (a) A SRL must describe the Leased Premises by reference to a private or public survey, such survey shall meet the standards required by the Community's Department of Land Use Planning & Zoning and in such form and detail as required by the Community and be of sufficient detail to meeting recording requirements for the LTRO. If the land cannot be so described, the SRL must include one or more of the following:
  - (1) A legal description;
  - (2) A survey-grade global positioning system description; or
  - (3) Another description prepared by a registered land surveyor that meets the standards required by the Community's Department of Land Use Planning & Zoning and in such form and detail as required by the Community.
- (b) If the tract is fractionated, BIA will identify the undivided trust or restricted interests in the Leased Premises.

**§ 512 May a SRL allow compatible uses?**

The SRL may authorize others to use the Leased Premises for other uses compatible with the purpose of the SRL and consistent with the terms of the SRL. This may include the right to lease the premises for other compatible purposes. Any such use will not reduce or offset the monetary compensation for the SRL.

**§ 513 When are monetary compensation payments due under a SRL?**

A SRL must specify the dates on which all payments are due.

**§ 514 May a SRL provide for non-monetary or varying types of compensation?**

- (a) A SRL may provide for the following:
  - (1) Alternative forms of compensation, including but not limited to, in-kind consideration and payments based on percentage of income; or
  - (2) Varying types of consideration at specific stages during the life of the SRL, including but not limited to fixed annual payments during

installation, payments based on income during an operational period, and bonuses.

**§ 515 What other types of payments are required under a SRL?**

- (a) The Lessee may be required to pay additional fees, taxes, and assessments associated with the use of the land, as determined by the Community. The Lessee must pay these amounts to the appropriate office at the Community.
- (b) If the Leased Premises are within an Indian irrigation project or drainage district, except as otherwise provided in part 171 of Title 25 of the C.F.R., the Lessee must pay all operation and maintenance charges that accrue during the Commercial Lease term. The Lessee must pay these amounts to the appropriate office in charge of the irrigation project or drainage district. The Community will treat failure to make these payments as a Violation.

**SRL Bonding and Insurance**

**§ 516 Must a Lessee provide a Bond for a SRL?**

The Lessee must provide a Bond or alternative form of security, except as provided in paragraph (f) of this section.

- (a) The Bond or alternative form of security must be in an amount sufficient to secure the contractual obligations including:
  - (1) No less than:
    - (i) The highest annual rental specified in the SRL, if the compensation is paid annually; or
    - (ii) If the compensation is not paid annually, another amount established by the Community;
  - (2) The installation of any required permanent improvements;
  - (3) The operation and maintenance charges for any land located within an irrigation project; and
  - (4) The restoration and reclamation of the Leased Premises, to their condition at the start of the term or some other specified condition.
- (b) The Bond or other security must be deposited with, and made payable to, the Community, and may not be modified without the Community's approval.
- (c) The SRL must specify the conditions under which security or Bond requirements may be adjusted to reflect changing conditions.

- (d) The Community may require that the Surety provide any supporting documents needed to show that the Bond or alternative forms of security will be enforceable, and that the Surety will be able to perform the guaranteed obligations.
- (e) The Bond or other security instrument must require the Surety to provide notice to the Community at least sixty (60) Days before canceling a Bond or other security. This will allow the Community to notify the Lessee of its obligation to provide a substitute Bond or other security and require collection of the bond or security before the cancellation date. Failure to provide a substitute Bond or security is a Violation.
- (f) The Community may waive the requirement for a Bond or alternative forms of security, or reduce the amount of the Bond or security required, if doing so is in the Best Interest of the Community.

**§ 517 What forms of security are acceptable under a SRL?**

- (a) A Bond must be in only one of the following forms:
  - (1) Certificates of deposit issued by a federally insured financial institution authorized to do business in the United States;
  - (2) Irrevocable letters of credit issued by a federally insured financial institution authorized to do business in the United States;
  - (3) Negotiable Treasury securities; or
  - (4) Surety bonds issued by a company approved by the U.S. Department of the Treasury.
- (b) The Community, at its sole discretion, may accept an alternative form of security that provides adequate protection for the tribe, including but not limited to an escrow agreement and assigned savings account.
- (c) All forms of Bonds or alternative security must, if applicable:
  - (1) Indicate on their face that the Community approval is required for redemption;
  - (2) Be accompanied by a statement granting full authority to the Community to make an immediate claim upon or sell them if there is a Violation by Lessee;
  - (3) Be irrevocable during the term of the Bond or alternative security; and

- (4) Be automatically renewable during the term.
- (d) The Community will not accept cash bonds.

**§ 518 What is the release process for a Bond or alternative form of security under a SRL?**

- (a) Upon expiration, termination, or cancellation of the SRL, the Lessee must ask the Community in writing to release the Bond or alternative form of security.
- (b) Upon receiving the request under paragraph (a) of this section, the Community will:
  - (1) Confirm that the Lessee has complied with all SRL obligations and the requirements of these Regulations; and
  - (2) Release the Bond or alternative form of security to the Lessee unless the Community determines that the bond or security must be redeemed to fulfill the contractual obligations.

**§ 519 Must a Lessee provide insurance for a SRL?**

Except as provided in paragraph (d) of this section, a Lessee must provide insurance necessary to protect the interests of the Community and in the amount sufficient to protect all insurable Improvements on the Lease Premises.

- (a) The insurance coverage shall include property, liability, business interruption and casualty insurance, as appropriate, and such other coverage as may be required depending on the Community's interests to be protected.
- (b) Both the Community and the United States must be identified as additional insured parties.
- (c) The insurance shall be provided by a nationally accredited insurance company with a financial strength rating of at least "A" or equivalent, and authorized to do business in the state of Arizona.
- (d) The Community may waive or modify any requirement for insurance if the Community determines, in its sole discretion, that such waiver or modification is warranted.

*SRL Approval*

**§ 520 What documents are required for Community approval of a SRL?**

A Lessee must submit the following documents to the Community to obtain approval of a SRL:

- (a) A SRL executed by the Lessee that meets the requirements of this Part;
- (b) Proof of insurance, if required under § 519;
- (c) The Community Council's resolution or other Community Council authorization for the SRL;
- (d) A valuation, if required;
- (e) A Bond or alternative form of security, if required under § 516;
- (f) Environmental and archeological reports, surveys, and site assessments as needed to facilitate compliance with applicable federal and tribal environmental and land use requirements, including any documentation prepared under § 021 or required under Part G;
- (g) A restoration and reclamation plan (and any subsequent modifications to the plan);
- (h) Where the Lessee is not an entity owned and operated by the Community, documents that demonstrate the technical capability of the Lessee or Lessee's contractors or agents to construct, operate, maintain, and complete the proposed project and the Lessee's ability to successfully design, construct, or obtain the funding for a project similar to the proposed project, if appropriate;
- (i) A resource development plan that describes the type and location of any permanent improvements the Lessee plans to install and a schedule showing the tentative commencement and completion dates for those improvements;
- (j) A legal description of the land under § 511;
- (k) Information to assist the Community's evaluation of the factors in these Regulations; and
- (l) If the Lessee is a corporation, limited liability company, partnership, joint venture, or other legal entity, except a Community Entity, information such as organizational documents, certificates, filing records, and resolutions, that demonstrates that:
  - (1) The representative that has executed the SRL has authority to do so;
  - (2) The SRL will be enforceable against the Lessee; and
  - (3) The legal entity is in good standing and authorized to conduct business in the State of Arizona.

**§ 521 Must a SRL Lease Document be recorded?**



- (a) The Community shall record all SRL Documents with the:
- Bureau of Indian Affairs  
Pima Agency Offices  
PO Box 8-104  
N. Main St., Bldg. #4  
Sacaton, AZ 85147
- (b) The SRL will be recorded immediately following its approval.
- (c) If approval of an Assignment or Sublease is not required, the Community shall record the Assignment or Sublease in the LTRO for the Southwest region.
- (d) The Community is responsible for disseminating recorded SRL Documents to the Lessee and to appropriate Community offices and officials.
- (d) A copy of each SRL Document shall be sent for information purposes only to the Superintendent, Pima Agency, Bureau of Indian Affairs, Box 8, Sacaton, Arizona 85147, pursuant to 25 U.S.C. § 415 et seq.
- (e) The Community shall record SRL Lease Documents for the following types of SRLs in the LTRO for the Southwest region:
- (1) SRLs of Community Trust Land that a corporate entity leases to a third party under 25 U.S.C. § 477; and
  - (2) SRLs of Community Trust Land under a special act of Congress.

#### SRL Amendments

##### **§ 522 May the Parties amend a SRL?**

Amending a SRL requires the Lessee's and Community's signature.

#### SRL Assignments

##### **§ 523 May a Lessee assign a SRL?**

- (a) A Lessee may assign a SRL by obtaining the Community's approval of the Assignment under § 429 or by meeting the conditions in paragraphs (b) or (c) of this section.
- (b) Where provided for in the SRL, the Lessee may assign the SRL to the following without meeting consent requirements or obtaining approval of the Assignment, as long as the Lessee notifies the Community of the Assignment within thirty (30) Days after it is executed:

- (1) Not more than three (3) distinct legal entities specified in the SRL; or
  - (2) The Lessee's wholly owned subsidiaries.
- (c) The Lessee may assign the SRL without the Community's approval or meeting consent requirements if:
- (1) The assignee is a Mortgagee or its designee, acquiring the SRL either through foreclosure or by conveyance;
  - (2) The assignee agrees in writing to assume all of the obligations and conditions of the SRL; and
  - (3) The assignee agrees in writing that any transfer of the SRL will be in accordance with applicable law under § 011.

#### SRL Subleases

##### **§ 524 May a Lessee sublease a SRL?**

- (a) A Lessee may sublease a SRL by obtaining the Community's approval of the Sublease, under § 429, or by meeting the conditions in paragraph (b) of this section.
- (b) The Lessee may sublease without meeting consent requirements, if:
- (1) The SRL provides for subleasing without meeting consent requirements;
  - (2) The Sublease does not relieve the Lessee/sublessor of any liability; and
  - (3) The Lessee provides the Community with a copy of the Sublease within thirty (30) Days after it is executed.

#### SRL Leasehold Mortgages

##### **§ 525 May a Lessee mortgage a SRL?**

A Lessee may mortgage a SRL by obtaining Community approval of the Leasehold Mortgage under § 526.

##### **§ 526 What is the approval process for a Leasehold Mortgage of a SRL?**

When the Community receives a Leasehold Mortgage that meets the requirements of this subpart, the Community will notify the parties of the date the Community received it. The Community has twenty (20) Days from receipt of the executed Leasehold Mortgage, proof of required consents, and required documentation to approve or disapprove the Leasehold Mortgage. The Community's determination whether to approve the Leasehold Mortgage will be in writing and will state the basis for its approval or disapproval.

*SRL Effectiveness, Compliance, and Enforcement*

**§ 527 When will an amendment, Assignment, Sublease, or Leasehold Mortgage of a SRL be effective?**

- (a) An amendment, Assignment, Sublease, or Leasehold Mortgage of a SRL will be effective when approved, except:
  - (1) If the amendment or Sublease was deemed approved under §429 or §524(b) , the amendment or Sublease becomes effective forty-five (45) Days from the date the parties mailed or delivered the document to the Community for review or, if the Community sent a letter informing the parties that the Community needs additional time to approve or disapprove the SRL, the amendment or Sublease becomes effective forty-five (45) Days from the date of the letter informing the parties that the Community needs additional time to approve or disapprove the SRL; and
  - (2) An Assignment that does not require approval under § 523(b) or a Sublease that does not require approval under § 524(b) becomes effective on the effective date specified in the Assignment or Sublease. If the Assignment or Sublease does not specify the effective date, it becomes effective upon execution by the parties.

**§ 528 May the Community investigate compliance with a SRL?**

- (a) The Community may enter the Leased Premises at any reasonable time, upon reasonable notice, and consistent with any notice requirements under applicable Community Law and applicable Lease Documents, to protect its interests and to determine if the Lessee is in compliance with the requirements of the SRL.
- (b) If a Lessee causes or threatens to cause immediate and significant harm to the Leased Premises, or undertakes criminal activity thereon, the Community may take appropriate emergency action, which includes securing judicial relief.

**§ 529 May a SRL provide for negotiated remedies if there is a Violation?**

- (a) A SRL of Community Trust Land may provide either or both parties with negotiated remedies in the event of a Violation, including, but not limited to, the power to terminate the SRL.
- (b) The parties must notify any Surety or Mortgagee of any Violation that may result in termination and the termination of a SRL.
- (c) Negotiated remedies may apply in addition to, or instead of, the cancellation remedy, as specified in the SRL.

- (d) A SRL may provide that Violations will be addressed by a process established by the Community, and that lease disputes will be resolved by a Community Court or through an alternative dispute resolution method. The Community shall be bound to any dispute resolution process to which it agrees in the SRL or by separate agreement.

**§ 530 Will late payment charges or special fees apply to delinquent payments due under a SRL?**

The SRL shall specify the rate of interest and any additional late payment penalties to be assessed against the Lessee if the Lessee fails to make payments in a timely manner. Unless the SRL provides otherwise, interest charges and late payment penalties shall apply in the absence of any specific notice to the Lessee from the Community, and the failure to pay such amounts shall be treated as a Violation and a breach of the SRL. If the SRL is silent as to rate of interest, late payment penalties, or special fees, the Community will assess charges and fees in the amounts set forth in Appendix A hereto.

**§ 531 When will a cancellation of a SRL be effective?**

A cancellation involving a SRL shall become effective thirty-one (31) Days after delivery. If the Lessee invokes the dispute resolution procedures in the SRL, the effective date of cancellation shall not change. Pending the outcome of any dispute resolution proceedings, the Lessee shall make all requisite payments, as well as comply with the terms of the SRL.

**§ 532 What will the Community do if a Lessee remains in possession after a SRL expires or is terminated or cancelled?**

If a Lessee remains in possession after the expiration, termination, or cancellation of a SRL, the Community may treat the unauthorized possession as a Trespass under applicable law.

**§ 533 What happens if the Lessee abandons the Leased Premises?**

If a Lessee abandons the Leased Premises, the Community will treat the abandonment as a Violation. The SRL may specify a period of non-use after which the Leased Premises will be considered abandoned.

**Part F—Records**

**§ 601 Who owns the records associated with these Regulations?**

Records compiled, developed, or received by the Community pursuant to these Regulations are the property of the Community.

**§ 602 How must records associated with these Regulations be preserved?**

- (a) Records identified in § 601(a) of these Regulations and held by the Community will be preserved in accordance with approved Department of the Interior records retention procedures under the Federal Records Act, 44 U.S.C. Chapters 29, 31 and 33. These records and related records management practices and safeguards required under the Federal Records Act are subject to inspection by the Secretary and the Archivist of the United States.
- (b) The Community will preserve the records identified in § 601(b) of these Regulations, for the period of time authorized by the Archivist of the United States for similar Department of the Interior records under 44 U.S.C. Chapter 33.

**§ 603 How does the Paperwork Reduction Act affect these Regulations?**

The Community is exercising authority granted to the Community under 25 U.S.C. § 415(h) pursuant to these Regulations and the Paperwork Reduction Act does not apply.

**Part G—Gila River Environmental Review Process**

**§ 701 Purpose and Scope of this Part.**

- (a) The purpose of this Part is to ensure that prior to approval of any Lease or Permit pursuant to these Regulations, a process is followed that:
  - (1) identifies and evaluates any Significant Effect on the Environment of a proposed leasing transaction or Permit issuance;
  - (2) ensures that Community members and non-member residents of the Reservation are informed of, and have a reasonable opportunity to comment on, any Significant Effect on the Environment of the proposed leasing transaction or Permit issuance identified by the Community; and
  - (3) the Community provides responses to relevant and substantive comments from Community members and non-member residents of the Reservation on any Significant Effect on the Environment before the Community approves the Lease or Permit.
- (b) No Lease or Permit shall be approved until the NRSC has issued a Statement of Determination and Recommendation under the Gila River Environmental Review Process, or has otherwise determined that these Regulations do not apply or that the proposed leasing transaction or Permit issuance falls within a Categorical Exclusion specified in § 702(b) of these Regulations.
- (c) Leases or Permits that are not in compliance with this section shall be null and void *ab initio*.

- (d) The NRSC shall be responsible for:
  - (1) implementing the GRER Process;
  - (2) determining whether or not the Applicant must consult with federal and state governments;
  - (3) developing an environmental assessment form (EAF) for evaluations conducted under the GRER Process within ninety (90) Days of final approval of these Regulations.

**§ 702 Purpose and Scope of an EAF and when it must be prepared.**

- (a) The purpose of an EAF is to allow the NRSC to identify and evaluate the Significant Effects on the Environment of a proposed Lease or Permit or related transactions.
- (b) An EAF shall be prepared for all proposed Leases, Permits, and related transactions covered by these Regulations, except for the following Categorical Exclusions:
  - (1) Activities already contemplated under a Lease for which an environmental review was already completed;
  - (2) Renewals, extensions and amendments to existing Leases or Permits where the activities authorized under the Lease or Permit will not materially change;
  - (3) Placement of temporary structures or instruments on Community Trust Land for the purpose of measuring renewable energy potential;
  - (4) Authorized Subleases and Permit transfers where the activities authorized under the original Lease or Permit will not materially change; and
  - (5) Commercial Space Leases, where the use under such lease is consistent with existing uses in the existing Community building or facility.

**§ 703 The GRER Process**

- (a) Initiation of the GRER Process
  - (1) Prior to commencing a Lease or undertaking an activity requiring a Permit, an Applicant shall initiate the GRER process by submitting electronic copies of the completed EAF via email or delivery on a compact disc or other electronic storage medium to the NRSC and the Gila River Indian Community Office of General Counsel.

- (2) Upon receiving a completed EAF from an Applicant, NRSC shall determine whether the Applicant has properly completed the EAF and shall notify the Applicant of its determination, as follows:
    - (i) If NRSC determines the EAF is complete, NRSC shall notify the Applicant that the EAF has been accepted for review.
    - (ii) If NRSC determines that the EAF is not complete, NRSC shall notify the Applicant of its determination, and instruct the Applicant to complete the EAF and re-submit it for review.
  - (3) Where an Applicant re-submits an EAF pursuant to subsection (a)(2)(ii), NRSC shall make a completeness determination and provide notification pursuant to the procedures in subsection (a)(2).
    - (i) Soliciting Community Agency Input on EAF
  - (4) NRSC shall provide copies of a completed EAF to the following Community agencies: Department of Land Use Planning and Zoning; Department of Environmental Quality; and Cultural Resources Management Program.
  - (5) Within fifteen (15) Days of receiving an EAF from NRCS, each Community agency shall provide comments to NRCS, if any, on the EAF. Agency comments shall be limited to subject matter areas over which the agency has jurisdiction or expertise.
  - (6) Based upon the comments received from the Community agencies, NRSC shall determine whether the EAF is acceptable for Public review. If NRSC determines that the EAF is not acceptable for Public review, NRSC shall notify the Applicant of this determination and shall provide the Applicant with instructions on how to supplement or revise the EAF. It shall not be necessary for NRSC to re-circulate an EAF that has been revised or supplemented pursuant to this paragraph to Community agencies prior NRSC determining that the EAF is acceptable for Public review.
- (b) Public Review and Comment Process
- (1) Following a determination by NRSC that an EAF is acceptable for public review, NRSC shall place a notice in the Gila River Indian News informing the Public that the EAF is available for review. The notice shall, at a minimum, include:
    - (i) The name of the Applicant;

- (ii) The activity or development that would be authorized by the requested Lease or Permit;
    - (iii) The location of the activity or development that would be authorized by the requested Lease or Permit;
    - (iv) The date, location, and time of the public meeting on the requested Lease or Permit if NRSC determines that a Public meeting is required;
    - (v) Instructions on how the Public can access and view the EAF, or portions thereof;
    - (vi) The length of the Public comment period; and
    - (vii) Instructions for submitting comments.
  - (2) NRSC shall make the EAF, or portions thereof, available for Public review on the Community Intranet and in any other location or by any other manner that NRSC deems appropriate. The EAF shall be available during the entire comment period.
  - (3) The Public comment period shall be thirty (30) Days, except that in the sole discretion of NRSC, the comment period can be extended.
  - (4) NRSC, in its sole discretion, shall determine whether to hold a Public meeting on a proposed Lease or Permit. Any Public meeting held pursuant to these Regulations shall be held in the District where the activity that would be authorized by the Lease or Permit will occur.
  - (5) At the conclusion of the Public comment period, NRSC shall provide all of the comments received during the Public comment period to the Applicant. The Applicant shall be responsible for providing NRSC with written responses to the comments by the Public addressing Significant Effects on the Environment, prior to issuance of the Statement of Determination and Recommendation.
- (c) Statement of Determination and Recommendation
- (1) Upon receiving and accepting written responses to the comments from the Applicant, the NRSC shall prepare a Statement of Determination and Recommendation, which shall:
    - (i) Include a statement that the GRER process was properly followed;
    - (ii) Identify any Significant Effect on the Environment;



- (iii) Identify any recommended mitigation or conditions of approval on the Lease or Permit;
    - (iv) Include responses to public comments; and
    - (v) Provide a recommendation to the Economic Development Standing Committee and the Gila River Indian Community Council as to whether the Lease or Permit application should be approved.
  - (2) NRSC shall provide the Statement of Determination and Recommendation to the Economic Development Standing Committee.
- (d) Material Changes in activities or uses authorized by a Lease or Permit
- (1) In circumstances where a Lessee or Permittee proposes to make a change to an activity or use authorized by a Lease or Permit, the Lessee or Permittee shall submit a revised EAF to NRSC. Upon receipt of a revised EAF, NRSC shall determine whether the proposed change in use or activity is material, and whether the prior GRER process identified and analyzed the environmental effects of the proposed change in use or activity.
  - (2) If NRSC determines that the proposed change in use or activity is material and the prior GRER process did not identify or analyze the environmental effects of the proposed change in use or activity, the NRSC shall subject the revised EAF to the GRER process, as set forth in these Regulations.
  - (3) If NRSC determines that the proposed change in use or activity is not material or that the prior GRER process adequately identified and analyzed the environmental effects of the proposed change in use or activity, no further action under the GRER process is required.