



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

**APPROVAL OF**

**MECHOOPDA INDIAN TRIBE OF CHICO RANCHERIA, CALIFORNIA  
LEASING ORDINANCE**

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The attached Leasing Ordinance, submitted by the Mechoopda Indian Tribe of Chico Rancheria, California (listed in the Federal Register, Vol. 88, No. 8 FR 2113 (January 12, 2023) as the Mechoopda Indian Tribe of Chico Rancheria, California), 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 Mechoopda Indian Tribal Council on October 18, 2022, is hereby approved.

Dated: 2-27-2023

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

Assistant Secretary – Indian Affairs  
United States Department of the Interior

Pursuant to the authority delegated by 209 DM 8

**MECHOOPDA INDIAN TRIBE OF CHICO RANCHERIA**  
**TRUST LAND LEASING ORDINANCE**

**ARTICLE I**

**GENERAL PROVISIONS; LEASE DOCUMENT REVIEW AND APPROVAL;  
LEASE ADMINISTRATION**

**1. TITLE; PURPOSE; GENERAL PROVISIONS**

- 1.1 Title.** This Ordinance shall be known as the "Mechoopda Indian Tribe of Chico Rancheria Trust Land Leasing Ordinance."
- 1.2 Purpose.** The purpose of this Ordinance is to provide a framework and clear requirements for leasing of trust and restricted Indian lands subject to the sole approval of the Mechoopda Indian Tribe of Chico Rancheria in accordance with the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012, Public Law 112-151 of July 20, 2012, codified into 25 U.S.C. § 415(h).
- 1.3 Applicability.** This Ordinance applies to all Leases of Tribal Trust Land entered into for business, agriculture, wind energy evaluation resources, wind and solar resources, public, religious, educational, recreational, or residential purposes. For the avoidance of doubt, this Ordinance does not apply to:
- (a) Land use agreements entered into under other federal statutory or regulatory authority;
  - (b) Fee land;
  - (c) Lands held in trust by the United States for the benefit of individual Members;
  - (d) Mineral leases;
  - (e) Fractionated lands; or
  - (f) Easements or rights of way.
- 1.4 Other Law Unaffected.** Activities and transactions governed by this Ordinance are subject to applicable federal and Tribal Law.
- 1.5 Construction.** This Ordinance shall not in any way be construed:
- (a) To diminish the Tribe's jurisdiction over its Trust Lands; or
  - (b) As a waiver of the sovereign immunity of the Tribe or any of its instrumentalities, agencies, officers, agents, or employees.
- 1.6 Amendment.** Any substantive changes to this Ordinance or the Environmental Assessment must be submitted to and approved by the Secretary. The Tribe may make minor typographical and conforming amendments to this Ordinance or the Environmental Assessment Ordinance of the Mechoopda Indian Tribe of Chico Rancheria without further Secretarial Approval in accordance with Tribal Law.
- 1.7 Effective Date.** This Ordinance shall be effective as Tribal Law, for all purposes, from and after Approval of this Ordinance by the Tribal Council and the Secretary. Nothing in this Ordinance shall be construed to affect the terms or conditions of Lease Documents entered into before the effective date of this Ordinance. After

Secretarial approval of this Ordinance, all Leases approved and executed under this Ordinance shall be effective without federal approval under the HEARTH Act.

2. **DEFINITIONS.** The following terms, wherever used or referred to in this Ordinance, shall have the following meanings:

2.1 **"Agricultural Land"** means Trust Land suited or used for the production of crops, livestock or other agricultural products; and/or Trust Land suited or used for a business that supports the surrounding agricultural community.

2.2 **"Agricultural Lease"** means a Lease of Agricultural Land for farming or grazing purposes.

2.3 **"Applicant"** means:

(a) A person or entity seeking to lease Trust Land in accordance with this Ordinance; or

(b) A Lessee seeking to assign, sublease, or mortgage a Lease when such Assignment, Sublease, or Leasehold Mortgage requires Tribal Approval in accordance with Section 3 of this Ordinance.

2.4 **"Approval"** means official action through writing or recorded minutes by a department, board, commission, or official of the Tribe, as may be required under this Ordinance to authorize Leases in accordance with this Ordinance.

2.5 **"Assignee"** means a person or entity that acquires all or some of the Lessee's rights and assumes all or some of the Lessee's obligations under a Lease.

2.6 **"Assignment"** means an agreement between a Lessee and an Assignee whereby Assignee assumes all or some of the Lessee's rights and assumes all or some of the Lessee's obligations under a Lease.

2.7 **"BIA"** means the Bureau of Indian Affairs within the United States Department of the Interior.

2.8 **"Best Interest Determination"** means a determination, required under certain provisions of this Ordinance, of whether a certain proposed Lease Document provision is in the best interest of the Tribe in light of all material circumstances.

2.9 **"Business Day"** means Monday through Friday, excluding recognized holidays of the Tribe, and federally recognized holidays and other days that the applicable office of the Tribe or federal government is closed to the public.

2.10 **"Business Lease"** means a ground Lease of undeveloped land or a Lease of developed land for any permitted commercial or industrial purpose including retail, office, manufacturing, storage, biomass, waste-to-energy, or other non-residential purposes.

2.11 **"Cancellation"** means action on the part of a party to a Lease Document to end the Lease Document.

2.12 **"Chairperson"** means the Chairperson of the Mechoopda Indian Tribe of Chico Rancheria, or other chief executive official as may be established under Tribal Law from time to time.

2.13 **"Court of Competent Jurisdiction"** means a Tribal or federal court with jurisdiction over the dispute at issue.

2.14 **"Day"** means a calendar day, unless otherwise specified.

- 2.15 **“Environment”** means water, air, land, and the inter-relationship between them.
- 2.16 **“Environmental Impact Report” or “EIR”** means a written document which identifies and evaluates any significant effects on the environment that are likely to arise from the activities and/or development contemplated under a proposed Lease Document, prepared in accordance with the Environmental Assessment Ordinance of the Mechoopda Indian Tribe of Chico Rancheria.
- 2.17 **“Equipment Installation Plan”** means a plan that describes the Permanent Improvements to be installed subject to a WEEL, the location of their installation, design standards to be used, a schedule for the commencement and completion dates of their installation and related construction activities, and information regarding proper maintenance of the Permanent Improvements.
- 2.18 **“Fair Market Rental”** means the amount of rental income that a leased tract of Trust Land would most probably command in an open and competitive market or as determined by competitive bidding.
- 2.19 **“Holdover”** means circumstances in which a Lessee remains in possession of Trust Lands after the term of the controlling Lease Document expires, terminates, or is cancelled.
- 2.20 **“Housing for Public Purposes”** means multi-family developments, Single-Family Residential Developments, and Single-Family Residences:
- (a) Administered by the Tribe or a Tribally-designated housing entity (“TDHE”); or
  - (b) Substantially financed using a Tribal, federal, or State housing assistance program or TDHE.
- 2.21 **“Lease”** means a written contract between the Tribe and a Lessee, whereby the Lessee is granted a right to possess Trust Land for a specified purpose and duration.
- 2.22 **“Lease Administrator”** means the Tribal Administrator or his/her designee designated in a Lease to administer that Lease on behalf of the Tribe.
- 2.23 **“Lease Document”** means a Lease, an amendment to a Lease, an Assignment, a Sublease, or a Leasehold Mortgage.
- 2.24 **“Leasehold Mortgage” or “Mortgage”** means a mortgage, deed of trust, or other instrument that pledges a Lessee's leasehold interest as security for a debt or other obligation owed by the Lessee to a lender or other Mortgagee.
- 2.25 **“Lessee”** means person or entity that has acquired a legal right to possess Trust Land in accordance with this Ordinance.
- 2.26 **“LTRO”** means the Land Titles and Records Office of the BIA.
- 2.27 **“Mail”** means to send something by U.S. Postal Service or reputable commercial delivery service.
- 2.28 **“Member”** means a person enrolled in the Tribe pursuant to Tribal Law.
- 2.29 **“Mortgagee”** means the holder of a Leasehold Mortgage.
- 2.30 **“NEPA”** means the National Environmental Policy Act, 42 U.S.C. §4321, *et seq.*, the implementing regulations and guidance adopted by the Council on Environmental Quality, and the implementing regulations and guidance adopted by the BIA, as they may be amended from time to time.

- 2.31 **“Notice of Violation”** means a written notice to a Lessee of a Violation of a Lease Document and providing the Lessee with a specified time to take specified action required to avoid Cancellation or Termination of the Lease Document.
- 2.32 **“OEPP”** means the Office of Environmental Planning and Protection of the Mechoopda Indian Tribe of Chico Rancheria or such other chief environmental protection body as the Tribe may establish from time to time.
- 2.33 **“Performance Bond”** means security for the performance of certain Lease Document obligations, as furnished by the Lessee, or a guaranty of such performance as furnished by a third-party Surety.
- 2.34 **“Permanent Improvements”** means buildings, other structures, and associated infrastructure placed, erected, or constructed on leased premises.
- 2.35 **“Public”** means, for the purpose of an Environmental Review, any person or entity who can demonstrate that they will be directly substantially affected by the Lease or the Lease activity.
- 2.36 **“Residential Lease”** means a ground Lease of undeveloped land or a Lease of developed land for housing purposes, including a Lease for the construction or use of a Single-Family Residence and Housing for Public Purposes, but excluding a Lease for other residential development such as single-family residential developments and multi-family developments that are not Housing for Public Purposes.
- 2.37 **“Resource Development Plan”** means a plan that describes the Permanent Improvements to be installed subject to a WSR Lease, the location of their installation, design standards to be used, a schedule for the commencement and completion dates of their installation and related construction activities, and information regarding proper maintenance of the Permanent Improvements.
- 2.38 **“Restoration and Reclamation Plan”** means a plan that defines the reclamation, revegetation, restoration, and soil stabilization requirements for the project area, and requires the expeditious reclamation of construction areas and revegetation of disturbed areas to reduce invasive plant infestation and erosion.
- 2.39 **“Secretary”** means the Secretary of the Interior.
- 2.40 **“Significant Effect on the Environment”** means a substantial, or potentially substantial, adverse change in the environment, including land, air, water, minerals, flora, fauna, ambient noise, cultural areas and objects of historic, cultural, or aesthetic significance.
- 2.41 **“Single-Family Residence”** means a building with one to four dwelling units on a tract of Trust Land under a single Residential Lease Document.
- 2.42 **“Single-Family Residential Development”** means two or more Single-Family Residences owned, managed, or developed by a single entity.
- 2.43 **“Sublease”** means a written agreement by which the Lessee grants to an individual or entity a right to possession no greater than that held by the Lessee under the Lease.
- 2.44 **“Surety”** means one who guarantees the performance of another with respect an obligation under a Lease Document.
- 2.45 **“Termination”** means action by the Tribe with the effect of Cancellation of a Lease Document.
- 2.46 **“Trespass”** means any unauthorized occupancy, use of, or action on any Trust Land.

**2.47 "Tribal Council"** means the Tribal Council of the Mechoopda Indian Tribe of Chico Rancheria.

**2.48 "Tribal Land"** means the surface estate of any tract of land held by the U.S. in trust or restricted status for the benefit of the Tribe. The term also includes lands held by the U.S. in trust for an Indian corporation chartered under section 17 of the Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. § 477).

**2.49 "Tribal Law"** means the laws of the Tribe, including statutes, ordinances, resolutions, or other enactments by the Tribe and rulings and opinions issued under Tribal Law.

**2.50 "Tribe"** means the Mechoopda Indian Tribe of Chico Rancheria, California, a federally recognized Indian tribe. Depending on the context, "Tribe" includes the Tribe's elected or appointed officials, employees, and agents.

**2.51 "Trust or Restricted Land"** means any tract, in which the surface estate is held in Trust or Restricted Status by the United States for the benefit of the Tribe. The term also includes the surface estate of lands held by the United States in trust for a corporation of the Tribe chartered under section 17 of the Act of June 18, 1934, 48 Stat. 988, codified as 25 U.S.C. § 477.

**2.52 "Trust or Restricted Status"** means:

(a) That the United States holds title to the tract in trust for the benefit of the Tribe; or

(b) That one or more tribes holds title to the tract but can alienate or encumber it only with the approval of the United States because of limitations in the conveyance instrument under federal law or limitations in federal law.

**2.53 "USPAP"** means the Uniform Standards of Professional Appraisal Practice promulgated by the Appraisal Standards Board of the Appraisal Foundation as requirements and procedures for professional real property appraisal practice.

**2.54 "Violation"** means:

(a) A failure to take any action, including payment of compensation, when and in the manner required by a Lease Document;

(b) Taking any action prohibited by a Lease Document; or

(c) Failure to otherwise comply with any provision of a Lease Document, and in the event of a conflict between this definition and the language of any Lease, this Ordinance and definition apply.

**2.55 "Wind and Solar Resource Lease" or "WSR Lease"** means a Lease for the purpose of installing, operating, and maintaining instrumentation, facilities, and associated infrastructure, such as wind turbines and solar panels, to harness wind and/or solar energy to generate and supply electricity for resale on a for-profit or non-profit basis, to a utility grid serving the public generally, or to users within the local community.

**2.56 "Wind Energy Evaluation Lease" or "WEEL"** means a Lease for the purpose of installing, operating, and maintaining instrumentation, and associated infrastructure, such as meteorological towers, to evaluate wind resources for electricity generation.

### 3. LEASE DOCUMENT REVIEW & APPROVAL; ENVIRONMENTAL IMPACT REPORTS

**3.1 Lease Document Approval.** No Lease Document, other than an Assignment, Sublease, or Leasehold Mortgage which is exempt from this Section 3 under the terms of a Lease previously entered into under this Ordinance, shall be valid unless:

- (a) The Applicant has submitted a proposed Lease Document which meets all applicable requirements under this Ordinance and all documents and other information required under this Ordinance to the Tribal Council or its designee;
- (b) In consultation with the OEPP and other Tribal agencies, departments, commissions, officials, and entities, as appropriate, the Tribal Council or its designee has reviewed the proposed Lease Document and all documents and other information required under this Ordinance and certified in writing:
  - (i) The classification of the proposed Lease Document as either an Agricultural, Residential, Business, Wind Energy Evaluation, or Wind and Solar Resource Lease Document;
  - (ii) That the Environment Review required by subsection 3.2 has been completed;
  - (iii) Whether an Environmental Impact Report is required under subsection 3.2 and that, if required, such a report has been prepared;
  - (iv) Whether Approval of the proposed Lease Document requires any Best Interest Determination under this Ordinance; and, if so, the certification shall identify which provisions of or omissions from the proposed Lease Document require a Best Interest Determination;
  - (v) Whether the proposed Lease Document includes a sovereign immunity waiver;
  - (vi) That the proposed Lease Document complies with the requirements of Section 12 if an Agricultural Lease, Section 13 if a Residential Lease, Section 14 if a Business Lease, or Section 15 if a Wind Energy Evaluation or a Wind and Solar Resource Lease; and
  - (vii) That the Applicant has submitted all documents and other information required under this Ordinance.
- (c) The Tribal Council or its designee has made any required Best Interests Determination(s);
- (d) The Tribal Council or its designee approves the Lease Document in accordance with Tribal Law; and
- (e) The Chairperson or his or her authorized designee has executed the Lease Document on behalf of the Tribe, and an individual or individuals with the capacity and authority to bind all other parties to the Lease Document under applicable law has executed the Lease Document on behalf of such other parties.

**3.2 Environmental Review and Procedures.** The Tribe shall consider the reasonably foreseeable environmental impacts of any Lease Approval. All Leases are subject to the Tribe's Environmental Review as set forth below, which requires an Environmental Impact Report ("EIN") for purposes of:

- (a) identifying and evaluating any Significant Effects on the Environment that are likely to arise from the activities and/or development contemplated under a proposed Lease Document and any proposed, recommended, or required mitigation measures;
- (b) ensuring the public is informed of, and has a reasonable opportunity to comment on any significant environmental impacts of the proposed action identified by the Tribe; and

- (c) allowing the Tribe to provide responses to relevant and substantive public comments on any such impacts before the Tribe approves the Lease.

**3.3 EIR Requirements.** Unless an exemption applies or a Lease is otherwise not subject to the Environmental Review Process, before the approval or execution of any Lease, the OEPP shall cause to be prepared a comprehensive and adequate environmental assessment or environmental impact report, similar to the requirements of NEPA analyzing the potentially Significant Effect(s) on the Environment of the proposed action. The EIR shall provide detailed information about the Significant Effect(s) on the Environment that the Lease is likely to have, and shall include a detailed statement setting forth all of the following:

- (a) A description of the physical environmental conditions in the vicinity of the proposed Lease (the environmental setting and existing baseline conditions), as they exist at the time the notice of preparation is issued;
- (b) All Significant Effects on the Environment of the proposed Lease, and, to the extent such significant effects are identified, a classification of such impacts delineating:
  - (i) Those that cannot be avoided if the Tribal Council approves the Lease;
  - (ii) Those that would be irreversible if the Tribal Council approves the Lease; and
  - (iii) Any mitigation measures proposed, recommended, or required.

**3.4 Preparing the EIR.** The Tribal Council, through the OEPP, shall prepare, or cause to be prepared, an environmental assessment EIR similar to NEPA, provided however, that the only provisions of NEPA applicable to the Tribe in this context are those provisions regarding the content of the detailed report on the environmental impacts of the proposed Lease.

- (a) Every Applicant requesting Lease Approval shall be responsible for preparing the detailed report on the environmental impact of the proposed action. This action shall be at the Applicant's own cost.

**3.5 Public Notice and Comment Period.** Within no less than 30 days following the completion of the draft EIR, the OEPP shall file a copy of the draft EIR with the Tribe. The Tribe shall also post a copy of the draft EIR on its website along with a notice that includes all of the following information:

- (a) A brief description of the proposed Lease;
- (b) The proposed location of the Lease;
- (c) An address where copies of the draft EIR are available; and
- (d) Notice of a period of 30 days during which the Tribe will receive comments on the draft EIR.

The OEPP and Tribe shall make relevant and substantive notice for public comment and response available on the Tribe's website or in written form.

**3.6 Conclusion of Environmental Review.** Upon review of the Significant Effects on the Environment by the Tribe, publication of the draft EIR, acceptance of the public comment, and consideration of the proposed or recommended mitigation measures addressing any such impacts, the Environmental Review Process concludes and the Tribe may approve or disapprove of the proposed Lease.

- (a) Mitigation. The Tribal Council may determine to mitigate significant impacts detailed in the EIR. If Significant Effects on the Environment are found, the OEPP will develop a mitigation plan. If the significant impacts cannot be mitigated due to significant damage to the Environment then the Tribal Council shall make a Best Interest Determination.



#### 4. APPLICANT'S DUTY TO PROVIDE DOCUMENTS & INFORMATION

**4.1 Required Documents.** Except as provided otherwise in this Ordinance, the Tribal Council or its designee shall not consider approval of a Lease Document unless and until an Applicant has provided the following documents and information, as applicable:

(a) **Evidence of Enforceability.** If the Applicant or any other party to a proposed Lease Document is a corporation, limited liability company, partnership, or other entity, it must provide organizational documents, certificates, filing records, resolutions, and financial documents as necessary to demonstrate that:

- (i) The executing representative for each party other than the Tribe, to a Lease Document has the authority to bind that party;
- (ii) The Lease Document will be enforceable against the parties other than the Tribe in accordance with its terms; and
- (iii) The Applicant and any other parties, other than the Tribe, to the proposed Lease Document are in good standing and authorized to conduct the activities authorized by the Lease Document.

(b) **Proof of Insurance.**

- (i) The Applicant must provide proof it carries all insurance policies, if any, required under the proposed Lease and of the Tribe's and the United States' status as additional insureds, if required by the proposed Lease Document.
- (ii) The Applicant may submit such proof of insurance after Approval of the Lease Document only if the proposed Lease Document provides that failure to submit such proof of insurance before the commencement date of the Lease Document shall be a Violation and grounds for Cancellation of the Lease Document.

(c) **Furnishing of Bond & Supporting Documents.**

- (i) The Applicant must provide any securities, certificates, letters of credit, and any other instruments or documents necessary to furnish any bond or alternative form of security required in connection with the proposed Lease Document.
- (ii) The Applicant may submit such bond, alternative form of security, and/or supporting documents after approval of the Lease only if the Lease Document provides that failure to submit such bond, alternative form of security, and/or supporting documents before the commencement date of the Lease Document shall be a Violation and grounds for Cancellation of the Lease Document.
- (iii) The Tribal Council may also require that the Surety provide any supporting documents needed to show that a bond or alternative form of security required under this Ordinance will be enforceable and that the Surety will be able to perform the guaranteed obligations.

(d) **Environmental Review and Compliance Documents.**

- (i) The Applicant must prepare or cause to be prepared any reports, surveys, site assessments or other information OEPP determines are reasonably necessary to complete Environmental Review of the proposed Lease Document, if applicable, and to ensure compliance with any mitigation requirements

during the Lease term. OEPP may require additional information during the Environmental Review process or the Lease term.

(ii) OEPP may agree to bear some or all of the costs associated with the Environmental Review but only with approval for such expenditure in accordance with Tribal Law.

(e) **Documents to Facilitate Compliance with Tribal Law.** The Applicant must provide any documents or information required by the Tribal Council or its designee, OEPP, or any other Tribal department, agency, board, commission, or official as required to facilitate compliance with applicable federal and Tribal environmental, cultural resource, and land use laws, regulations, practices, and policies. The Tribal Council or its designee, OEPP, or any other Tribal department, agency, board, commission, or official, as appropriate, may demand additional documents or information during the Lease term as necessary to facilitate compliance with applicable Tribal Law.

(f) **Site Plan for Non-Public Housing Residential Lease.** Unless the proposed Lease Document is for Housing for Public Purposes, a Residential Lease Applicant must submit a preliminary site plan identifying the proposed location of residential development, roads, and utilities, if applicable.

(g) **Restoration and Reclamation Plan for Business Lease, WEEL, or WSR Lease.**

(i) A WEEL or WSR Lease Applicant must prepare or cause to be prepared a Restoration or Reclamation Plan satisfactory to OEPP.

(ii) A Business Lease Applicant must prepare or cause to be prepared a Restoration and Reclamation Plan if OEPP determines a Restoration and Reclamation Plan is appropriate in light of the proposed development activities.

(iii) Any Applicant required to submit a Restoration and Reclamation Plan must prepare or caused to be prepared and provide OEPP with any revisions or modifications of a Restoration and Reclamation Plan that become necessary during the term of the Lease.

(iv) OEPP may agree to bear some or all of the costs associated with the preparation of these materials but only with approval for such expenditure in accordance with Tribal Law.

(h) **Capacity to Implement Business Lease, WEEL, or WSR Lease.** If a Business Lease, WEEL, or WSR Lease Applicant is not an entity owned and operated by the Tribe, it must provide documents that demonstrate its technical capability to construct, operate, maintain, and terminate the proposed project and its ability to successfully design, construct, and obtain any necessary funding for the project to the Tribal Council's or its designee's satisfaction.

(i) **Development Plans & Construction Schedules for Business Leases.** If a proposed Business Lease Document provides for construction of Permanent Improvements, the Applicant must provide a preliminary plan of development that describes the type and location of any Permanent Improvements the Applicant plans to construct or install and a preliminary schedule showing the tentative commencement and completion dates.

(j) **Resource Development Plan for WSR Leases.** A WSR Lease Applicant must provide a Resource Development Plan.

(k) **Equipment Installation Plan for WEEL.** A WEEL Applicant must provide an Equipment Installation Plan.

(l) **Other Necessary Documents.** An Applicant must provide any other documents or information the Tribal Council or its designee determines are reasonably necessary for evaluation or administration of the proposed Lease Document.

**4.2 Incorporation of WEEL Analysis.** A WSR Lease Applicant who was or is a party to a WEEL approved under this Ordinance may incorporate by reference any analyses used to bring a WEEL activity into compliance with any legal or regulatory requirements into any document required under subsection 4.1, as appropriate.

**4.3 Return of Documents.** If a proposed Lease Document is not approved or an Applicant withdraws a proposed Lease Document from the Approval process, the Tribal Council or its designee shall return any materials submitted by the Applicant upon the Applicant's written request, but the Tribe shall be entitled to retain the originals of any environmental and archaeological reports, maps, surveys, site assessments, Restoration and Reclamation Plans, studies, or other information for which the Tribe bore any part of the preparation cost.

**5. REJECTION OF APPLICATION; RIGHT TO AMEND.** If the Tribal Council or its designee does not approve a proposed Lease Document, it must provide the reason(s) for the rejection either on official record or in writing and afford the Applicant a reasonable opportunity to amend and resubmit the proposed Lease Document.

**6. COLLECTION OF RENT; LEASE ADMINISTRATION; RECORDS.**

**6.1 Rent Obligation Unaffected by Notice.** The Lease Administrator may issue bills or invoices to a Lessee in advance of the dates on which rent payments are due under a Lease Document, but the Lessee's obligation to make such payments in a timely manner will not be excused if such bills or invoices are not delivered or received.

**6.2 Partial Payments.** The Lease Administrator may accept partial payments, but such acceptance will not operate as a waiver with respect to any amounts remaining unpaid or any other existing Violation(s). Unless otherwise provided in the Lease Document, overpayments may be credited as an advance against future rent payments or refunded at the Lease Administrator's discretion.

**6.3 Dishonored Checks.** If a personal or business check is dishonored, and, for that reason, a rent payment is not made by the due date, the failure to make the payment in a timely manner will be a Violation. Any payment made to cure such a Violation and any future payments by the same Lessee, must be made by one of the alternative payment methods provided by the Lease unless the Lease Administrator determines that circumstances warrant allowing the continued use of personal or business checks.

**6.4 Administrative Fees.** The Lease Administrator may charge the Lessee administrative fees as provided in the Lease Document.

**6.5 Documentation of Payments.**

(a) The Lease Administrator must, upon request, provide the Secretary with documentation of the Lease payments that are sufficient to enable the Secretary to discharge the trust responsibility of the United States in accordance with 25 USC 415(h)(6)(B).

(b) The Lease Administrator shall, upon request, provide the Tribal Council with regular documentation of all Lease payments.

**6.6 Records.** The Lease Administrator shall maintain copies of all Leases, Lease Documents, and all other documents, reports, and instruments associated with a Lease.

**6.7 Recording.** Within 30 days after Approval, amendment, renewal, Assignment, Sublease, Mortgage, or Cancellation of any Lease Document entered into under this Ordinance, except for a Residential Sublease, the Lease Administrator shall submit any previously unrecorded Lease Document, renewal, or Cancellation with the LTRO with jurisdiction over the Tribe.

**7. VIOLATIONS; CANCELLATION.**

**7.1 Notice of Violation.** Upon determining that a Lease Document has been violated, the Lease Administrator shall send the Lessee, and the Lessee's Mortgagee(s) or Sureties, if any, a Notice of Violation within five Business Days of that determination. The Notice of Violation must be sent via certified Mail, return receipt requested, or personal delivery.

**7.2 Lessee's Right to Cure.** Within ten Business Days of receipt of a Notice of Violation, unless a longer period of time is allowed under the applicable Lease Document, the Lessee must:

- (a) Cure the Violation and notify the Lease Administrator in writing that the Violation has been cured;
- (b) Dispute the determination that a Violation has occurred or explain why the Tribe should not cancel the Lease or take other remedial action; or
- (c) Request additional time to cure the Violation.

**7.3 Failure to Cure.** If the Lessee does not timely cure the Violation, the Lease Administrator must advise the Tribal Council or its designee of such Violation. Upon receipt of such notification, the Tribal Council or its designee, may take one or more of the following actions:

- (a) Cancellation, if allowed under the terms of the Lease Document;
- (b) Invoke any other remedies available to it under the Lease Document;
- (c) Grant the Lessee additional time in which to cure the Violation, in which case the Lessee shall proceed diligently to cure the defect within a reasonable or specified time period from the date on which the extension is granted; or
- (d) Provide reasonable notice of the Violation to the BIA and request that the BIA, at its discretion, enforce the provisions of or cancel the Lease Document.

**7.4 Cancellation Letter.** Within five Business Days of Approval of the Cancellation of a Lease, the Lease Administrator shall send the Lessee and its Sureties and Mortgagee(s), if any, a cancellation letter. The cancellation letter must be sent to the Lessee by certified Mail, return receipt requested, or personal delivery. The cancellation letter must:

- (a) Explain the grounds for Cancellation;
- (b) Notify the Lessee of the amount of any unpaid rent, interest charges, or late payment penalties due under the Lease;
- (c) Notify the Lessee of its right to appeal or dispute the Cancellation as provided in the Lease Document's dispute resolution provisions; and
- (d) Order the Lessee to vacate the property within 30 days, or such greater period of time as may be appropriate under the circumstances, after receipt of the cancellation letter.

**7.5 Enforcement by Secretary.** Pursuant to the authority of the Secretary to fulfill the trust obligation of the United States to the Tribe, the Secretary may, upon reasonable notice from the Tribe and at the discretion of the Secretary, enforce the provisions of, or cancel, any Lease executed by the Tribe subject to this Ordinance.

**8. TRESPASS & HOLDOVER.** If any person takes possession of, or uses, Trust Land without a Lease and a Lease is required, or after the expiration or Cancellation of a Lease Document which authorized that person's possession of the land, the unauthorized possession or use is a Trespass. In the event of a Trespass, the Tribe may request the BIA, at its discretion, take action to recover possession, including eviction, on behalf of the Tribe and pursue any additional remedies available under applicable law. As an alternative to or cumulative with BIA action, the Tribe may itself pursue any available remedies under applicable law.

**9. EMERGENCY ACTION.** If a Lessee or any other party causes or threatens to cause immediate and significant harm to Trust Land during the term of a Lease, the Lease Administrator may take appropriate emergency action. Emergency action may include trespass proceedings or a civil or administrative action under applicable Tribal Law seeking immediate cessation of the activity resulting in or threatening the harm.

**10. TRIBAL PREFERENCE.** Leases and Subleases of Trust Land may include provisions, consistent with Tribal and federal Law, requiring the Lessee to give a preferential treatment to Members and/or other Native Americans.

**11. FEES & TAXATION.** Leasehold or possessory interests may be subject to fees or taxation by the Tribe in accordance with Tribal Law.

## ARTICLE II LEASE PROVISIONS

### **12. AGRICULTURAL LEASES.**

**12.1 Applicability.** This Section 12 covers Agricultural Leases.

**12.2 Agricultural Lease Provisions.** All Agricultural Lease Documents shall be consistent with the following:

(a) **Impermissible Uses.** An Agriculture Lease must provide that the Lessee shall not engage in or allow unlawful conduct, creation of a nuisance, illegal activity, or negligent use or waste of the leased premises and that the Lessee must comply with all applicable laws, ordinances, rules, regulations, and other legal requirements, including those imposed by Tribal Law. The Lease must provide that unlawful, illegal, unauthorized, harmful, negligent, or wasteful use of the leased premises shall be a Violation.

(b) **Enforcement by the United States.** An Agricultural Lease must provide that the obligations of the Lessee and its Sureties to the Tribe shall also be enforceable by the United States; so long as the leased premises remain in Trust or Restricted Status.

(c) **Termination of Federal Trust Responsibilities.** An Agricultural Lease must provide that:

(i) Nothing contained in the Lease shall operate to delay or prevent a termination of federal trust responsibilities with respect to the leased premises by the issuance of a fee patent or otherwise during the term of the Lease, but that such termination shall not abrogate the Lease; and

(ii) That the Lease Administrator shall notify the Lessee, its Mortgagee(s) and Sureties, if any, of any such change in the status of the land.

(d) **Lease Administrator.** An Agricultural Lease must specify:

(i) Which Tribal entity, department, agency, official, or other agent will serve as the Lease Administrator;

(ii) That Tribal Council or its designee may designate a replacement Lease Administrator at its sole discretion; and

(iii) That the Lessee must be provided timely written notice of the identity and address of any replacement Lease Administrator.

(e) **Insurance.** Unless waiver or modification is in the best interest of the Tribe as determined by the Tribal Council, an Agricultural Lease must require that a Lessee provide insurance. Such insurance may include property, crop, liability, and/or casualty insurance. If insurance is required, the Lease must provide that:

(i) Such insurance must cover the Tribe and the United States as additional insureds;

(ii) Such insurance must be sufficient to protect all insurable improvements on the leased premises; and

(iii) Failure to provide proof of insurance to the Lease Administrator by a specified date, before the commencement date of the Lease, shall be a Violation.

(f) **General Indemnity.** Unless the Lessee would be prohibited by law from making such an agreement or waiver or modification is in the best interest of the Tribe as determined by the Tribal Council, an Agricultural Lease must require that the Lessee indemnify and hold the Tribe and the United States harmless from any loss, liability, or damages resulting from the Lessee's use or occupation of the leased premises.

(g) **Indemnity Related to Hazardous Materials.** Unless the Lessee would be prohibited by law from making such an agreement, an Agricultural Lease must specifically require that the Lessee indemnify the United States and the Tribe 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 materials from the leased premises that occurs during the Lease term, regardless of fault.

(h) **Bond.** Unless waiver or modification is found to be in the best interest of the Tribe by the Tribal Council, an Agricultural Lease must require the Lessee to furnish a bond in accordance with Section 12.4 and any supporting documents requested by the Lease Administrator by a specified date, before the commencement date of the Lease. If a bond is required, the Lease must provide that failure to furnish the required bond by the date specified shall be a Violation.

(i) **Authorizing Law.** An Agricultural Lease must include a citation of the provisions of this Ordinance which authorize the Tribe's Approval of the Lease, along with a citation of the formal documents or minutes by which such authority has been exercised.

(j) **Description of Land.** An Agricultural Lease must contain a description of the leased premises. If possible, the Lease should describe the leased premises by reference to a public or private survey. If the land cannot be so described, the Lease must include a legal description or other description that is sufficient to identify the leased premises.

(k) **Amount & Kind of Rent.**

- (i) An Agricultural Lease must provide for the payment of a fair annual rental, unless Tribal Council determines that a lesser amount is in the best interest of the Tribe.
- (ii) The Lessee's rent payments may be in fixed amounts or based on a share of the agricultural products generated by the Lease, or a percentage of the income to be derived from the sale of such agricultural products.
- (iii) The amount and kind of rent payments must be specified in the Lease.

**(l) Form & Manner of Payment; Late Payment Penalties.**

- (i) An Agricultural Lease must provide that rent payments are to be delivered to the Lease Administrator, and the Lease must provide the manner in which payments may be delivered.
- (ii) An Agricultural Lease must provide that the Lease Administrator will not accept cash or foreign currency for rent payments and will accept third-party checks only from financial institutions or federal agencies. Acceptable forms of payment for monetary rent may include:
  - A. Electronic funds transfer payments;
  - B. Money orders;
  - C. Personal checks;
  - D. Certified checks; and/or
  - E. Cashier's checks.

(iii) An Agricultural Lease must specify the dates on which all rent payments are due. Unless otherwise provided in the Lease, rent payments may not be made or accepted more than one year in advance of the due date. The Lease must provide that rent payments are due at the time specified in the Lease, regardless of whether the Lessee receives an advance billing or other notice that a payment is due.

(iv) An Agricultural Lease must provide that failure to make a rent payment by the due date or other specified date is a Violation.

(v) An Agricultural Lease may provide that interest will accrue on any rent payment not made by the due date or any other date specified in the Lease, but if it does, the Lease must also specify the interest rate and the date on which such interest payments are due.

(vi) An Agricultural Lease may identify additional late payment penalties that will apply if a rent payment is not made by a specified date but if it does, the Lease must also specify the date on which such penalties are due.

(vii) Unless otherwise provided in the Lease, interest charges and late payment penalties will apply in the absence of any specific notice to the Lessee from the Lease Administrator.

(viii) If such charges and penalties are provided for in the Lease, an Agricultural Lease must provide that failure to pay interest charges and/or late payment penalties by the specified date is a Violation.

**(m) Rental Adjustments.**

(i) An Agricultural Lease must provide for one or more rental adjustments, unless:

- A. The Lease term is less than five years;
- B. The Lease provides for the payment of less than a fair annual rental; or
- C. The Lease provides for a payment based primarily on a share of the agricultural products generated by the Lease, or a percentage of the income derived from the sale of agricultural products.

(ii) If the Lease provides for rental adjustments, the Lease must specify:

- A. How adjustments are made;
- B. Who makes the adjustments;
- C. When the adjustments are effective, and
- D. How disputes about the adjustments will be resolved.

(n) **Administrative Fees.** An Agricultural Lease may provide for administrative fees in the event the Lessee's rent payment in the form of personal or business check is dishonored and to cover the costs of providing notices and other correspondence associated with the Lease.

(o) **Irrigation & Drainage Maintenance.** If the leased premises are within an Indian irrigation project or drainage district, except as provided by Title 25, part 171 of the Code of Federal Regulations, an Agricultural Lease must provide that the Lessee must pay all operation and maintenance charges that accrue during the Lease term to the appropriate official in charge of the irrigation project or drainage district and failure to make any such payment shall be a Violation.

(p) **Resource Management.**

(i) An Agricultural Lease must require that farming and grazing operations be conducted in accordance with:

- A. Recognized principles of sustained yield management;
- B. Integrated resource management planning;
- C. Sound conservation practices, and
- D. Other community goals as expressed in applicable Tribal Law, leasing policies, and any Integrated Resource Management Plan.

(ii) All Agricultural Leases must incorporate appropriate stipulations or conservation plans.

(q) **Purpose & Use of Premises.** An Agricultural Lease must describe the purpose of the Lease and the authorized uses of the leased premises. The Lease must provide that any use of the leased premises for an unauthorized purpose or a failure by the Lessee to maintain operations consistent with the purpose of the Lease throughout the Lease term shall be Violation.

(r) **Commencement Date & Term.** An Agricultural Lease must provide for a definite Lease term, not to exceed 25 years, and specify the commencement date, not more than one year after the date on which the



Lease is approved.

(s) **Renewal.** An Agricultural Lease may provide for an option to renew for up to two additional terms, each of which may not exceed 25 years, but only if such a renewal is for a definite term, and the Lease specifies:

(i) The time and manner in which the option must be exercised or whether it is automatically effective if no action is taken;

(ii) That the Lessee must provide notice of the renewal to any Sureties and Mortgagee(s);

(iii) 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

(iv) Any other conditions for renewal.

(t) **Amendments.** An Agricultural Lease must provide that any amendment of the Lease is subject to:

(i) Approval in accordance with Section 3 of this Ordinance; and

(ii) The written consent of the Lessee's Sureties and Mortgagee(s), if any.

(u) **Assignments & Subleases.**

(i) An Agricultural Lease may authorize assignment and sublease subject to approval of the Assignment or Sublease in accordance with Section 3 of this Ordinance.

(ii) If a Lease authorizes assignment or subleasing, it must also provide that such assignment or sublease is allowed only if:

A. The Lessee is not in Violation of the Lease;

B. The Lessee's Sureties consent in writing to the assignment or sublease; and

C. The assignee agrees to be bound by, or the subtenant agrees to be subordinated to, the terms of the Lease.

(v) **Leasehold Mortgages.** An Agricultural Lease may allow the Lessee to Mortgage its leasehold interest subject to additional approval and applicable Tribal law in which case the Lease must also:

(i) Describe the process and any timeframe for obtaining approval;

(ii) Identify and provide the address of the Tribal agency, department, commission, official, political body, or other entity which may provide such approval; and

(iii) State the conditions under which such approval may be granted, including the requirements that:

A. The Lessee's Sureties, if any, must consent in writing to the Leasehold Mortgage;

B. The Mortgage may cover only the Lessee's interest in the leased premises, and not unrelated collateral; and

C. The loan secured by the Mortgage may only be used in connection with the development or use of

the leased premises, and the Mortgage may not secure any unrelated debts the Lessee owes to the Mortgagee.

(w) **Unauthorized Transfer.** An Agricultural Lease must provide that any attempt by the Lessee to Mortgage the leasehold interest or authorize possession by another party other than as authorized by the Lease and in compliance with Ordinance will be treated as a Violation and such Mortgage or transfer shall be null and void.

(x) **Improvements.**

(i) An Agricultural Lease may allow the Lessee to construct Permanent Improvements on the Leased premises, in which case the Lease must:

- A. Generally describe the type and location of any Permanent Improvements to be constructed by the Lessee, along with the delineation of responsibilities related to constructing, operating, maintaining, and managing permanent improvements, provided however, that this requirement may be waived if the Tribe makes a Best interests Determination; and
- B. Provide that the Permanent Improvements will either remain on the leased premises, in a condition satisfactory to the Tribe; or be removed within a time period specified in the Lease, at the Lessee's expense, with the leased premises to be restored as close as possible to their condition prior to construction of such Permanent Improvements.

(ii) If a Lease allows the Lessee to remove any Permanent Improvements, it must also provide the Tribe with an option to waive the removal requirement and take possession of the Permanent Improvements if they are not removed within the specified time period.

(y) **Remedies.** An Agricultural Lease may provide the Tribe with certain negotiated remedies in the event of a Violation, including the power to cancel the Lease.

(z) **Dispute Resolution.** An Agricultural Lease must provide that Lease disputes are to be resolved in a Court of Competent Jurisdiction or provide an alternative dispute resolution method.

(aa) **Limited Waiver of Sovereign Immunity.** The Tribal Council may authorize the inclusion of a provision waiving the Tribe's sovereign immunity in an Agricultural Lease but only for actions arising from the Tribe's conduct towards the Lessee in connection with its administration or enforcement of the Lease or to allow the Lessee to avail itself of its remedies under the Lease. Such a waiver may limit the Lessee's remedies in such an action to specific performance of Lease terms or other equitable relief as the Tribal Council finds appropriate and in the best interest of the Tribe

(bb) **Compensation for Diminished Value.** Unless otherwise provided in an Agricultural Lease, the Tribe will be entitled to receive any settlement funds or other payments arising from certain actions that diminish the value of the land or the improvements thereon. Such payments may include, but are not limited to, insurance proceeds, trespass damages, and condemnation awards.

(cc) **Cost-Share.** An Agricultural Lease may provide for the Lessee to assume certain cost-share or other payment obligations that have attached to the land through past farming and grazing operations, so long as those obligations are specified in the Lease and considered in any determination of fair annual rental made under this Section.

(dd) **Inspections & Right of Entry.** Unless an Agricultural Lease provides otherwise, the Tribe and/or the Secretary may enter the leased premises at any reasonable time, without prior notice, to protect the interests

of the Tribe and ensure that the Lessee complies with the operating requirements of the Lease.

(ee) **Parties & Notices.** An Agricultural Lease must:

(i) Identify the parties to the Lease;

(ii) Provide addresses for the Lessee and the Lease Administrator where all notices and other correspondence related to the Lease may be sent;

(iii) Require the Lessee to timely provide an address or addresses where notices and other correspondence related to the Lease may be sent to any Sureties and Mortgagee(s) it has contracted with in connection with the Lease; and

(iv) Require the Lessee to timely notify the Tribe in writing of any changes in its mailing address or that of its Sureties and Mortgagee(s) that occur during the Lease term.

(ff) **Access.** An Agricultural 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.

(gg) **Environmental Impact Report Mitigation Measures.** If applicable, an Agricultural Lease must provide that any failure by the Lessee to comply with mitigation measures required by the Environmental Impact Report prepared in connection with the Approval of the Lease shall be a Violation.

(hh) **Documents & Information to Facilitate Compliance with Tribal Law.**

(i) An Agricultural Lease must provide which, if any, reports, surveys, site assessments, or other information will be required to facilitate ongoing compliance with applicable Tribal environmental, cultural resource, land use, or other law.

(ii) If such documents and information are required, the Agricultural Lease must provide that failure to provide such information in accordance with the requirements and procedure of the responsible Tribe department, agency, board, commission, or official shall be a Violation.

**12.3 Record keeping.** The Tribe will preserve records involving Agricultural Leases in accordance with applicable law.

#### **12.4 Bonding for Agricultural Lease.**

(a) If required by an Agricultural Lease, the Lessee must provide a bond to secure:

(i) The payment of one year's rental;

(ii) The construction of any required improvements;

(iii) The performance of any additional Lease obligations, including the payment of operation and maintenance charges; and/or

(iv) The restoration and reclamation of the leased premises, to their condition at the commencement of the Lease term or some other specified condition.

(b) The Performance Bond or other security must be made payable only to the Tribe.

(c) The bond may not be modified or withdrawn without the approval of the Tribal Council.

(d) The bond must be in one of the following forms:

(i) Cash;

(ii) Negotiable Treasury securities that have a market value at least equal to the bond amount and are accompanied by a statement granting full authority to the Tribe to sell such securities in case of a Violation of the terms of the Lease;

(iii) Certificates of deposit that indicate on their face that Tribe approval is required before redemption by any party;

(iv) Irrevocable letters of credit issued by federally-insured financial institutions authorized to do business in the United States. A letter of credit must:

A. Contain a clause that grants the Tribe authority to demand immediate payment if the Lessee violates the Lease or fails to replace the letter of credit at least 30 days prior to its expiration date;

B. Be payable to the Tribe, be irrevocable during its term, and have an initial expiration date of not less than one year following the date of issuance; and

C. Be automatically renewable for a period of not less than one year, unless the issuing financial institution provides the Tribe with written notice that it will not be renewed, at least 90 calendar days before the letter of credit's expiration date.

(v) Surety bonds issued by a company approved by the U.S. Department of the Treasury; or

(vi) Any other form of liquid, non-volatile security that is easily convertible to cash and for which the Tribe's approval is required before redemption by any party.

(e) If a cash bond is submitted, the Tribe will retain the funds in an account established in the name of the Lessee. The Tribe will not pay interest on a cash bond.

**12.5 Release of Security.** Upon expiration, Termination, or Cancellation of a Lease, the Lessee may request, in writing, the Tribal Council or its designee release the Performance Bond or alternative form of security. If the Lessee has complied with all Lease obligations, if applicable, the Tribal Council or its designee shall release the Performance Bond or alternative form of security to the Lessee. The Tribal Council or its designee shall release any Performance Bond or alternative form of security provided by an Applicant upon the withdraw of the Applicant's application.

**12.6 Fair Annual Rent.** The Tribal Council or its designee must determine the fair annual rental of Agricultural Land prior to Approval of an Agricultural Lease by competitive bidding, appraisal, or any other appropriate valuation method. Where an appraisal or other valuation is needed to determine the fair annual rental, the appraisal or valuation must be prepared in accordance with USPAP.

**12.7 Advertising; Competitive Bidding.**

(a) The Tribal Council or its designee may advertise Trust Land for agricultural leasing. Advertisements of Agricultural Land for lease shall:

(i) Provide prospective Lessees with notice of any applicable Tribal Law and leasing policies along with

the required terms and conditions of an Agricultural Lease as provided in this Section 12;

- (ii) Indicate that the Agricultural Land will be leased by sealed bid, and they may provide for further competitive bidding among the prospective tenants at the conclusion of the bid opening. Competitive bidding must be supported, at a minimum, by a market study or rent survey that is consistent with USPAP; and
  - (iii) Indicate that tenant preferences are prohibited, and bidders at Lease sales will not be afforded any preference, except that any interested Member, association of Members, or entity wholly owned and controlled by a Member or Members shall be given the opportunity to match the highest non-Member bid which satisfies all the requirements of this Section.
- (b) If a Member, association of Members, or entity wholly owned and controlled by a Member or Members matches the highest bid which satisfies all requirements of this Section and the terms thereof, leasing preference shall be given to that Member, association of Members, or entity.

### **13. RESIDENTIAL LEASES**

#### **13.1 Applicability.**

- (a) This Section 13 covers both ground Leases of undeveloped Trust Land and Leases of developed Trust Land including any Permanent Improvements on Trust Land for housing purposes. Leases covered by this Section may authorize the construction or use of:
  - (i) A Single-Family Residence; and
  - (ii) Housing for Public Purposes, which may include office space necessary to administer programs for Housing for Public Purposes.
- (b) Leases for other residential development (e.g., Single-Family Residential Developments and multi-family developments that are not Housing for Public Purposes) are governed by Section 14 of this Ordinance.

**13.2 Fair Market Rental Determination.** The Tribal Council or its designee must determine the Fair Market Rental of the prospective leased premises prior to Approval of a Residential Lease by market analysis, appraisal, or other appropriate valuation method prepared in accordance with USPAP.

**13.3 Residential Lease Provisions.** All Residential Lease Documents shall be consistent with the following:

- (a) **Impermissible Uses.** A Residential Lease must provide that the Lessee shall not engage in or allow unlawful conduct, creation of a nuisance, illegal activity, or negligent use or waste of the leased premises and that the Lessee must comply with all applicable laws, ordinances, rules, regulations, and other legal requirements, including those imposed by Tribal law. The Lease must provide that unlawful, illegal, unauthorized, harmful, negligent, or wasteful use of the leased premises shall be a Violation.
- (b) **Enforcement by the United States.** A Residential Lease must provide that the obligations of the Lessee to the Tribe will also be enforceable by the United States, so long as the leased premises remains in Trust or Restricted Status.
- (c) **Lease Administrator.** A Residential Lease must specify:
  - (i) Which Tribal entity, department, agency, official, or other agent will serve as the Lease Administrator;
  - (ii) That Tribal Council or its designee may designate a replacement Lease Administrator at its sole

discretion; and

(iii) That the Lessee must be provided timely written notice of the identity and address of any replacement Lease Administrator.

(d) **Bonding and Insurance.** A Residential Lease need not require the Lessee to provide a Performance Bond or alternative form of security, or insurance, but, if it does, it must set out the requirements for the bond, alternative form of security, and/or insurance.

(e) **General Indemnity.** A Residential Lease must require that the Lessee indemnify and hold the Tribe and the United States harmless from any loss, liability, or damages resulting from the Lessee's use or occupation of the leased premises.

(f) **Indemnity Related to Hazardous Materials.** A Residential Lease must specifically require that the Lessee indemnify the United States and the Tribe 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 materials from the leased premises that occurs during the Lease term, regardless of fault, except that the Lessee will not be required to indemnify the Tribe for liability or costs arising from the Tribe's negligence or willful misconduct.

(g) **Authorizing Law.** A Residential Lease must include a citation of the provisions of this Ordinance which authorize the Tribe's Approval of the Lease, along with a citation of the formal documents or minutes by which such authority has been exercised.

(h) **Description of Land.** A Residential Lease must contain a description of the leased premises. If possible, the Lease should describe the leased premises by reference to a public or private survey. If the land cannot be so described, the Lease must include a legal description, a survey-grade global positioning system description, or other description prepared by a registered land surveyor that is sufficient to identify the leased premises and sufficient for recordation with LTRO.

(i) **Amount & Kind of Rent.**

(i) A Residential Lease for Housing for Public Purposes of Trust Land may allow for any rent amount, which may or may not be a Fair Market Rental.

(ii) A Residential Lease for purposes other than Housing for Public Purposes must provide for the payment of a Fair Market Rental, unless the Tribal Council determines that a lesser amount is in the best interest of the Tribe.

(iii) Any Residential Lease may provide for alternative forms of payment, including, but not limited to in-kind consideration, or varying types of compensation at specific stages during the life of the Lease.

(iv) A Residential Lease must provide the amount and kind of rent payments.

(j) **Form & Manner of Payment; Late Payment Penalties.**

(i) The Lease must provide that rent payments are to be made to the Lease Administrator, and the Lease must provide an address where payments may be delivered.

(ii) The Lease must provide a list of acceptable forms of payment.

(iii) A Residential Lease must specify the dates on which all rent payments are due. Unless otherwise

provided in the Lease, rent payments may not be made or accepted more than one year in advance of the due date. The Lease must provide that rent payments are due at the time specified in the Lease, regardless of whether the Lessee receives an advance billing or other notice that a payment is due.

(iv) A Residential Lease must provide that failure to make a rent payment by the due date or other specified date is a Violation.

(v) A Residential Lease may provide that interest will accrue on any rent payment not made by the due date or any other date specified in the Lease, but if it does, the Lease must also specify the interest rate and the date on which such interest payments are due.

(vi) A Residential Lease may identify additional late payment penalties that will apply if a rent payment is not made by a specified date but if it does, the Lease must also specify the date on which such penalties are due.

(vii) If the Residential Lease allows for interest charges and late payment penalties, such charges and penalties will apply in the absence of any specific notice to the Lessee from the Lease Administrator.

(viii) If such charges and penalties are provided for in the Lease, a Residential Lease must provide that failure to pay interest charges and/or late payment penalties by the specified date is a Violation.

**(k) Rental Adjustments.**

(i) If the Lease term runs more than five years, a Residential Lease must provide for one or more rental adjustments, unless:

A. The Lease is for Housing for Public Purposes; or

B. The Tribal Council determines not having rental adjustment for a particular Lease in the best interest of the Tribe.

(ii) If the Lease provides for rental adjustments, the Lease must specify:

A. How adjustments are made;

B. Who makes the adjustments;

C. When the adjustments are effective, and

D. How disputes about the adjustments will be resolved.

(l) **Administrative Fees.** A Residential Lease may provide for administrative fees in the event the Lessee's rent payment in the form of personal or business check is dishonored and to cover the costs of providing notices and other correspondence associated with the Lease.

(m) **Irrigation & Drainage Maintenance.** If the leased premises are within an Indian irrigation project or drainage district, except as provided by Title 25, part 171 of the Code of Federal Regulations, a Residential Lease must provide that the Lessee must pay all operation and maintenance charges that accrue during the Lease term to the appropriate official in charge of the irrigation project or drainage district and failure to make any such payment shall be a Violation.

(n) **Historic & Cultural Discoveries.** A Residential Lease must provide that 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 Lease, all activity in the immediate vicinity of the properties, resources, remains, or items will cease and the Lessee shall contact the Lease Administrator to determine how to proceed and the appropriate disposition of any such items.

(o) **Purpose & Use of Premises.** A Residential Lease must describe the purpose of the Lease and the authorized uses of the leased premises. The Lease must provide that use of the Leased premises for an unauthorized purpose shall be a Violation.

(p) **Commencement Date, Term.** A Residential Lease must provide for a definite Lease term, not to exceed 75 years, and specify the commencement date, not more than one year after the date on which the Lease is approved.

(q) **Renewal Process.** A Residential Lease may provide for an option to renew, but only if such renewal is for a definite term and would not extend the total Lease term beyond 75 years from the original commencement date, and the Lease specifies:

(i) The time and manner in which the option must be exercised or whether it is automatically effective if no action is taken;

(ii) That the Lessee must provide notice of the renewal to the Lease Administrator and any Sureties and Mortgagee(s);

(iii) 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

(iv) Any other conditions for renewal.

(r) **Amendments.** A Residential Lease must provide that any amendment of the Lease is subject to:

(i) Approval in accordance with Section 3 of this Ordinance; and

(ii) The written consent of the Lessee's Mortgagee(s), if any.

(s) **Assignments.**

(i) A Residential Lease may authorize assignment of the Lease without further approval, but the Lease must provide that such an Assignment is allowed only if:

A. The Lease is for Housing for Public Purposes or the assignee is a Leasehold Mortgagee or its designee, acquiring the Lease either through foreclosure or by conveyance;

B. The assignee agrees in writing to assume all of the obligations and conditions of the Lease;

C. The assignee agrees in writing that any transfer of the Lease will be in accordance with applicable Tribal and federal law and regulation; and

D. The Lessee promptly provides the Lease Administrator with copies of any documents associated with the Assignment.

(ii) A Residential Lease may allow the Lessee to assign the Lease subject to additional approval, in which case the Lease must also:



- A. Describe the process and any timeframe for obtaining approval;
- B. Identify and provide the address of the Tribal agency, department, commission, official, political body, or other entity which may provide such approval; and
- C. State the conditions under which such approval may be granted, including whether:
  1. The written consent of the Lessee's Mortgagee(s) and Sureties, if any, is required;
  2. The Lessee may be in Violation of the Lease at the time of Assignment;
  3. The assignee must agree to be bound by the terms of the Lease; and
  4. Assignment will be permitted when it may adversely affect the value of any part of the leased premises not assigned.

**(t) Subleases.**

- (i) A Residential Lease may authorize sublease without additional approval, but the Lease must provide that any Sublease shall not relieve the Lessee of any liability and must require the Lessee to promptly provide the Lease Administrator with copies of the Sublease.
- (ii) A Residential Lease may allow the Lessee to sublease subject to additional approval, in which case the Lease must also:

- A. Describe the process and any timeframe for obtaining approval;
- B. Identify and provide the address of the Tribal agency, department, commission, official, political body, or other entity which may provide such approval; and
- C. State the conditions under which such approval may be granted, including whether:
  1. The written consent of the Lessee's Mortgagee(s) and Sureties, if any, is required;
  2. The Lessee may be in Violation of the Lease;
  3. The Lessee is required to remain liable under the Sublease; and
  4. Sublease will be permitted when it may adversely affect the value of any part of the leased premises not subleased.

**(u) Leasehold Mortgages.**

- (i) A Residential Lease must authorize the Lessee to Mortgage its leasehold interest, subject to any conditions stated in the Lease; which must, at a minimum address whether:
  - A. Proceeds from the Leasehold Mortgage may be used for purposes unrelated to the leased premises; and
  - B. Whether the Leasehold Mortgage must be limited to the leasehold.

(ii) A Residential Lease must require the Lessee to promptly provide the Lease Administrator with copies of any documents associated with any Leasehold Mortgage.

(v) **Unauthorized Transfer.** A Residential Lease must provide that any attempt by the Lessee to Mortgage the leasehold interest or authorize possession by another party other than as authorized by the Lease and in compliance with this Ordinance will be treated as a Violation and such Mortgage or transfer shall be null and void.

(w) **Permanent Improvements.**

(i) A Residential Lease may allow the Lessee to construct Permanent Improvements on the leased premises, in which case the Lease must:

A. Specify that the Lessee will own, construct, operate, maintain, and manage the Permanent Improvements during the Lease term;

B. Generally describe the type and location of any Permanent Improvements;

C. Require the Lessee to provide the Lease Administrator with reasonable notice of the construction of any Permanent Improvements not generally described in the Lease; and

D. Provide, with respect to each specific Permanent Improvement, either that it will:

1. Remain on the leased premises, in a condition satisfactory to the Tribe and become the property of the Tribe upon expiration or Cancellation of the Lease;

2. Be removed within a time period specified in the Lease, at the Lessee's expense, with the leased premises to be restored as close as possible to their condition prior to construction of such improvement; or

3. Be disposed of by other specified means.

(ii) If the Lease allows the Lessee to remove the Permanent Improvements, it must also provide the Tribe with an option to waive the removal requirement and take title to any Permanent Improvement not removed within the specified time period.

(x) **Remedies.** A Residential Lease may provide the Tribe and the Lessee with certain negotiated remedies in the event of a Violation, including the power to cancel or terminate the Lease.

(y) **Dispute Resolution.** A Residential Lease must provide that Lease disputes are to be resolved in a Court of Competent Jurisdiction or provide an alternative dispute resolution method.

(z) **Limited Waiver of Sovereign Immunity.** The Tribal Council may authorize the inclusion of a provision waiving the Tribe's sovereign immunity in a Residential Lease but only for actions arising from the Tribe's conduct towards the Lessee in connection with its administration or enforcement of the Lease or to allow the Lessee to avail itself of its remedies under the Lease. Such a waiver may limit the Lessee's remedies in such an action to specific performance of Lease terms or other equitable relief as the Tribal Council finds appropriate and in the best interest of the Tribe.

(aa) **Compensation for Diminished Value.** Unless otherwise provided in a Residential Lease, the Tribe will be entitled to receive any settlement funds or other payments arising from certain actions that diminish the value of the land or the improvements thereon. Such payments may include, but are not limited to, insurance

proceeds, trespass damages, and condemnation awards.

(bb) **Inspections & Right of Entry.** A Residential Lease must provide that the Tribe and/or the Secretary may enter the leased premises at any reasonable time, with reasonable prior notice, for inspection and to ensure that the Lessee is in compliance with the Lease.

(cc) **Parties & Notices.** A Residential Lease must:

(i) Identify the parties to the Lease;

(ii) Provide addresses for the Lessee and the Lease Administrator where all notices and other correspondence related to the Lease may be sent;

(iii) Require the Lessee to timely provide an address or addresses where notices and other correspondence related to the Lease may be sent to any Sureties and Mortgagee(s) it has contracted with in connection with the Lease; and

(iv) Require the Lessee to timely notify the Tribe in writing of any changes in its mailing address or that of its Sureties and Mortgagee(s) that occur during the Lease term.

(dd) **Access to Records & Information.** A Residential Lease must provide that the Tribe may treat as a Violation any failure by the Lessee to cooperate with a request to make appropriate records, reports, or information relating to the Lease or leased premises available for the Tribe's inspection and duplication.

(ee) **Access.** A Residential 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.

(ff) **Environmental Impact Report Mitigation Measures.** If applicable, a Residential Lease must provide that any failure by the Lessee to comply with mitigation measures required by the Environmental Impact Report prepared in connection with the Approval of the Lease shall be a Violation.

(gg) **Documents & Information to Facilitate Compliance with Tribal Law.**

(i) A Lease must provide which, if any, reports, surveys, site assessments, or other information will be required to facilitate ongoing compliance with applicable Tribal environmental, cultural resource, land use, or other law.

(ii) If such documents and information are required, the Lease must provide that failure to provide such information in accordance with the requirements and procedure of the responsible Tribe department, agency, board, commission, or official shall be a Violation.

## 14. BUSINESS LEASES

### 14.1 Applicability:

(a) This Section 14 covers both ground Leases of undeveloped land and Leases of developed land including all Permanent Improvements on Trust Land that are not covered in another Section of this Ordinance, including:

(i) Leases for residential purposes not covered in Section 13;

(ii) Leases for business purposes that are not covered in Sections 12 or 15;

(iii) Leases for religious, educational, recreational, cultural, or other public purposes; and

(iv) Commercial or industrial Leases for retail, office, manufacturing, storage, biomass, waste-to-energy, or other business purposes.

(b) Leases covered by this Section may authorize the construction of single-purpose or mixed-use projects designed for use by any number of Lessees or occupants.

**14.2 Fair Market Rental.** The Tribal Council or its designee must determine the Fair Market Rental of the prospective leased premises prior to Approval of a Business Lease by market analysis, appraisal, or other appropriate valuation method prepared in accordance with USPAP or by competitive bidding.

**14.3 Business Lease Provisions.** All Business Lease Documents shall be consistent with the following:

(a) **Impermissible Uses.** A Business Lease must provide that the Lessee shall not engage in or allow unlawful conduct, creation of a nuisance, illegal activity, or negligent use or waste of the leased premises and that the Lessee must comply with all applicable laws, ordinances, rules, regulations, and other legal requirements, including those imposed by Tribal Law. The Lease must provide that unlawful, illegal, unauthorized, harmful, negligent, or wasteful use of the leased premises shall be a Violation.

(b) **Enforcement by the United States.** A Business Lease must provide that the obligations of the Lessee and its Sureties to the Tribe will also be enforceable by the United States, so long as the leased land remains in Trust or Restricted Status.

(c) **Lease Administrator.** A Business Lease must specify:

(i) Which Tribal entity, department, agency, official, or other agent will serve as the Lease Administrator;

(ii) That Tribal Council or its designee may designate a replacement Lease Administrator at its sole discretion; and

(iii) That the Lessee must be provided timely written notice of the identity and address of any replacement Lease Administrator.

(d) **Insurance.** Unless waiver or modification is in the best interest of the Tribe as determined by the Tribal Council, a Business Lease must require that a Lessee provide insurance. Such insurance may include property, crop, liability, and/or casualty insurance. If insurance is required, the Lease must provide:

(i) Such insurance must cover the Tribe and the United States as additional insureds;

(ii) Such insurance must be sufficient to protect all insurable improvements on the leased premises; and

(iii) Failure to provide proof of insurance to the Lease Administrator by a specified date, before the commencement date of the Lease, shall be a Violation.

(e) **General Indemnity.** A Business Lease must require that the Lessee indemnify and hold the Tribe and the United States harmless from any loss, liability, or damages resulting from the Lessee's use or occupation of the leased premises.

(f) **Indemnity Related to Hazardous Materials.** A Business Lease must specifically require that the Lessee indemnify the United States and the Tribe 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 materials from the leased premises that occurs during the Lease term, regardless of fault, except that the Lessee will not be required to indemnify the Tribe for liability or costs arising from the Tribe's negligence or willful misconduct.

(g) **Authorizing Law.** A Business Lease must include a citation of the provisions of this Ordinance which authorize the Tribe's Approval of the Lease, along with a citation of the formal documents or minutes by which such authority has been exercised.

(h) **Description of Land.** A Business Lease must contain a description of the leased premises. If possible, the Lease should describe the leased premises by reference to a public or private survey. If the land cannot be so described, the Lease must include a legal description, a survey-grade global positioning system description, or other description prepared by a registered land surveyor that is sufficient to identify the leased premises and recordation with LTRO.

(i) **Bond.**

(i) A Business Lease must require the Lessee to furnish a Performance Bond that meets the requirements of subsection 14.3, unless waived or modified by the Tribal Council. The Tribal Council or its designee may waive or modify the bond requirement only on the grounds that, either:

- A. Such waiver or modification is in the best interest of the Tribe; or
- B. The Lease is for religious, educational, recreational, cultural, or other public purposes.

(ii) If a bond is required, the Lease must:

- A. Specify the conditions and procedure under which the Tribe may adjust the bond requirements to reflect changing conditions;
- B. Provide that failure to furnish the required bond and any supporting documents requested by the Lease Administrator by a specified date, before the commencement date of the Lease, shall be a Violation;
- C. State that the Lessee must obtain the consent of the Surety for any legal instrument that directly affects the Lessee's or Surety's obligations and liabilities; and
- D. Provide that in the event the Surety cancels a Performance Bond or other security instrument, failure to provide a substitute Performance Bond or security shall be a Violation.

(j) **Amount & Kind of Rent.**

(i) A Business Lease must provide for the payment of a Fair Market Rental before any adjustments, based on a fixed amount, a percentage of the projected income, or some other method, unless, either:

- A. The Tribal Council determines that a lesser amount or non-monetary compensation is in the best interest of the Tribe; or
- B. The Lease provides for less than Fair Market Rental only during pre-development or construction periods.

(ii) A Business Lease may provide for:

- A. Monetary rental payments in a fixed amount;
- B. Alternative forms of compensation, including but not limited to, in-kind consideration and payments based on a percentage of income, or other method of determining payment amounts; and
- C. Varying types of compensation at specific stages during the life of the Lease, including but not limited to fixed annual payments during construction, payments based on income during an operational period, and bonuses.

(iii) A Business Lease must specify the amount and kind of rent payments.

**(k) Form & Manner of Payment; Late Payment Penalties.**

(i) A Business Lease must provide that rent payments are to be made to the Lease Administrator, and the Lease must provide an address where payments may be delivered.

(ii) A Business Lease must provide that the Lease Administrator will not accept cash or foreign currency for rent payments and will accept third-party checks only from financial institutions or federal agencies. Acceptable forms of payment for monetary rent must be provided in the Lease as:

- A. Electronic funds transfer payments;
- B. Money orders;
- C. Personal checks;
- D. Certified checks; or
- E. Cashier's checks.

(iii) A Business Lease must specify the dates on which all rent payments are due. Unless otherwise provided in the Lease, rent payments may not be made or accepted more than one year in advance of the due date. The Lease must provide rent payments are due at the time specified in the Lease, regardless of whether the Lessee receives an advance billing or other notice that a payment is due.

(iv) A Business Lease must provide that failure to make a rent payment by the due date or other specified date is a Violation.

(v) A Business Lease may provide that interest will accrue on any rent payment not made by the due date or any other date specified in the Lease, but if it does, the Lease must also specify the interest rate and the date on which such interest payments are due.

(vi) A Business Lease may identify additional late payment penalties that will apply if a rent payment is not made by a specified date, but if it does, the Lease must also specify the date on which such penalties are due.

(vii) Unless otherwise provided in the Lease, interest charges and late payment penalties will apply in the absence of any specific notice to the Lessee from the Lease Administrator.

(viii) If such charges and/or penalties are provided for in the Lease, a Business Lease must provide that failure to pay interest charges and/or late payment penalties by the specified date is a Violation.

**(l) Rental Adjustments.**

(i) A Business Lease must provide for periodic review and adjustment of rental compensation at least every fifth year unless:

A. The Lease term is less than five years;

B. The Lease is for religious, educational, recreational, cultural, or other public purposes;

C. The Lease provides for the payment of less than a Fair Market Rental for the entire Lease term;

D. The Lease provides for automatic adjustments;

E. The Lease provides for most or all of the compensation to be paid during the first five years of the Lease term;

F. The Lease provides for graduated rent or non-monetary compensation; or

G. The Tribal Council or its designee determines not requiring periodic review and adjustment of rental compensation is in the best interest of the Tribe.

(ii) If the Lease provides for periodic review and adjustment of rental compensation, the Lease must specify:

A. How adjustments are made;

B. Who makes the adjustments;

C. When the adjustments are effective; and

D. How disputes about the adjustments will be resolved.

(m) **Administrative Fees.** A Business Lease may provide for administrative fees in the event the Lessee's rent payment in the form of personal or business check is dishonored and to cover the costs of providing notices and other correspondence associated with the Lease.

(n) **Irrigation & Drainage Maintenance.** If the leased premises are within an Indian irrigation project or drainage district, except as provided by Title 25, part 171 of the Code of Federal Regulations, a Business Lease must provide that the Lessee must pay all operation and maintenance charges that accrue during the Lease term to the appropriate official in charge of the irrigation project or drainage district and failure to make any such payment shall be a Violation.

(o) **Historic & Cultural Discoveries.** A Business Lease must provide that 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 Lease, all activity in the immediate vicinity of the properties, resources, remains, or items will cease and the Lessee shall contact the Lease Administrator to determine how to proceed and the appropriate disposition of any such items.

(p) **Purpose & Use of Premises.** A Business Lease must describe the purpose of the Lease and the authorized

uses of the leased premises. The Lease must provide that use of the leased premises for an unauthorized purpose will be treated as a Violation, and the Lease may provide that non-use of the leased premises for a specified period of time shall be a Violation.

(q) **Compatible Uses.** A Business Lease may provide for the Tribe to use, or authorize others to use, the leased premises for other uses compatible with the purpose of and consistent with the terms of the Business Lease.

(r) **Commencement Date & Term.** A Business Lease must provide for a definite Lease term, not to exceed 25 years, except if the Lease is for residential, religious, educational, recreational, cultural, or other public purposes, the Lease term may not exceed 75 years, and specify the commencement date, not more than one year after the date on which the Lease is approved.

(s) **Renewal.**

(i) A Business Lease other than one for religious, educational, recreational, cultural, or other public purposes may provide for an option to renew for up to two additional terms, each of which may not exceed 25 years.

(ii) A Business Lease for religious, educational, recreational, cultural, or other public purposes may provide for an option to renew, but only if such renewal is for a definite term and would not extend the Lease term beyond 75 years from the original commencement date.

(iii) If a Lease provides an option to renew such a renewal must be for a definite term, and the Lease must specify:

- A. The time and manner in which the option must be exercised or whether it is automatically effective if no action is taken;
- B. That the Lessee must provide notice of the renewal to the Tribe and any Sureties and Mortgagee(s);
- C. 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
- D. Any other conditions for renewal.

(t) **Amendments.** A Business Lease must provide that any amendment of the Lease is subject to:

(i) Approval in accordance with Section 3 of this Ordinance; and

(ii) The written consent of the Lessee's Sureties and Mortgagee(s), if any.

(u) **Assignments.**

(i) A Business Lease may authorize Assignment of the Lease without further approval only to an assignee that is:

- A. One of no more than three distinct entities specified in the Lease;
- B. A wholly owned subsidiary of the Lessee; or
- C. A Leasehold Mortgagee or its designee, acquiring the Lease either through foreclosure or by conveyance, and;



1. The assignee agrees in writing to assume all of the obligations and conditions of the Lease; and
2. The assignee agrees in writing that any transfer of the Lease will be in accordance with applicable Tribal and federal law and regulation.

(ii) If a Business Lease authorizes Assignment without further approval, it must require the Lessee to promptly provide the Lease Administrator with copies of any documents associated with the Assignment.

(iii) A Business Lease may allow the Lessee to assign the Lease subject to additional approval, in which case the Lease must also:

A. Describe the process and any timeframe for obtaining approval;

B. Identify and provide the address of the Tribal agency, department, commission, official, political body, or other entity which may provide such approval; and

C. State the conditions under which such approval may be granted, including whether:

1. The written consent of the Lessee's Mortgagee(s) and Sureties, if any, is required;
2. The Lessee may be in Violation of the Lease at the time of Assignment;
3. The assignee must post a Performance Bond or other form of security in accordance with Section 14.3;
4. The assignee must agree to be bound by the terms of the Lease; and
5. Assignment will be permitted when it may adversely affect the value of any part of the leased premises not assigned.

**(v) Subleases.**

(i) A Business Lease may authorize the Lessee to sublease without additional approval, but if it does, the Lease must provide that any Sublease shall not relieve the Lessee of any liability and must require the Lessee to promptly provide the Lease Administrator with copies of the Sublease.

(ii) A Business Lease may allow the Lessee to sublease subject to additional approval, in which case the Lease must also:

A. Describe the process and any timeframe for obtaining approval;

B. Identify and provide the address of the Tribal agency, department, commission, official, political body, or other entity which may provide such approval; and

C. State the conditions under which such approval may be granted, including whether:

1. The written consent of the Lessee's Mortgagee(s) and Sureties, if any, is required;

2. The Lessee may be in Violation of the Lease;

3. The Lessee is required to remain liable under the Sublease; and
4. Sublease will be permitted when it may adversely affect the value of any part of the leased premises not Subleased.

(w) **Leasehold Mortgages.** A Business Lease may allow the Lessee to Mortgage its leasehold interest, in which case the Lease must also:

- (i) Describe the process and any timeframe for obtaining approval;
- (ii) Identify and provide the address of the Tribal agency, department, commission, official, political body, or other entity which may provide such approval; and
- (iii) State the conditions under which such approval may be granted, including whether:
  - A. The written consent of the Lessee's Mortgagee(s) and Sureties, if any, is required;
  - B. The Leasehold Mortgage proceeds may be used for purposes unrelated to the leased premises; and
  - C. The Leasehold Mortgage must be limited to the leasehold.

(x) **Unauthorized Transfer.** A Business Lease must provide that any attempt by the Lessee to Mortgage the leasehold interest or authorize possession by another party other than as authorized by the Lease and in compliance with this Ordinance will be treated as a Violation and such Mortgage or transfer shall be null and void.

(y) **Permanent Improvements.**

(i) A Business Lease may allow the Lessee to construct Permanent Improvements, or provide for the development of:

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

(ii) If a Business Lease provides for construction of Permanent Improvements or for the development of a plan and construction schedule for Permanent Improvements, the Lease must specify:

- A. Who will own, construct, operate, maintain, and manage the Permanent Improvements;
- B. Under what conditions, if any, Permanent Improvements the Lessee constructs may be conveyed to the Tribe during the Lease term; and
- C. Whether each specific Permanent Improvement the Lessee constructs will:
  1. Remain on the leased premises, upon the expiration, Cancellation, or Termination of the Lease, in a condition satisfactory to the Tribe, and become the property of the Tribe;
  2. Be removed within a time period specified in the Lease, at the Lessee's expense, with the leased premises to be restored as closely as possible to their condition before construction of the

Permanent Improvements; or

3. Be disposed of by other specified means.

(iii) A Lease that requires the Lessee to remove the Permanent Improvements must also provide the Tribe with an option to take possession of and title to the Permanent Improvements if the Permanent Improvements are not removed within the specified time period.

(z) **Due Diligence Requirements.** Unless waiver or modification is found to be in the best interest of the Tribe by the Tribal Council, a Business Lease other than one for religious, educational, recreational, cultural, or other public purposes that allows for the construction of Permanent Improvements must provide:

(i) Due diligence requirements that require the Lessee to complete construction of any Permanent Improvements within the schedule specified in the Lease;

(ii) A process for changing the schedule by mutual consent of the parties to the Lease;

(iii) That if construction does not occur, or is not expected to be completed, within the time period specified in the Lease, the Lessee must provide the Tribe with an explanation of good cause as to the nature of any delay, the anticipated date of construction of facilities, and evidence of progress toward completion of construction; and

(iv) That failure to comply with the due diligence requirements of the Lease shall be a Violation.

(aa) **Remedies.** A Business Lease may provide the Tribe and the Lessee with certain negotiated remedies in the event of a Violation, including the power to cancel the Lease.

(bb) **Dispute Resolution.** A Business Lease must provide that Lease disputes are to be resolved in a Court of Competent Jurisdiction or provide an alternative dispute resolution method.

(cc) **Limited Waiver of Sovereign Immunity.** The Tribal Council may authorize the inclusion of a provision waiving the Tribe's sovereign immunity in a Business Lease but only for actions arising from the Tribe's conduct towards the Lessee in connection with its administration or enforcement of the Lease or to allow the Lessee to avail itself of its remedies under the Lease. Such a waiver may limit the Lessee's remedies in such an action to specific performance of Lease terms or other equitable relief as the Tribal Council finds appropriate and in the best interest of the Tribe.

(dd) **Compensation for Diminished Value.** A Business Lease must specify under what conditions and in what portion the Tribe and/or the Lessee will be entitled to receive any settlement funds or other payments arising from certain actions that diminish the value of the land or the improvements thereon. Such payments may include, but are not limited to, insurance proceeds, trespass damages, and condemnation awards.

(ee) **Inspections & Right of Entry.** A Business Lease must provide that the Tribe and/or the Secretary may enter the leased premises at any reasonable time, with reasonable prior notice, for inspection and to ensure that the Lessee is in compliance with the Lease.

(ff) **Parties & Notices.** A Business Lease must:

(i) Identify the parties to the Lease;

(ii) Provide addresses for the Lessee and the Lease Administrator where all notices and other correspondence related to the Lease may be sent;

(iii) Require the Lessee to timely provide an address or addresses where notices and other correspondence related to the Lease may be sent to any Sureties and Mortgagee(s) it has contracted with in connection with the Lease; and

(iv) Require the Lessee to timely notify the Tribe in writing of any changes in its mailing address or that of its Sureties and Mortgagee(s) that occur during the Lease term.

(gg) **Access to Records & Information.** A Business Lease must provide that the Tribe may treat as a Violation any failure by the Lessee to cooperate with a request to make appropriate records, reports, or information relating to the Lease or leased premises available for the Tribe's inspection and duplication.

(hh) **Access.** A Business 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.

(ii) **Environmental Impact Report Mitigation Measures.** If applicable, a Business Lease must provide that any failure by the Lessee to comply with mitigation measures required by the Environmental Impact Report prepared in connection with the Approval of the Lease shall be a Violation.

(jj) **Documents & Information to Facilitate Compliance with Tribal Law.**

(i) A Business Lease must provide which, if any, reports, surveys, site assessments, or other information will be required to facilitate ongoing compliance with applicable Tribal environmental, cultural resource, land use, or other law.

(ii) If such documents and information are required, the Lease must provide that failure to provide such information in accordance with the requirements and procedure of the responsible Tribe department, agency, board, commission, or official shall be a Violation.

#### 14.4 Bonding for Business Lease.

(a) If required by a Business Lease, the Lessee must provide a Performance Bond or alternative form of security, in an amount sufficient to secure the contractual obligations including:

(i) No less than:

A. The highest annual rental specified in the Lease, if compensation is paid annually; or

B. If the compensation is not paid annually, another amount established by the Tribal Council or its designee;

(ii) The construction of any required Permanent Improvements;

(iii) The operation and maintenance charges for any land located within an irrigation project; and

(iv) The restoration and reclamation of the leased premises to their condition at the start of the Lease term or some other specified condition.

(b) The Performance Bond or other security must be made payable only to the Tribe.

(c) The bond may not be modified or withdrawn without the approval of the Tribal Council.

(d) The Performance Bond or other security instrument must require the Surety to provide notice to the Lease

Administrator at least 60 days before canceling a Performance Bond or other security. This will allow the Tribe to notify the Lessee of its obligation to provide a substitute Performance Bond or other security and require collection of the bond or security before the cancellation date.

**(e) Acceptable Forms of Security.**

(i) The Tribe will accept a Performance Bond only in one of the following forms:

- A. Certificates of deposit issued by a federally insured financial institution authorized to do business in the United States;
- B. Irrevocable letters of credit issued by a federally insured financial institution authorized to do business in the United States;
- C. Negotiable Treasury securities; or
- D. Surety bonds issued by a company approved by the U.S. Department of the Treasury.

(ii) The Tribe 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.

(iii) All forms of Performance Bonds or alternative security must, if applicable:

- A. Indicate on their face that the Tribe's approval is required for redemption;
- B. Be accompanied by a statement granting full authority to the Tribe to make an immediate claim upon or sell them if the Lessee violates the Lease;
- C. Be irrevocable during the term of the Performance Bond or alternative security; and
- D. Be automatically renewable during the term of the Lease.

(iv) The Tribe will not accept cash bonds.

**(f) Release of Security.** Upon expiration, Termination, or Cancellation of a Lease, the Lessee may request, in writing, the Tribal Council or its designee release the Performance Bond or alternative form of security. If the Lessee has complied with all Lease obligations, if applicable, the Tribal Council or its designee shall release the Performance Bond or alternative form of security to the Lessee. The Tribal Council or its designee shall release any Performance Bond or alternative form of security provided by an Applicant upon the withdraw of the Applicant's application.

## **15. WIND AND SOLAR ENERGY LEASES**

### **15.1 Applicability.**

(a) This Section 15 covers:

- (i) Wind Energy Evaluation Leases or WEELs, which are short-term Leases that authorize possession of Trust Land for the purpose of installing, operating, and maintaining instrumentation, and associated infrastructure, such as meteorological towers, to evaluate wind resources for electricity generation; and
- (ii) Wind and Solar Resource or WSR Leases, which are Leases that authorize possession of Trust Land for the purpose of installing, operating, and maintaining instrumentation, facilities, and associated

infrastructure, such as wind turbines and solar panels to harness wind or solar energy to generate and supply electricity for resale on a for-profit or non-profit basis to a utility grid serving the public generally or to users within the local community.

- (b) If the generation of electricity is solely to support a use approved under Sections 12, 13, or 14 for the same parcel of land, then the installation, operation, and maintenance of instrumentation, facilities, and associated infrastructure are governed under those Sections, respectively.

**15.2 Fair Market Rental Determination.** The Tribal Council or its designee must determine the Fair Market Rental of the prospective leased premises prior to Approval of a WSR Lease by market analysis, appraisal, or other appropriate valuation method prepared in accordance with USPAP or by competitive bidding.

### 15.3 WEEL Provisions.

- (a) **Impermissible Uses.** A WEEL must provide that the Lessee shall not engage in or allow unlawful conduct, creation of a nuisance, illegal activity, or negligent use or waste of the leased premises and that the Lessee must comply with all applicable laws, ordinances, rules, regulations, and other legal requirements, including those imposed by Tribal Law. The Lease must provide that unlawful, illegal, unauthorized, harmful, negligent, or wasteful use of the leased premises shall be a Violation.
- (b) **Enforcement by the United States.** A WEEL must provide that the obligations of the Lessee and its Sureties to the Tribe will also be enforceable by the United States, so long as the leased land remains in Trust or Restricted Status.
- (c) **Lease Administrator.** A WEEL must specify:
  - (i) Which Tribal entity, department, agency, official, or other agent will serve as the Lease Administrator;
  - (ii) That Tribal Council or its designee may designate a replacement Lease Administrator at its sole discretion; and
  - (iii) That the Lessee must be provided timely written notice of the identity and address of any replacement Lease Administrator.
- (d) **Insurance.**
  - (i) Unless waiver or modification is in the best interest of the Tribe as determined by the Tribal Council, a WEEL must require that a Lessee provide insurance. Such insurance may include property, crop, liability, and/or casualty insurance, as appropriate. If insurance is required, the Lease must provide that:
    - A. Such insurance must identify the Tribe and the United States as additional insured parties;
    - B. Such insurance must be sufficient to protect all insurable improvements on the leased premises; and
    - C. Failure to provide proof of insurance to the Lease Administrator by a specified date, before the commencement date of the Lease, shall be a Violation.
  - (ii) Insurance obtained to satisfy this subsection may be increased and extended to satisfy the insurance requirements of a WSR Lease.
- (e) **General Indemnity.** A WEEL must require that the Lessee indemnify and hold the Tribe and the United

States harmless from any loss, liability, or damages resulting from the Lessee's use or occupation of the leased premises.

(f) **Indemnity Related to Hazardous Materials.** A WEEL must specifically require that the Lessee indemnify the United States and the Tribe 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 materials from the leased premises that occurs during the Lease term, regardless of fault, except that the Lessee will not be required to indemnify the Tribe for liability or costs arising from the Tribe's negligence or willful misconduct.

(g) **Authorizing Law.** A WEEL must include a citation of the provisions of this Ordinance which authorize the Tribe's Approval of the Lease, along with a citation of the formal documents or minutes by which such authority has been exercised.

(h) **Description of Land.** A WEEL must contain a description of the leased premises. If possible, the Lease should describe the leased premises by reference to a public or private survey. If the land cannot be so described, the Lease must include a legal description, a survey-grade global positioning system description, or other description prepared by a registered land surveyor that is sufficient to identify the leased premises and for recordation with LTRO.

(i) **Bond.** A WEEL need not require the Lessee provide a Performance Bond or alternative form of security.

**(j) Amount & Kind of Rent.**

(i) A WEEL may provide for:

- A. Monetary rental payments in a fixed amount;
- B. Alternative forms of compensation, including but not limited to, in-kind consideration and payments based on percentage of income; or
- C. Varying types of consideration at specific stages during the Lease, including but not limited to fixed annual payments, payments based on income, and bonuses;

(ii) A WEEL must specify the amount and kind of rent payments.

**(k) Form & Manner of Payment; Late Payment Penalties.**

(i) A WEEL must provide that rent payments are to be made to the Lease Administrator, and the Lease must provide an address where payments may be delivered.

(ii) A WEEL must provide that the Lease Administrator will not accept cash or foreign currency for rent payments and will accept third-party checks only from financial institutions or federal agencies. Acceptable forms of payment for monetary rent must be provided in the Lease as:

- A. Electronic funds transfer payments;
- B. Money orders;
- C. Personal checks;
- D. Certified checks; or

E. Cashier's checks.

(iii) A WEEL must specify the dates on which all rent payments are due. Unless otherwise provided in the Lease, rent payments may not be made or accepted more than one year in advance of the due date. The Lease must provide rent payments are due at the time specified in the Lease, regardless of whether the Lessee receives an advance billing or other notice that a payment is due.

(iv) A WEEL must provide that failure to make a rent payment by the due date or other specified date is a Violation.

(v) A WEEL may provide that interest will accrue on any rent payment not made by the due date or any other date specified in the Lease, but if it does, the Lease must also specify the interest rate and the date on which such interest payments are due.

(vi) A WEEL may identify additional late payment penalties that will apply if a rent payment is not made by a specified date, but if it does, the Lease must also specify the date on which such penalties are due.

(vii) Unless otherwise provided in the Lease, interest charges and late payment penalties will apply in the absence of any specific notice to the Lessee from the Lease Administrator.

(viii) If such charges and penalties are provided for in the Lease, a WEEL must provide that failure to pay interest charges and/or late payment penalties by the specified date is a Violation.

(l) **Rental Adjustments.** A WEEL may provide for periodic review and adjustment of rental compensation, but, if it does, the Lease must specify:

(i) How adjustments are made;

(ii) Who makes the adjustments;

(iii) When the adjustments are effective; and

(iv) How disputes about the adjustments will be resolved;

(m) **Administrative Fees.** A WEEL may provide for administrative fees in the event the Lessee's rent payment in the form of personal or business check is dishonored and to cover the costs of providing notices and other correspondence associated with the Lease.

(n) **Irrigation & Drainage Maintenance.** If the leased premises are within an Indian irrigation project or drainage district, except as provided by Title 25, part 171 of the Code of Federal Regulations, a WEEL must provide that the Lessee must pay all operation and maintenance charges that accrue during the Lease term to the appropriate official in charge of the irrigation project or drainage district and failure to make any such payment shall be a Violation.

(o) **Historic & Cultural Discoveries.** A WEEL must provide that 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 Lease, all activity in the immediate vicinity of the properties, resources, remains, or items will cease and the Lessee shall contact the Lease Administrator to determine how to proceed and the appropriate disposition of any such items.

(p) **Purpose & Use of Premises.** A WEEL must describe the purpose of the Lease and the authorized uses of the leased premises. The Lease must provide that use of the leased premises for an unauthorized purpose



will be treated as a Violation, and the Lease may provide that non-use of the leased premises for a specified period of time shall be a Violation.

(q) **Compatible Uses.** A WEEL may provide for the Tribe to use or authorize others to use the leased premises for other uses compatible with the purpose of and consistent with the terms of the Lease.

(r) **Commencement Date & Term.** A WEEL must provide for a definite term and state the commencement date. A WEEL may provide an option to renew, and if it does, the Lease must provide for a definite term for the renewal period. A WEEL may have an initial term that is no longer than three years and one renewal period not to exceed three years.

(s) **Renewal.** If the WEEL provides for an option to renew, the Lease must provide:

(i) The time and manner in which the option must be exercised or whether it is automatically effective if no action is taken;

(ii) That confirmation of the renewal must be submitted to the Lease Administrator, unless the Lease provides for automatic renewal;

(iii) 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

(iv) Any other conditions for renewal.

(t) **Option for Lessee to Enter into WSR Lease.**

(i) A WEEL may provide for an option period following the expiration of the Lease term during which the Lessee and the Tribe may enter into a WSR Lease.

(ii) If a WEEL contains an option to enter into a WSR Lease, it must provide that, notwithstanding the option, the WSR Lease is subject to approval in accordance with Section 3 of this Ordinance.

(u) **Amendments.** A WEEL must provide that any amendment of the Lease is subject to:

(i) Approval in accordance with Section 3 of this Ordinance; and

(ii) The written consent of the Lessee's Sureties and Mortgagee(s), if any.

(v) **Assignments.**

(i) A WEEL may authorize assignment of the Lease without further approval only to an assignee that is:

A. One of no more than three distinct entities specified in the Lease;

B. A wholly owned subsidiary of the Lessee; or

C. A Leasehold Mortgagee or its designee, acquiring the Lease either through foreclosure or by conveyance, and:

1. The assignee agrees in writing to assume all of the obligations and conditions of the Lease; and

2. The assignee agrees in writing that any transfer of the Lease will be in accordance with

applicable Tribal and federal law and regulation.

(ii) If a WEEL authorizes Assignment without further approval it must require the Lessee to promptly provide the Lease Administrator with copies of any documents associated with the Assignment.

(iii) A WEEL may allow the Lessee to assign the Lease subject to additional approval, in which case the Lease must also:

- A. Describe the process and any timeframe for obtaining approval;
- B. Identify and provide the address of the Tribal agency, department, commission, official, political body, or other entity which may provide such approval; and
- C. State the conditions under which such approval may be granted, including whether:
  1. The written consent of the Lessee's Mortgagee(s) and Sureties, if any, is required;
  2. The Lessee may be in Violation of the Lease at the time of Assignment;
  3. The assignee must agree to be bound by the terms of the Lease;
  4. Assignment will be permitted when it may adversely affect the value of any part of the Leased premises not assigned; and
  5. The assignee must provide evidence of its capacity to perform its obligations under the Lease and Assignment.

**(w) Subleases.**

(i) A WEEL may authorize the Lessee to sublease without additional approval, but, if so, the Lease must provide that any Sublease shall not relieve the Lessee of any liability and must require the Lessee to promptly provide the Lease Administrator with copies of the Sublease.

(ii) A WEEL may allow the Lessee to Sublease subject to additional approval, in which case the Lease must also:

- A. Describe the process and any timeframe for obtaining approval;
- B. Identify and provide the address of the Tribal agency, department, commission, official, political body, or other entity which may provide such approval; and
- C. State the conditions under which such approval may be granted, including whether:
  1. The written consent of the Lessee's Mortgagee(s) and Sureties, if any, is required;
  2. The Lessee may be in Violation of the Lease;
  3. The Lessee is required to remain liable under the Sublease; and
  4. Sublease will be permitted when it may adversely affect the value of any part of the leased premises not subleased.

(x) **Leasehold Mortgages.** A WEEL may allow the Lessee to Mortgage its leasehold interest subject to additional approval, in which case the Lease must also:

- (i) Describe the process and any timeframe for obtaining approval;
- (ii) Identify and provide the address of the Tribal agency, department, commission, official, political body, or other entity which may provide such approval; and
- (iii) State the conditions under which such authorization may be granted, including whether:
  - A. The written consent of the Lessee's Mortgagees and Sureties, if any, is required;
  - B. The Leasehold Mortgage proceeds may be used for purposes unrelated to the leased premises; and
  - C. The Leasehold Mortgage must be limited to the leasehold.

(y) **Unauthorized Transfer.** A WEEL must provide that any attempt by the Lessee to Mortgage the leasehold interest or authorize possession by another party other than as authorized by the Lease and in compliance with this Ordinance will be treated as a Violation and such Mortgage or transfer shall be null and void.

(z) **Permanent Improvements; Equipment Installation Plan.**

(i) A WEEL anticipates the installation of facilities and associated infrastructure of a size and magnitude necessary for evaluation of wind resource capacity and potential effects of development. The Lease must provide that these facilities and associated infrastructure shall be considered Permanent Improvements.

(ii) A WEEL must provide that any Permanent Improvements must be installed in accordance with an Equipment Installation Plan submitted prior to Lease Approval in accordance with Section 3 of this Ordinance.

(iii) A WEEL may allow for revision of the Equipment Installation Plan, but must require Tribal Council Approval to:

- A. Change the location of Permanent Improvements;
- B. Change the type of Permanent Improvements; or
- C. Delay any phase of development more than ninety (90) days.

(iv) A WEEL must specify:

- A. Who will own, install, operate, maintain, and manage the Permanent Improvements;
- B. Whether Permanent Improvements may be conveyed to the Tribe during the Lease term and under what conditions the Permanent Improvements may be so conveyed;
- C. Whether the Lessee intends to grant a security interest, lien, or other encumbrance on or in any Permanent Improvement; the form of any intended security interest, lien, or other encumbrance; and the identity of any person or entity whom the Lessee anticipates will hold or possess a beneficial interest in such a security interest, lien, or other encumbrance; and

D. Whether each specific Permanent Improvement the Lessee installs will:

1. Remain on the premises upon expiration, Termination, or Cancellation of the Lease, whether or not the WEEL is followed by a WSR Lease, in a condition satisfactory to the Tribe;
2. Be removed within a time period specified in the WEEL, 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.

(v) A WEEL that requires the Lessee to remove the Permanent Improvements must also provide the Tribe with an option to take possession and title to the Permanent Improvements if the Permanent Improvements are not removed within the specified time period.

**(aa) Due Diligence.**

(i) A WEEL must include due diligence requirements that require the Lessee to:

- A. Install testing and monitoring facilities within 12 months after the commence date of the WEEL or other period designated in the WEEL and consistent with the Equipment Installation Plan; and
- B. If installation does not occur, or is not expected to be completed, within the time period specified in the Lease, provide the Tribe with an explanation of good cause for any delay, the anticipated date of installation of facilities, and evidence of progress toward installing or completing testing and monitoring facilities.

(ii) A WEEL must provide that failure of the Lessee to comply with the due diligence requirements of the WEEL is a Violation and may lead to:

- A. Cancellation of the Lease; and
- B. Application of the requirement that the Lessee transfer ownership of energy resource information collected under the WEEL to the Tribe under subsection 15.2(bb)(ii).

**(bb) Ownership of the Energy Resource Information.**

(i) A WEEL must specify the ownership of any energy resource information the Lessee obtains during the WEEL term.

(ii) Unless otherwise specified in a WEEL, the energy resource information the Lessee obtains becomes the property of the Tribe at the expiration, termination, or Cancellation of the WEEL or upon failure by the Lessee to diligently install testing and monitoring facilities on the leased premises in accordance with the Lease.

(iii) A WEEL may provide that the Tribe will keep confidential any information it is provided and which is marked confidential or proprietary and that is exempt from public release, to the extent allowed by law.

**(cc) Remedies.** A WEEL may provide the Tribe and the Lessee with certain negotiated remedies in the event of a Violation, including the power to cancel the Lease.

**(dd) Dispute Resolution.** A WEEL must provide that Lease disputes are to be resolved in a Court of Competent

Jurisdiction or provide an alternative dispute resolution method.

- (ee) **Limited Waiver of Sovereign Immunity.** The Tribal Council may authorize the inclusion of a provision waiving the Tribe's sovereign immunity in a WEEL but only for actions arising from the Tribe's conduct towards the Lessee in connection with its administration or enforcement of the Lease or to allow the Lessee to avail itself of its remedies under the Lease. Such a waiver may limit the Lessee's remedies in such an action to specific performance of Lease terms or other equitable relief as the Tribal Council finds appropriate and in the best interest of the Tribe.
- (ff) **Inspections & Right of Entry.** A WEEL must provide that the Tribe and/or the Secretary may enter the leased premises at any reasonable time, with reasonable prior notice, for inspection and to ensure that the Lessee is in compliance with the Lease.
- (gg) **Parties & Notices.** A WEEL must:
  - (i) Identify the parties to the Lease;
  - (ii) Provide addresses for the Lessee and the Lease Administrator where all notices and other correspondence related to the Lease may be sent;
  - (iii) Require the Lessee to timely provide an address or addresses where notices and other correspondence related to the Lease may be sent to any Sureties and Mortgagee(s) it has contracted with in connection with the Lease; and
  - (iv) Require the Lessee to timely notify the Tribe in writing of any changes in its mailing address or that of its Sureties and Mortgagee(s) that occur during the Lease term.
- (hh) **Access to Records & Information.** A WEEL must provide that the Tribe may treat as a Violation any failure by the Lessee to cooperate with a request to make appropriate records, reports, or information relating to the Lease or leased premises available for the Tribe's inspection and duplication.
  - (ii) **Access.** A WEEL may address access to the leased premises by roads or other infrastructure, as long as the access complies with applicable statutory and regulatory requirements.
- (jj) **Environmental Impact Report Mitigation Measures.** If applicable, a WEEL must provide that any failure by the Lessee to comply with mitigation measures required by the Environmental Impact Report prepared in connection with the Approval of the Lease shall be a Violation.
- (kk) **Documents & Information to Facilitate Compliance with Tribal Law.**
  - (i) A WEEL must provide which, if any, reports, surveys, site assessments, or other information will be required to facilitate ongoing compliance with applicable Tribal environmental, cultural resource, land use, or other law.
  - (ii) If such documents and information are required, the WEEL must provide that failure to provide such information in accordance with the requirements and procedure of the responsible Tribal department, agency, board, commission, or official shall be a Violation.

### 15.3 WSR Lease Provisions.

- (a) **Impermissible Uses.** A WSR Lease must provide that the Lessee shall not engage in or allow unlawful conduct, creation of a nuisance, illegal activity, or negligent use or waste of the leased premises and that

the Lessee must comply with all applicable laws, ordinances, rules, regulations, and other legal requirements, including those imposed by Tribal Law. The Lease must provide that unlawful, illegal, unauthorized, harmful, negligent, or wasteful use of the leased premises shall be a Violation.

(b) **Enforcement by the United States.** A WSR Lease must provide that the obligations of the Lessee and its Sureties to the Tribe will also be enforceable by the United States, so long as the leased land remains in Trust or Restricted Status.

(c) **Lease Administrator.** A WSR Lease must specify:

(i) Which Tribal entity, department, agency, official, or other agent will serve as the Lease Administrator;

(ii) That Tribal Council or its designee may designate a replacement Lease Administrator at its sole discretion; and

(iii) That the Lessee must be provided timely written notice of the identity and address of any replacement Lease Administrator.

(d) **Insurance.** Unless waiver or modification is in the best interest of the Tribe as determined by the Tribal Council, a WSR Lease must require that a Lessee provide insurance. Such insurance may include property, crop, liability, and/or casualty insurance, as appropriate. If insurance is required, the Lease must provide that:

(i) Such insurance must cover the Tribe and the United States as additional insureds;

(ii) Such insurance must be sufficient to protect all insurable improvements on the leased premises; and

(iii) Failure to provide proof of insurance to the Lease Administrator by a specified date, before the commencement date of the Lease, shall be a Violation.

(e) **General Indemnity.** A WSR Lease must require that the Lessee indemnify and hold the Tribe and the United States harmless from any loss, liability, or damages resulting from the Lessee's use or occupation of the leased premises.

(f) **Indemnity Related to Hazardous Materials.** A WSR Lease must specifically require that the Lessee indemnify the United States and the Tribe 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 materials from the leased premises that occurs during the Lease term, regardless of fault, except that the Lessee will not be required to indemnify the Tribe for liability or costs arising from the Tribe's negligence or willful misconduct.

(g) **Authorizing Law.** A WSR Lease must include a citation of the provisions of this Ordinance which authorize the Tribe's Approval of the Lease, along with a citation of the formal documents or minutes by which such authority has been exercised.

(h) **Description of Land.** A WSR Lease must contain a description of the leased premises. If possible, the Lease should describe the leased premises by reference to a public or private survey. If the land cannot be so described, the Lease must include a legal description, a survey-grade global positioning system description, or other description prepared by a registered land surveyor that is sufficient to identify the leased premises and for recordation with LTRO.

(i) **Bond.**

(i) A WSR Lease must require the Lessee to furnish a Performance Bond that meets the requirements of subsection 15.5 of this Section, unless waived or modified by the Tribal Council. The Tribal Council may waive or modify the bond requirement only on the grounds that, either:

- A. Such waiver or modification is in the best interest of the Tribe; or
- B. The Lease is for public purposes.

(ii) If a bond is required, the Lease must:

- A. Specify the conditions and procedure under which the Tribe may adjust the bond requirements to reflect changing conditions;
- B. Provide that failure to furnish the required bond and any supporting documents requested by the Lease Administrator by a specified date, before the commencement date of the Lease, shall be a Violation;
- C. State that the Lessee must obtain the consent of the Surety for any legal instrument that directly affects their obligations and liabilities; and
- D. Provide that in the event the Surety cancels a Performance Bond or other security instrument, failure to provide a substitute Performance Bond or security shall be a Violation.

**(j) Amount & Kind of Rent.**

(i) A WSR Lease must provide for the payment of a Fair Market Rental before any adjustments, based on a fixed amount, a percentage of the projected gross income, megawatt capacity fee, or some other method, unless either:

- A. The Tribal Council determines that a lesser amount is in the best interest of the Tribe;
- B. The Lease provides for less than Fair Market Rental only during the periods before the generation and transmission of electricity begins; or
- C. The Lease is for public purposes.

(ii) A WSR Lease may provide for:

- A. Monetary rental payments in a fixed amount;
- B. Alternative forms of compensation, including but not limited to, in-kind consideration and payments based on percentage of income; or
- C. Varying types of consideration at specific stages during the life of the Lease, including but not limited to fixed annual payments during installation, payments based on income during an operational period, and bonuses.

(iii) A WSR Lease must specify the amount and kind of rent payments.

**(k) Form & Manner of Payment; Late Payment Penalties.**

(i) A WSR Lease must provide that rent payments are to be made to the Lease Administrator, and the

Lease must provide an address where payments may be delivered.

- (ii) A WSR Lease provide that the Lease Administrator will not accept cash or foreign currency for rent payments and will accept third-party checks only from financial institutions or Federal agencies.

Acceptable forms of payment for monetary rent must be provided in the Lease as:

A. Electronic funds transfer payments;

B. Money orders;

C. Personal checks;

D. Certified checks; or

E. Cashier's checks.

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

- (iv) A WSR Lease must provide that failure to make a rent payment by the due date or other specified date is a Violation.

- (v) A WSR Lease may provide that interest will accrue on any rent payment not made by the due date or any other date specified in the Lease, but if it does, the Lease must also specify the interest rate and the date on which such interest payments are due.

- (vi) A WSR Lease may identify additional late payment penalties that will apply if a rent payment is not made by a specified date but if it does, the Lease must also specify the date on which such penalties are due.

- (vii) Unless otherwise provided in the Lease, interest charges and late payment penalties will apply in the absence of any specific notice to the Lessee from the Lease Administrator,

- (viii) If such charges and penalties are provided for in the Lease, a WSR Lease must provide that failure to pay interest charges and/or late payment penalties by the specified date is a Violation.

#### **(I) Rental Adjustments.**

- (i) A WSR Lease must provide for periodic review and adjustment of rental compensation at least every fifth year unless:

A. The Lease term is less than five years;

B. The Lease is for religious, education, recreational, cultural, or other public purposes;

C. The Lease provides for the payment of less than a Fair Market Rental for the entire Lease term;

D. The Lease provides for automatic adjustments;



- E. The Lease provides for most or all of the compensation to be paid during the first five years of the Lease term;
  - F. The Lease provides for graduated rent or non-monetary compensation; or
  - G. If the Tribal Council or its designee determines not requiring periodic review and adjustment of rental compensation is in the best interest of the Tribe.
- (ii) If the Lease provides for periodic review and adjustment of rental compensation, the Lease must specify:
- A. How adjustments are made;
  - B. Who makes the adjustments;
  - C. When the adjustments are effective; and
  - D. How disputes about the adjustments will be resolved.
- (m) **Administrative Fees.** A WSR Lease may provide for administrative fees in the event the Lessee's rent payment in the form of personal or business check is dishonored and to cover the costs of providing notices and other correspondence associated with the Lease.
- (n) **Irrigation & Drainage Maintenance.** If the leased premises are within an Indian irrigation project or drainage district, except as provided by Title 25, part 171 of the Code of Federal Regulations, a WSR Lease must provide that the Lessee must pay all operation and maintenance charges that accrue during the Lease term to the appropriate official in charge of the irrigation project or drainage district and failure to make any such payment shall be a Violation.
- (o) **Historic & Cultural Discoveries.** A WSR Lease must provide that 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 Lease, all activity in the immediate vicinity of the properties, resources, remains, or items will cease and the Lessee shall contact the Lease Administrator to determine how to proceed and the appropriate disposition of any such items.
- (p) **Purpose & Use of Premises.** A WSR Lease must describe the purpose of the Lease and the authorized uses of the leased premises. The Lease must provide that use of the leased premises for an unauthorized purpose will be treated as a Violation, and the Lease may provide that non-use of the leased premises for a specified period of time shall be a Violation.
- (q) **Compatible Uses.** A WSR Lease may provide for the Tribe to use or authorize others to use the leased premises for other uses compatible with the purpose of and consistent with the terms of the Lease.
- (r) **Commencement Date & Term.** A WSR Lease must provide for a definite term and state the commencement date. A WSR Lease may provide an option to renew, and if it does, the Lease must provide for a definite term for the renewal period. The maximum term of a WSR Lease is twenty-five (25) years, except that any such Lease may include an option to renew for an additional term, which may not exceed twenty-five (25) years.
- (s) **Renewal.** If a WSR Lease provides for an option to renew, the Lease must specify:
- (i) The time and manner in which the option must be exercised or whether it is automatically effective if

no action is taken;

(ii) That confirmation of the renewal must be submitted to the Lease Administrator, unless the Lease provides for automatic renewal;

(iii) That the Lessee must provide notice of the renewal to the Lease Administrator and any Sureties and Mortgagee(s);

(iv) 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

(v) Any other conditions for renewal.

(t) **Amendments.** A WSR Lease must provide that any amendment of the Lease is subject to:

(i) Approval in accordance with Section 3 of this Ordinance; and

(ii) The written consent of the Lessee's Sureties and Mortgagee(s), if any.

(u) **Assignments.**

(i) A WSR Lease may authorize assignment of the Lease without further approval only to an assignee that is:

A. One of no more than three distinct entities specified in the Lease;

B. A wholly owned subsidiary of the Lessee; or

C. A Leasehold Mortgagee or its designee, acquiring the Lease either through foreclosure or by conveyance, and:

1. The assignee agrees in writing to assume all of the obligations and conditions of the Lease; and
2. The assignee agrees in writing that any transfer of the Lease will be in accordance with applicable Tribal and federal law and regulation.

(ii) If a WSR Lease authorizes Assignment without further approval, it must require the Lessee to promptly provide the Lease Administrator with copies of any documents associated with the Assignment.

(iii) A WSR Lease may allow the Lessee to assign the Lease subject to additional approval, in which case the Lease must also:

A. Describe the process and any timeframe for obtaining approval;

B. Identify and provide the address of the Tribal agency, department, commission, official, political body, or other entity which may provide such approval; and

C. State the conditions under which such approval may be granted, including whether:

1. The written consent of the Lessee's Mortgagee(s) and Sureties, if any, is required;
2. The Lessee may be in Violation of the Lease at the time of Assignment;

3. The assignee must agree to be bound by the terms of the Lease;
4. The assignee must post a Performance Bond or alternative form of security in accordance with subsection 15.5 of this Section;
5. Assignment will be permitted when it may adversely affect the value of any part of the leased premises not assigned; and
6. The assignee must provide evidence of its capacity to perform its obligations under the Lease and Assignment.

**(v) Subleases.**

- (i) A WSR Lease may authorize the Lessee to sublease without additional approval, but, if it does, the Lease must provide that any Sublease shall not relieve the Lessee of any liability and must require the Lessee to promptly provide the Lease Administrator with copies of the Sublease.
- (ii) A WSR Lease may allow the Lessee to sublease subject to additional approval, in which case the Lease must also:
  - A. Describe the administrative process and any timeframe for obtaining approval;
  - B. Identify and provide the address of the Tribal agency, department, commission, official, political body, or other entity which may provide such approval; and
  - C. State the conditions under which such approval may be granted, including whether:
    1. The written consent of the Lessee's Mortgagees and Sureties, if any, is required;
    2. The Lessee may be in Violation of the Lease;
    3. The Lessee is required to remain liable under the Sublease; and
    4. Sublease will be permitted when it may adversely affect the value of any part of the leased premises not subleased.

**(w) Leasehold Mortgages.** A WSR Lease may allow the Lessee to Mortgage its leasehold interest subject to additional approval, in which case the Lease must also:

- (i) Describe the process and any timeframe for obtaining approval;
- (ii) Identify and provide the address of the Tribal agency, department, commission, official, political body, or other entity which may provide such approval; and
- (iii) State the conditions under which such approval may be granted, including whether:
  - A. The written consent of the Lessee's Mortgagees and Sureties, if any, is required;
  - B. The Leasehold Mortgage proceeds may be used for purposes unrelated to the leased premises; and
  - C. The Leasehold Mortgage must be limited to the leasehold.

(x) **Unauthorized Transfer.** A WSR Lease must provide that any attempt by the Lessee to Mortgage the leasehold interest or authorize possession by another party other than as authorized by the Lease and in compliance with this Ordinance will be treated as a Violation and such Mortgage or transfer shall be null and void.

(y) **Permanent Improvements; Resource Development Plan.**

(i) A WSR Lease must provide for the installation of a facility and associated infrastructure of a size and magnitude necessary for the generation and delivery of electricity. The Lease must provide these facilities and associated infrastructure shall be considered Permanent Improvements.

(ii) A WSR must provide that any Permanent Improvements must be installed in accordance with the Resource Development Plan submitted prior to Lease Approval.

(iii) A WSR Lease may allow for revision of the Resource Development Plan, but must require Tribal Council approval to:

A. Change the location of Permanent Improvements;

B. Change the type of Permanent Improvements; or

C. Delay any phase of development more than 90 days.

(iv) A WSR Lease must specify:

A. Who will own, construct, operate, maintain, and manage the Permanent Improvements, including WSR equipment, roads, and transmission lines;

B. Whether Permanent Improvements may be conveyed to the Tribe during the Lease term and under what conditions the Permanent Improvements may be so conveyed;

C. Whether the Lessee intends to grant a security interest, lien, or other encumbrance on or in any Permanent Improvement; the form of any intended security interest, lien, or other encumbrance; and the identity of any person or entity whom the Lessee anticipates will hold or possess a beneficial interest in such a security interest, lien, or other encumbrance; and

D. Whether each specific Permanent Improvement the Lessee installs will:

1. Remain on the premises upon expiration, Termination, or Cancellation of the Lease in a condition satisfactory to the Tribe;

2. Be removed within a time period specified in the Lease, at the Lessee's expense, with the leased premises to be restored as closely as possible to their condition before installation of the Permanent Improvements; or

3. Be disposed of by other specified means.

(v) A WSR Lease that requires the Lessee to remove the Permanent Improvements must also provide the Tribe with an option to take possession and title to the Permanent Improvements if the Permanent Improvements are not removed within the specified time period.

**(z) Due Diligence Requirements.**

(i) A WSR Lease must include due diligence requirements that require the Lessee to:

- A. Commence installation of energy facilities consistent with the timeframe in the Resource Development Plan;
- B. If installation does not occur, or is not expected to be completed, within the time period specified in the Lease, provide the Tribe with an explanation of good cause as to the nature of any delay, the anticipated date of installation of facilities, and evidence of progress toward commencement of installation;
- C. Maintain all on-site electrical generation equipment and facilities and related infrastructure in accordance with the design standards in the Resource Development Plan; and
- D. Repair, place into service, or remove from the site within a time period specified in the Lease any idle, improperly functioning, or abandoned equipment or facilities that have been inoperative for a continuous period specified in the Lease, unless the equipment or facilities were idle as a result of planned suspension of operations (e.g., for grid operations or during bird migration season).

(ii) A WSR Lease must provide that failure of the Lessee to comply with the due diligence requirements of the Lease is a Violation and may lead to Cancellation of the Lease.

**(aa) Responsibility for WSR Implementation.**

(i) A WSR Lease must specify who is responsible for evaluating the leased premises for suitability; purchasing, installing, operating, and maintaining WSR equipment; negotiating power purchase agreements; and transmission.

(ii) If, under a WSR Lease, any person or entity other than the Tribal Council or its designee is responsible for negotiating power purchase agreements or entering into agreements for transmission, the Lease must provide that such agreements are subject to the approval of the Tribal Council or its designee, as specified in the Lease.

**(bb) Remedies.** A WSR Lease may provide the Tribe and the Lessee with certain negotiated remedies in the event of a Violation, including the power to cancel the Lease.

**(cc) Dispute Resolution.** A WSR Lease must provide that Lease disputes are to be resolved in a Court of Competent Jurisdiction or provide an alternative dispute resolution method.

**(dd) Limited Waiver of Sovereign Immunity.** The Tribal Council may authorize the inclusion of a provision waiving the Tribe's sovereign immunity in a WSR Lease but only for actions arising from the Tribe's conduct towards the Lessee in connection with its administration or enforcement of the Lease or to allow the Lessee to avail itself of its remedies under the Lease. Such a waiver may limit the Lessee's remedies in such an action to specific performance of Lease terms or other equitable relief as the Tribal Council finds appropriate and in the best interest of the Tribe.

**(ee) Inspections & Right of Entry.** A WSR Lease must provide that the Tribe and/or the Secretary may enter the leased premises at any reasonable time, with reasonable prior notice, for inspection and to ensure that the Lessee is in compliance with the Lease.

**(ff) Parties & Notices.** A WSR Lease must:

(i) Identify the parties to the Lease;

(ii) Provide addresses for the Lessee and the Lease Administrator where all notices and other correspondence related to the Lease may be sent;

(iii) Require the Lessee to timely provide an address or addresses where notices and other correspondence related to the Lease may be sent to any Sureties and Mortgagee(s) it has contracted with in connection with the Lease; and

(iv) Require the Lessee to timely notify the Tribe in writing of any changes in its mailing address or that of its Sureties and Mortgagee(s) that occur during the Lease term.

**(gg) Access to Records & Information.** A WSR Lease must provide that the Tribe may treat as a Violation any failure by the Lessee to cooperate with a request to make appropriate records, reports, or information relating to the Lease or leased premises available for the Tribe's inspection and duplication.

**(hh) Access.** A WSR 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.

**(ii) Environmental Impact Report Mitigation Measures.** If applicable, a WSR Lease must provide that any failure by the Lessee to comply with mitigation measures required by the Environmental Impact Report prepared in connection with the Approval of the Lease shall be a Violation.

**(jj) Documents & Information to Facilitate Compliance with Tribal Law.**

(i) A WSR Lease must provide which, if any, reports, surveys, site assessments, or other information will be required to facilitate ongoing compliance with applicable Tribal environmental, cultural resource, land use, or other law.

(ii) If such documents and information are required, the Lease must provide that failure to provide such information in accordance with the requirements and procedure of the responsible Tribal department, agency, board, commission, or official shall be a Violation.

#### **15:4 Bonding for WSR Lease.**

(a) If required by a WSR Lease, the Lessee must provide a Performance Bond or alternative form of security in an amount sufficient to secure the contractual obligations including:

(i) No less than:

A. The highest annual rental specified in the Lease, if the compensation is paid annually; or

B. If the compensation is not paid annually, another amount established by the Tribe.

(ii) The installation of any required Permanent Improvements;

(iii) The operation and maintenance charges for any land located within an irrigation project; and

(iv) The restoration and reclamation of the leased premises, to their condition at the start of the Lease term or some other specified condition.

- (b) The Performance Bond or other security must be made payable only to the Tribe.
- (c) The bond may not be modified or withdrawn without the approval of the Tribal Council.
- (d) The Performance Bond or other security instrument must require the Surety to provide notice to the Lease Administrator at least 60 days before canceling a Performance Bond or other security. This will allow the Tribe to notify the Lessee of its obligation to provide a substitute Performance Bond or other security and require collection of the bond or security before the cancellation date.
- (e) **Acceptable Forms of Security.**
  - (i) The Tribe will accept a Performance Bond only in one of the following forms:
    - A. Certificates of deposit issued by a federally insured financial institution authorized to do business in the United States;
    - B. Irrevocable letters of credit issued by a federally insured financial institution authorized to do business in the United States;
    - C. Negotiable Treasury securities; or
    - D. Surety bonds issued by a company approved by the U.S. Department of the Treasury.
  - (ii) The Tribe 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.
  - (iii) All forms of Performance Bonds or alternative security must, if applicable:
    - A. Indicate on their face that Tribe approval is required for redemption;
    - B. Be accompanied by a statement granting full authority to the Tribe to make an immediate claim upon or sell them if the Lessee violates the terms of the Lease;
    - C. Be irrevocable during the term of the Performance Bond or alternative security; and
    - D. Be automatically renewable during the term of the Lease.
- (f) **Release of Security.** Upon expiration, Termination, or Cancellation of a Lease, the Lessee may request, in writing, the Tribal Council or its designee release the Performance Bond or alternative form of security. If the Lessee has complied with all Lease obligations, if applicable, the Tribal Council or its designee shall release the Performance Bond or alternative form of security to the Lessee. The Tribal Council or its designee shall release any Performance Bond or alternative form of security provided by an Applicant upon the withdrawal of the Applicant's lease application.