



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

**APPROVAL OF  
MORONGO BAND OF MISSION INDIANS, CALIFORNIA  
LEASING ORDINANCE**

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The attached Leasing Ordinance, submitted by the Morongo Band of Mission Indians (listed in the Federal Register, Vol. 87, No. 19 FR 4638 (January 28, 2022) as the Morongo Band of Mission Indians, California), and prepared in accordance with the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012, consisting of 28 pages and adopted by the Morongo Band of Mission Indians Tribal Council on November 23, 2021, is hereby approved.

Dated: APR 14 2022

Assistant Secretary – Indian Affairs  
United States Department of the Interior

Pursuant to the authority delegated by 209 DM 8

**MORONGO BAND OF MISSION INDIANS  
ORDINANCE REGULATING THE LEASING OF TRIBAL TRUST LANDS  
OF THE MORONGO INDIAN RESERVATION  
FOR RESIDENTIAL AND BUSINESS PURPOSES**

THE MORONGO BAND OF MISSION INDIANS ("Band") hereby ordains and establishes the following Ordinance authorizing and regulating the leasing of lands held in trust for the Band.

SECTION 1. TITLE. This Ordinance shall be known as the Morongo Tribal Leasing Ordinance.

SECTION 2. PURPOSE.

A. Pursuant to 25 U.S.C. 415, as amended by the federal Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012 ("HEARTH Act of 2012", P.L. 112-151, 126 Stat. 1160 (2012), 25 U.S.C. § 415(h)), the Band is authorized to adopt and implement regulations to govern the review and approval of leases of land held in trust for the Band by the United States without review and approval by the Secretary of the Interior if the Band adopts and obtains the Secretary of the Interior's approval of the Band's regulations governing such leasing; and

B. The Band has determined that the sovereignty, economic and social welfare, advancement and stability of the Band and the Morongo Indian Reservation, and commerce on and with the Band and the Morongo Indian Reservation, would be enhanced and facilitated by the enactment of an Ordinance establishing the rules and regulations for tribal review and approval of leases of Tribal Land and space within existing structures on Tribal Land without the approval of the Secretary of the Interior.

C. This Ordinance shall not apply to any lease of individually-owned Indian trust allotments, nor does it apply to any leases or agreements for the exploration, development, or extraction of any mineral resources within the Morongo Reservation.

SECTION 3. DEFINITIONS.

As used in this Ordinance, the following terms shall mean as follows:

- A. *Adult* means a person who is 18 years of age or older.
- B. *Appeal bond* means a bond posted upon filing of an appeal.
- C. *Applicant* means a person or persons, business entity or entities, or any other entity

that submits a proposal to enter into a Lease of Tribal Land.

D. *Approval* means written authorization by the Tribe, given by the Tribal Chairperson or Vice Chairperson in accordance with the procedures set forth in this Ordinance, or, where applicable, authorization of an amendment or sublease as "deemed approved" by reason of the passage of time without official action, in accordance with the terms of a lease or sublease.

E. *Assignment* means an agreement between a Lessee and an assignee, whereby the assignee acquires all or some of the lessee's rights, and assumes all or some of the Lessee's obligations, under a lease.

F. *BIA* means the Secretary of the Interior or the Bureau of Indian Affairs within the Department of the Interior,

G. *Business day* means Monday through Friday, excluding federally recognized legal holidays.

H. *Cancellation* means action by the Tribe to end a lease pursuant to the Tribe's authority under this Ordinance.

I. *Consent* or *consenting* means written authorization by the Tribe to a specified action.

J. *Constructive notice* means notice:

(i) Posted at the Tribe's Administration Building on the Morongo Indian Reservation, and/or the United States Post Office in Banning, California; and

(ii) Published once per week for three weeks in a newspaper of general circulation distributed within 30 miles of the Morongo Indian Reservation.

K. *Court of competent jurisdiction* means a court with jurisdiction over the subject matter of an action and the parties to the action.

L. *Day* means a calendar day, unless otherwise specified.

M. *Deemed denied* means that an application that was not affirmatively approved within the time prescribed for approval under this Ordinance is denied without formal action.

N. *Department* means, unless otherwise specified, the Morongo Tribal Environmental Protection Department.

O. *Equipment installation plan* means a plan that describes the type and location of any improvements to be installed by the Lessee to evaluate or exploit wind or other natural

resources or phenomena and a schedule showing the tentative commencement and completion dates for installation of those improvements.

P. *Environmental Review* means a review performed in compliance with Section 7(H) of this Ordinance to determine whether a proposed Lease has the potential to have Significant Effect on the Environment.

Q. *Fair market rental* means the amount of rental income that a Lease would most probably command in an open and competitive market, utilizing a market analysis, appraisal or other appropriate valuation methods, or as determined by competitive bidding.

R. *General Membership* means the enrolled members of the Tribe who are eligible to vote in Tribal elections.

S. *Holdover* means circumstances in which a Lessee remains in possession of Leased Premises after the lease term expires.

T. *Housing for public purposes* means multi-family developments, single-family residential developments, and single-family residences:

(i) Administered by the Tribe or a tribally designated housing entity (TDHE);  
or

(ii) Substantially financed using a tribal, Federal, or State housing assistance or loan guarantee program or TDHE.

U. *Immediate family* means a spouse, brother, sister, aunt, uncle, niece, nephew, first cousin, lineal ancestor, lineal descendant, or another person or persons regarded as a member of a household under the Tribe's custom and tradition.

V. *Lease* means a written contract between the Tribe and a Lessee, pursuant to which the Lessee is granted a right, based on the terms of the lease, to possess or otherwise use Tribal trust property or space within an existing structure on Tribal Land for a specified purpose, duration and consideration, if any. The Lessee's right to possess will limit the Tribe's right to possess the proposed Leased Premises only to the extent provided in the Lease.

W. *Lease document* means a lease, amendment, assignment, sublease, or leasehold mortgage.

X. *Leased Premises* means the Tribal Lands or space within a structure on Tribal Lands subject to, or proposed to be subject to, a Lease or lease document and access and utility easements appurtenant to Tribal trust lands that are, or are proposed, to be the subject of a Lease.

Y. *Leasehold mortgage* means a mortgage, deed of trust, or other instrument that



pledges a Lessee's leasehold interest as security for a debt or other obligation owed by the Lessee to a lender or other mortgagee.

Z. *Lessee* means person or entity who has acquired a legal right to possess or otherwise occupy Tribal trust land or space within an existing structure on Tribal Land by a lease under this Ordinance.

AA. *Lessor* means the Morongo Band of Mission Indians, acting through the Morongo Tribal Council.

BB. *LTRO* means the Land Titles and Records Office with jurisdiction/responsibility for Tribal Lands. As of the effective date of this Ordinance, the Morongo Realty Department, a department of the Tribe's government, serves as the LTRO for the Morongo Indian Reservation pursuant to the Indian Self Determination and Education Act.

CC. *Mail* means to send written notice, written correspondence or other tangible objects by U.S. Postal Service or commercial courier service.

DD. *Mortgagee* means the holder of a leasehold mortgage.

EE. *NEPA* means the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*

FF. *Nominal rental or nominal compensation* means a rental amount that is so insignificant that it bears no relationship to the value of the property that is being leased.

GG. *Notice of violation* means a letter notifying the Lessee about a violation of the lease and providing the Lessee with a specified period of time, as defined in the Lease, to cure the violation or otherwise to show cause why the lease should not be cancelled for the violation.

HH. *Performance bond* means security for the performance of certain lease obligations, as furnished by the Lessee, or a guaranty of such performance as furnished by a third-party surety.

II. *Permanent improvements* means buildings, other structures, and associated infrastructure attached to Leased Premises.

JJ. *Project* means the purpose(s) for which the Leased Premises will be used under the Lease.

LL. *Public for purposes of environmental review* means the Tribe's General Membership and such other individuals and entities as reasonably might be expected to be directly affected by a Project because of residence or location of a place of business within one mile of the site of the Project, *provided* that this definition shall not apply to leases of space within existing structures on Tribal Lands..

MM. *Reservation* means the Morongo Indian Reservation, located in Riverside County, California, and includes all lands within the exterior boundaries of said Reservation.

NN. *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.

OO. *Secretary* means the Secretary of the Interior.

PP. *Significant Effect on the Environment* means a substantial, or potentially substantial, adverse change to the physical environment of the Morongo Indian Reservation or lands immediately adjacent thereto, including land, air, water, minerals, flora, fauna, ambient noise, socioeconomic, cultural areas and objects of historical, cultural or aesthetic significance.

QQ. *Single-family residence* means a building with one to four dwelling units on a tract of land under a single residential lease or assignment.

RR. *Single-family residential development* means two or more single-family residences owned, managed, or developed by a single entity.

SS. *Sublease* means a written agreement by which the Lessee of Tribal Land grants to an individual or entity a right to possession no greater than that held by the Lessee under the Lease.

TT. *Space Lease* means a lease of space within an existing structure on Tribal Land. A Space Lease may be either directly between the Tribe and a Lessee, or between a Lessee and a Sublessee.

UU. *Sublease* means a written agreement by which the Lessee grants to another individual or entity a right to possession in Leased Premises no greater than that held by the Lessee.

VV. *Surety* means one who guarantees the performance of another.

WW. *TDHE* means the Tribe's designated housing entity under 25 U.S.C. § 4103(22), a tribally-sponsored or tribally sanctioned not-for-profit entity, or any limited partnership or other entity organized for the purpose of developing or improving low-income housing on the Tribe's lands utilizing tax credits.

XX. *Termination* means action by the Tribe to end a lease.

YY. *Trespass* means any unauthorized occupancy, use of, or action on any Tribal Land.

ZZ. *Tribal authorization* means a duly adopted tribal ballot measure, Tribal Council resolution, tribal ordinance, or other appropriate tribal document authorizing a specified action.

AAA. *Tribal Council* means the Tribe's elected body responsible for overseeing the functioning of the Tribe's government, implementing and enforcing the Tribe's laws and policies as enacted or formulated by the Tribe's General Membership, and otherwise carrying out duties and exercising authority as delegated by the Tribe's General Membership, including implementing this Ordinance.

BBB. *Tribal Court* means the court created by the Tribe to exercise the Tribe's inherent judicial powers over the Tribe's lands, persons present on Tribal Lands who are subject to or have voluntarily submitted to the jurisdiction of that court, and transactions occurring on those lands.

CCC. *Tribal Historic Preservation Officer* means the Tribal official or employee designated by the Tribal Council and authorized to oversee the protection of the Morongo Reservation's archaeological, cultural and/or historic resources.

DDD. *Tribal Land* means any tract in which the surface estate is owned by the United States of America in trust for the Morongo Band of Mission Indians. The term also includes the surface estate of lands held by the United States in trust for or leased to a Tribal corporation chartered under section 17 of the Act of June 18, 1934 (48 Stat. 988; 25 U.S.C. § 5124 (formerly 477)).

EEE. *Tribal Land assignment* means a contract or agreement that conveys any rights for the use of Tribal Lands to one or more individual tribal members or one or more business entities owned or controlled by the Tribe or individual members of the Tribe.

FFF. *Tribal law* means the ordinances, customs and traditions and decisional law of the Morongo Band of Mission Indians, and any regulations promulgated pursuant thereto.

GGG. *Tribe* means the Morongo Band of Mission Indians.

HHH. *Trust status* means Tribal Land that the United States holds title to the tract in trust for the benefit of the Tribe.

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

JJJ. *Violation* means a failure to take an action, including payment of compensation, when required by a Lease, or to otherwise not comply with any term of a lease. This definition applies for purposes of enforcement of a lease under this part no matter how "violation" or "default" may be defined in the Lease.

#### SECTION 4, APPLICATION OF THIS ORDINANCE.

A. This Ordinance applies to any Lease of Tribal Lands or space within an existing structure on Tribal Land for public, religious, educational, recreational, residential, and business purposes for the maximum terms permitted by the HEARTH Act, but not to individually allotted land, existing or future leases entered into by the Tribe under 25 U.S.C. § 415(a), or leases for the exploration, development, or extraction of any mineral resources or leases of land allotted to individuals.

B. This Ordinance does not apply to or limit the Tribe's authority to enter into a Lease with an initial term not to exceed 50 years as currently authorized under 25 U.S.C. § 415(a), and nothing herein shall be construed to affect the terms and conditions of any existing Leases of Tribal Land or space within structures on Tribal Land approved by the Secretary.

#### SECTION 5, Laws Applicable to Leases Approved Pursuant to this Ordinance.

A. In addition to the regulations in this Ordinance, Leases approved hereunder:

(1) Are subject to applicable Federal laws and regulations, and any specific Federal statutory requirements that are not expressly incorporated in this Ordinance or are made expressly applicable by the final decision of a court of competent jurisdiction;

(2) Are subject to all other applicable laws of the Tribe, including the Tribe's building, life safety and land use ordinances and policies, and any possessory interest and other tax ordinances, except to the extent that those tribal laws are inconsistent with this Ordinance or applicable Federal law;

(3) Unless prohibited by or inconsistent with Federal law, the parties to a Lease may agree that the Lease shall require the Lessee to comply with State or local law in the absence of Federal or tribal law.

B. An agreement under subparagraph A of this section does not waive the Tribe's sovereign immunity unless the Tribe expressly states its intention to waive sovereign immunity in the Lease of Tribal Land, and nothing in any Lease shall be construed to confer any jurisdiction on the courts of any State to adjudicate ownership or right to possession, in probate or otherwise, of property held in trust by the United States.

#### SECTION 6, AUTHORITY TO APPROVE AND EXECUTE LEASES.

A. A Lease of Tribal Land may be approved under this Ordinance either by:

(i) a ballot measure approved by the General Membership, or



(ii) by a majority vote of the Tribal Council if the General Membership, through a ballot measure, has delegated to the Tribal Council the authority to approve either Leases in general or a specific Lease.

B. Actual execution of any Lease of Tribal Land, of space in an existing structure on Tribal Land, shall be by the Tribal Chair, Vice Chair or such other Tribal Council Member as may be authorized by motion of the Tribal Council.

SECTION 7. PROCESS FOR APPLYING FOR A LEASE FOR USE OF TRIBAL LAND.

A. An Applicant for a Lease shall present a written application to obtain a Lease of Tribal Land to the Tribe's Chief Executive Officer.

B. An application for a Lease shall be accompanied by an application processing fee in an amount estimated by the Tribal Council from time to time to be sufficient to reimburse the Tribe for the cost of any staff and outside consultant time reasonably necessary to review and evaluate the application, including obtaining an appraisal of the proposed Leased Premises in accordance with USPAP standards and making a threshold determination whether implementing a Lease involving ground-disturbing activities could have a Significant Effect on the Environment.

C. An Application for a Lease must contain the following information and documentation:

- (i) the full name, address and principal place of business of the Applicant and;
- (ii) each person or entity owning a direct or indirect interest in the Applicant, whether as partner, shareholder, member or other interest;
- (iii) provided, that if the Applicant is a publicly traded company, only the names and addresses of the members of its board of directors need be provided in addition to the identifying information about the Applicant itself;
- (iv) the business, public, religious, educational, recreational, residential, or other activities to be conducted on the proposed Leased Premises;
- (v) a business lease must describe the proposed Leased Premises by reference to an official or certified survey, if available. If the land has not been surveyed or if an acceptable survey otherwise is not available, the lease must include one or more of the following:
  - (a) A legal description;
  - (b) A survey-grade global positioning system description; or
  - (c) Another description prepared by a registered land surveyor that is



sufficient to identify the Leased Premises. Before a Lease can be approved, a legal description adequate for LTRO purposes must be provided.

(vi) architectural rendering(s), dimensions, estimated cost and proposed schedule for construction of all improvements proposed to be constructed on the proposed Leased Premises;

(vii) a listing of all hazardous or toxic materials (and quantities) that are anticipated to be stored or used on the proposed Leased Premises in the ordinary course of business;

(viii) a statement of the code standards to which such improvements will be constructed, and a description and estimated cost of any permanent improvements or

(ix) alterations to Tribal Land or other lands outside the Leased Premises necessary to provide utilities and other access to the proposed Leased Premises, and

(x) such other surface and/or subsurface alterations to the proposed Leased Premises as may be necessary to accomplish the purpose(s) of the Lease;

(xi) an application for a Lease of unimproved Tribal Land must include:

(a) the Applicant's estimate of the unimproved fair rental value of the Leased Premises, based upon,

(b) an appraisal or market analysis prepared by a qualified appraiser or other qualified professional no more than one year prior to submission of the application, or

(c) by competitive bidding, unless an appraisal or other estimation of fair rental value is waived by the Tribal Council.

(d) If the Leased Premises consist, in whole or in part, of existing improvements, the Applicant shall provide an estimate of the fair rental value of the proposed Leased Premises, based upon an appraisal or other market analysis prepared by a qualified appraiser or other qualified professional no more than one year prior to submission of the application;

(xii) the Applicant's estimate of the revenues and other economic benefits to the Applicant anticipated to be realized under the Lease, together with all studies or other analyses supporting that estimate;

(xiii) the compensation that the Applicant proposes to offer in consideration for the Tribe's entry into the proposed Lease;

(xiv) the Applicant's plan, if any, for financing the costs of site preparation and construction of planned improvements;

(xv) information from which the Department may determine, pursuant to Section 8 of this Ordinance, whether implementation of the proposed Lease likely would have:

(a) a Significant Effect on the Environment, and

- (b) a plan for restoring the proposed Leased Premises to its original condition upon termination or expiration of the Lease, unless,
- (c) under the terms of the Lease, the Tribe agrees to accept ownership of improvements to be constructed on the Leased Premises and to allow the constructed improvements to remain after termination or expiration of the Lease;
- (xvi) If the Applicant is other than an individual,
  - (a) copies of the Applicant's organizational document(s),
  - (b) audited financial statements for the three tax years immediately preceding the date of application, and
  - (c) documentation of the authority of the person(s) signing on behalf of the Applicant.
- (xvii) If the Applicant is an individual,
  - (a) copies of the individual's federal income tax returns for the three tax years immediately preceding the date of application.

D. Within sixty (60) days after receipt of an application for a Lease, the Tribe's Chief Executive Officer shall

- (i) consult with the Tribe's Realty Administrator to determine whether the Tribal Land proposed to be included in the Leased Premises would be available for lease, and if the land is available,
- (ii) prepare a summary of the application and
- (iii) forward it to the Tribal Council together with his/her recommended response to the Applicant.

E. The Tribal Council shall

- (i) review the proposed Lease within 90 days after receipt from the Tribe's Chief Executive Officer, provided that
- (ii) if the proposed Lease is received during a month in which the Tribal Council is not scheduled to meet in regular session, the Tribal Council shall have one hundred twenty (120) days after receipt from the Tribe's Chief Executive Officer within which to respond to the Applicant.
- (iii) If the Applicant is not a Tribal Member and the Tribal Council does not respond to the Applicant within the aforesaid time, the application shall
  - (a) be deemed denied, and the Tribe's Chief Executive Officer shall
  - (b) so inform the Applicant; provided that
  - (c) if the Tribal Council determines that it requires additional time or information in which to consider the application, it shall so inform the Chief Executive Officer who, in turn,
  - (d) shall so inform the Applicant.
- (iv) If the Applicant is a Tribal Member and the application is denied, the Tribal Council shall

- (a) provide the Applicant with a written notice of the denial.
  - (v) An Applicant may withdraw an application for a Lease at any time without penalty, provided that
    - (a) the Tribe may retain that portion of the application processing fee that has not been applied to defraying the Tribe's processing costs to the date of withdrawal.
- F. If the application is not denied or deemed denied, the Tribe's Chief Executive Officer and other appropriate Tribal staff and/or consultants shall
- (i) consult with the Tribal Council in closed session for the purpose of determining whether, and if so, how to respond to the application, and
  - (ii) if the Tribal Council decides to enter into negotiations with the Applicant, the Tribal Council shall
    - (a) designate the members of the Tribe's Lease negotiating team and
    - (b) set the parameters of the negotiating team's authority.
- G. If the Tribal Council directs the Tribe's negotiating team to proceed with negotiations with the Applicant, the Tribe's negotiating team shall
- (i) proceed to meet with the Applicant and negotiate with the Applicant concerning the economic and other relevant terms of the Lease within the parameters set by the Tribal Council; provided, that
  - (ii) any Lease terms or conditions that are mandated by applicable law may not be omitted or altered. Those terms and conditions shall include:
    - (iii) duration;
    - (iv) effective date and any conditions precedent to effectiveness
    - (v) identification of parties, including business address and contact information;
    - (vi) description of the leasehold premises;
    - (vii) amount (if any) of rent, and where, when, in what form and to whom rent is to be paid, any adjustments to rent over time, and any charges or fees for late payment;
    - (viii) purpose and permitted activities;
    - (ix) hold harmless/indemnification of the United States;
    - (x) definition and remedies for breach, and forum and procedures for dispute resolution, including upon request of the Tribe, the BIA's authority, in its discretion, to enforce or cancel the Lease;
    - (xi) any specific land management requirements pursuant to any applicable Tribal Ordinance or general or specific land use plan;
    - (xii) if applicable, development and implementation of conservation plan;
    - (xiii) maintenance obligations;
    - (xiv) due diligence, bond and insurance requirements;
    - (xv) acknowledgment of compliance with all applicable Tribal laws and



- regulations;
- (xvi) Tribal Historic Preservation Officer certification if a Lease will include ground disturbance for construction purposes;
- (xvii) whether, and if so, under what terms and conditions the Lease may be amended.

H. The Tribe's negotiating team designated in subsection F of Section 7 of this Ordinance shall

- (i) report to the Tribal Council on the status of negotiations at such intervals and times as the Tribal Council may direct, and
- (ii) shall inform the Tribal Council immediately upon reaching an agreement in principle with the Applicant.
- (iv) Any agreement in principle between the Tribe's negotiating team and the Applicant shall
  - (a) be expressly subject to approval by the Tribal Council, contingent upon
  - (b) completion of the environmental review process set forth in Section 8 of this Ordinance, and
  - (c) shall not be binding on the Tribe unless and until approved by the Tribe's General Membership, or
  - (d) by the Tribal Council if the General Membership has delegated final approval authority to the Tribal Council.

I. Unless the General Membership has,

- (i) by ballot measure, delegated to the Tribal Council the authority to approve Leases or categories of Leases in general, or
- (ii) a specific Lease in particular,
- (iii) upon approval of a proposed Lease by the Tribal Council, and subject to the environmental review process set forth in Section 8 of this Ordinance, the Tribal Council shall
  - (a) present the proposed Lease to the Tribe's General Membership at the next regularly scheduled General Membership meeting at which time is available on the agenda, together with the Tribal Council's recommendation.
  - (b) If the voting members present at the General Membership meeting vote to put the proposed Lease on a ballot, and subject to completion of the environmental review process set forth in Section 8 of this Ordinance, the proposed Lease shall
    - (i) be placed on the next available ballot for a vote, and if the ballot measure concerning the proposed Lease receives a majority of the votes cast concerning that proposition, the Tribal Council shall
    - (ii) be authorized to approve the execution of the proposed Lease and oversee its implementation.

J. Notwithstanding anything in the foregoing subsections of this Section 7, nothing shall preclude a prospective Lessee, prior to submitting an Application for a Lease of Tribal Land, from

- (i) meeting or otherwise communicating with the Tribe's CEO or
- (ii) with the Tribal Council to
  - (a) describe a potential Project,
  - (b) assess its feasibility, and
  - (c) discuss the Tribe's interest in entertaining a proposal to enter into a Lease of Tribal Land for a proposed purpose.

#### SECTION 8. ENVIRONMENTAL REVIEW PROCESS.

1. Unless a Lease of Tribal Land would be exempt from environmental review under this Section, a Lease of Tribal Land shall not be executed on behalf of the Tribe unless the Lease Tribal Land has been subjected to the complete environmental review process set forth in this Section 8 to determine whether implementing the Lease (the "Project") would have a Significant Effect(s) on the Environment, and if so, what mitigation measures should be prescribed to reduce or eliminate any such Significant Effect(s).

2. A Lease of Tribal Land that would not involve more than minor excavation in previously-disturbed areas, land clearing, new building construction, or discharges or emissions of pollutants exceeding the capacity of existing treatment facilities or existing legal limits is categorically exempt from environmental review hereunder.

3. For a Lease of Tribal Land that is not categorically exempt under subsection 2 of this Section 8, the Department shall prepare or cause to be prepared, or may require the Applicant to prepare or cause to be prepared by a consultant acceptable to the Department, an Environmental Assessment ("EA") that analyzes whether the Project would have a Significant Effect on the Environment, as defined in this Ordinance, and whether any such effect can be mitigated to a level less than significant. Analysis of the impacts on cultural resources, and reports identifying such resources, shall be reviewed and approved by the Tribe's THPO, and shall not be available to the public.

4. (a)(1) If the EA determines that the Project would not have a Significant Effect on the Environment, or if any such effect(s) can be mitigated to a level that is less than significant with the implementation of specified mitigation measures that shall be incorporated into the terms of the Lease, the Department may issue a Finding of No Significant Impact ("FONSI"). The FONSI shall prescribe the mitigation measure(s) necessary to render the impact(s) less than significant, and compliance with those measures shall be a requirement of the Lease.

(a)(2) The FONSI shall be available to the Public, as well as to the General Membership in connection with any ballot measure concerning approval of a proposed Lease of Tribal Lands, through publication of a notice of availability for review and comment on the Tribe's website and in a newspaper of general circulation in Riverside County, California. The notice of availability shall specify how and where comments may be submitted, and shall allow at least



twenty (20) calendar days from the date of the notice for submission of comments.

(b)(1) If the Department finds through an EA, or expects to find based on its best professional judgment, that the Project has the potential to have a Significant Effect on the Environment, the Department shall consult with the Tribal Council to determine whether to commence preparation of a Draft Tribal Environmental Impact Statement ("DTEIS").

(b)(2) If the Department is directed to prepare a DTEIS, the Department shall give the Public notice of the Project as proposed by the prospective Lessee by publishing on the Tribe's website and in a newspaper of general circulation in Riverside County, California a notice of its intent to prepare a DTEIS for the Lease. The notice shall contain a brief description of the Project, shall specify how and where comments may be submitted, and shall allow at least twenty (20) calendar days from the date of first publication of the notice for submission of comments.

(b)(3) Upon expiration of the comment period prescribed in subsection (b)(2) above, the Department may commence preparation of the DTEIS that shall identify the Project's potentially Significant Effects on the Environment, any measures by which such Significant Effects on the Environment feasibly could be mitigated without substantially reducing the benefits of the Lease to the Lessee and the Tribe, and shall identify and respond to any comments received.

(b)(4) The DTEIS shall contain the following information, at a minimum:

(i) A description of the physical environmental conditions in the vicinity of the Project (the environmental setting and existing baseline conditions;

(ii) All potentially Significant Effects on the Environment of the proposed Lease, including the disturbance of hazardous materials or the presence of federally-listed endangered or threatened species;

(iii) Any Significant Effect on the Environment that cannot be avoided if the Lease is executed and the Project implemented;

(iv) Any Significant Effect on the Environment that would be irreversible if the Lease is executed and the Project implemented;

(v) Any mitigation measures proposed, recommended or required;

(vi) A statement indicating the reason(s) for determining that various effects of the Lease on the environment are not significant, and thus have not been discussed in detail in the DTEIS. Direct and indirect Significant Effects on the Environment shall be clearly identified and described, giving due consideration to both the short-term and long-term effects.

(c) Upon completion of either a FONSI or a DTEIS, the Department shall submit the document to the Tribal Council for review, and upon approval by the Tribal Council,

the Department shall notify the Public through a notice published on the Tribe's website and in a newspaper of General Circulation in Riverside County that the document is available for comment for at least twenty (20) calendar days from the date of the first publication of the notice.

(d)(1) If the Department has prepared a FONSI, and if any comments require modification of the original FONSI, the Department shall make such modifications to the FONSI as it deems reasonably necessary, and if the comments do not cause the Department to determine that a TEIS is required, the Department shall submit the FONSI to the Tribal Council for certification.

(d)(2) If a DTEIS was prepared, upon expiration of the public comment period the Department shall consider and respond to all comments received that are relevant to the document under review. If comments are received that object to or question any of the findings or conclusions of the DTEIS, the Department shall schedule a public comment meeting and notify the Public of the time and place of that meeting, after which the Department shall proceed to prepare a Final Tribal Environmental Impact Statement ("FTEIS") for submission to the Tribal Council for certification. If no comments objecting to or questioning any of the findings or conclusions of the DTEIS are received, no public comment meeting need be scheduled.

(e) Notwithstanding any of the foregoing subsections of this subsection H, and unless the Department has determined that a proposed Lease has no potential to have a Significant Effect on the Environment, or that any Significant Effect on the Environment can be mitigated to a level less than significant, in order to avoid needless expenditure of staff time and resources the Tribal Council may direct that the environmental review of a proposed Lease may be deferred unless the General Membership votes at a General Membership meeting to put the question of final approval of the Lease on a ballot.

(f) If the Tribal Council orders the environmental review of a proposed Lease deferred under subsection (e) of this subsection and the approval of the proposed Lease will be placed on a ballot, the Department shall commence and complete the environmental review process set forth in this subsection prior to the submission of the Lease's approval to the General Membership on a ballot.

(g) Before submitting the proposed Lease to the General Membership on a ballot, the Tribal Council shall certify the FTEIS, and the Department shall give notice of said certification to the Public and the General Membership at least twenty (20) calendar days before the Election Committee sends out the ballot containing the proposed approval of the Lease.

(h) A Project that is consistent with a tribal land use plan that itself has been subject to environmental review pursuant to NEPA, the Tribe's Class III gaming compact with the State of California, or this Ordinance need not be the subject of a separate EA or FTEIS unless the Department determines that the Project would materially increase the impacts analyzed in the previous environmental review of the tribal land use plan.

(i) To conserve financial resources, the Department may rely upon a previous EA, FONSI, FEIS, EIR or TEIS in analyzing any proposed Lease, and in preparing a supplemental or tiered EA, FONSI or FTEIS for a subsequent Lease.

(j) The EA, DTEIS or FTEIS need not analyze alternatives to the Project that would utilize Tribal Lands other than those already designated by the General Membership as available for leasing, but shall identify, and the Lessee shall be required to implement, such reasonably feasible mitigation measures as prescribed in the EA or FTEIS and as the Tribal Council determines would be consistent with the Lease's purpose(s) and the Tribe's best interests. This subparagraph also applies to a proposed material change in the use(s) of Tribal Land under a Lease that already has been approved.

(k) All costs associated with the process of preparing an EA or FTEIS, including the costs of consultants, publication of notices, holding of public comment sessions, reproduction of documents, etc., shall be borne by the prospective Lessee.

5. (a) If the Department determines that a FTEIS is required for a Project:

(i) After considering all substantive comments received during the comment period or at the public meeting, the Department shall prepare and submit a FTEIS to the Tribal Council and give the public notice of its submission. A FTEIS shall include all substantive comments received, responses to those comments, and recommended mitigation measures. After review and due consideration of a FTEIS, the Tribal Council may approve a FTEIS in a record of decision, and thereafter based thereon execute a Lease that is the subject of a FTEIS, unless the General Membership has voted to place on the ballot ratification of a Lease approved prior to completion of the FTEIS, in which event the Tribal Council's authority to execute the Lease shall be contingent upon General Membership ratification based on the FTEIS. The Tribal Council's record of decision on a FTEIS shall specify which, if any, of the mitigation measures identified in the FTEIS need not be implemented, together with a statement of the Tribal Council's justification for each such determination.

(ii) The Tribal Council's decision to approve a FTEIS shall be final and not further reviewable.

## SECTION 9, LEASING AND SUBLEASING OF SPACE IN EXISTING STRUCTURES ON TRIBAL LAND.

### A. Leasing of Space in Existing Structures on Tribal Land.

1. Except as otherwise specified in this Section, applications for Space Leases or Subleases in existing structures on Tribal Land shall be processed in the same manner as applications for Leases of Tribal Land under Section 7 of this Ordinance.

2. An application for a Space Lease or Sublease shall, in addition to the fees



and applicable information required by Section 7(B) and (C) of this Ordinance, include the following in the Application, to the extent not already provided:

(a) an architectural rendering, plot plan or other diagram showing the location of both the existing structure and the proposed Leased Premises within the existing structure;

(b) architectural rendering(s), dimensions and estimated cost of the improvements proposed to be constructed within the proposed Leased Premises, the code standards to which such improvements will be constructed, and a description and estimated cost of any permanent improvements, if any, to Tribal Land or other lands necessary to provide utilities to the proposed Leased Premises;

(c) the Applicant's estimate of the revenues the Applicant expects to realize under the proposed Lease or Sublease, together with all studies or other analyses supporting that estimate;

(d) the compensation that the Applicant proposes to offer in consideration for the Tribe's entry into the proposed Lease or Sublease;

(e) the Applicant's plan, if any, for financing the costs of any necessary modifications and improvements to the existing structure and the Leased Premises;

(f) a description of any additional utility services and other infrastructure that will be needed to be installed within the Leased Premises, and the incremental impact of operating the planned improvements on the existing premises' water, gas, electrical, HVAC and effluent disposal facilities and systems;

(g) a plan for restoring the proposed Leased or Subleased Premises to their original condition upon termination or expiration of the Lease or Sublease;

2. Within sixty (60) days after receipt of an application for a Lease or Sublease, the Tribe's Chief Executive Officer shall

- (i) consult with the person with overall operational responsibility for the existing structure within which the applicant proposes to lease or sublease space, to
- (ii) determine whether the proposed Leased or Subleased Premises would be available for lease or sublease, and if available,
- (iii) prepare a summary of the application and forward it to the Tribal Council together with his/her recommended response to the Applicant.
- (iv) This subsection shall not apply to a Sublease if an approved Lease for the premises to be subleased authorizes subleasing without further Tribal approval.

3. Except for a Sublease exempted from further review and approval under subsection 2 of this Section, the Tribal Council shall
- (i) review the proposed Lease or Sublease within ninety (90) days after receipt from the Tribe's Chief Executive Officer; provided, that
  - (ii) if the proposed Lease or Sublease is received during a month in which the Tribal Council is not scheduled to meet in regular session, the Tribal Council shall
  - (iii) have one hundred twenty (120) days after receipt from the Tribe's Chief Executive Officer within which to respond to the Applicant.
  - (iv) If the Tribal Council does not respond to the Applicant with the aforesaid time, the application shall
    - (a) be deemed denied, and the Tribe's Chief Executive Officer shall
    - (b) so inform the Applicant, provided that if the Tribal Council determines that it requires additional time or information in which to consider the application, it shall
    - (c) so inform the Chief Executive Officer who, in turn, shall
    - (d) so inform the Applicant.
  - (v) An Applicant may withdraw an application for a Space Lease at any time without penalty.
4. If the application is not denied or deemed denied, the Tribe's Chief Executive Officer and other appropriate Tribal staff and/or consultants shall
- (i) consult with the Tribal Council in closed session for the purpose of preparing a response to the application,
  - (ii) designating the Tribe's negotiating team and
  - (iii) setting the parameters of the team's negotiating authority.
5. The Tribe's negotiating team shall
- (i) proceed to meet with the Applicant and
  - (ii) in negotiate with the Applicant concerning the economic and other relevant terms of the Lease or Sublease; provided, that
  - (iii) any terms or conditions that are mandated by applicable law shall
    - (a) be included in the Lease or Sublease, and
    - (b) may not be altered except as permitted by applicable law; and provided further, that
    - (c) no Lease or Sublease may contain any term or condition that would violate applicable Tribal or federal law.
6. The Tribe's negotiating team shall
- (i) report to the Tribal Council on the status of negotiations at such intervals and times as the Tribal Council may direct, and
  - (ii) shall inform the Tribal Council immediately upon reaching an agreement in principle with the Applicant.
  - (iii) Any agreement in principle between the Tribe's negotiating team and the



Applicant shall

- (a) be expressly subject to approval by the Tribal Council, and
- (b) shall not be binding on the Tribe unless and until approved by the Tribal Council.

7. Provided that the provisions of this Section 9 have been complied with, the Tribal Council hereby is

- (i) authorized to approve and bind the Tribe to Leases and Subleases of space in existing structures on Tribal Land without further General Membership approval.
- (ii) Notwithstanding the foregoing, the Tribal Council may, in its discretion,
  - (a) submit a proposed Lease or Sublease of space in an existing structure on Tribal Land to the General Membership for approval by ballot.

8. Unless otherwise expressly provided in a duly-approved Space Lease, a Lessee of space in an existing structure on Tribal Land

- (i) may not sublease the premises or assign the Lease without first obtaining the express approval of the Tribal Council.
- (ii) A Sublease or assignment of the Lease that has not either been approved or exempted from approval by the Tribal Council shall
  - (a) be null and void from its purported inception, and
  - (b) shall confer no rights in the Leased Premises.
- (iii) Moreover, the Tribal Council may treat an unapproved Sublease or assignment as
  - (a) an incurable material breach of the Lease, and
  - (b) both the Lessee and the Sublessee or Assignee may be evicted from the Leased Premises in a summary proceeding in the Tribal Court.

9. Assumption of Space Lease or Sublease by Lessee's Creditor(s).

(a) A Space Lease or Sublease may provide that in the event of a default by the Lessee or Sublessee on any obligation to a lender or other third party with a security interest in the Space Lease or Sublease, the lender or other third party may

- (i) assume the Lessee's/Sublessee's obligations under the Lease or Sublease, but
- (ii) only if the lender or other third party expressly submits to the jurisdiction of the Morongo Tribal Court for the adjudication of disputes that may arise under the Lease or Sublease.

(b) If any applicable law requires that a Space Lessee or Sublessee obtain a license or permit from an agency of the State of California or the Tribe in order to engage in the activities authorized by the Lease, the Lessee or Sublessee

- (i) must obtain any required license or permit before entering into

possession of the Leased or Subleased Premises.

10. Environmental Review of Space Leases or Subleases.

(a) A Space Lease or Sublease for a use that the Department determines is substantially similar to prior or current uses of or within the existing structure shall be categorically exempt from environmental review, unless the Department determines that the cumulative impacts of the proposed use under the Space Lease or Sublease have the potential to have a Significant Effect on the Environment.

(b) A Space Lease or Sublease for a use that would involve the use or storage of hazardous or toxic substances in quantities greater than needed for ordinary cleaning or maintenance, or would result in emission of noxious, hazardous or toxic fumes or the potential release into the environment or the Tribe's wastewater treatment facility of toxic or hazardous substances shall be treated as a Project subject to environmental review. A Space Lease or Sublease for a use that would increase the volume of sewage or wastewater beyond the capacity of existing wastewater or sewage disposal and treatment facilities shall be subject to review of the environmental impacts of expanding the capacity of such facilities to handle the incremental increases in the volumes of such discharges, but would not otherwise be subject to environmental review except as the Department, in its discretion, determines would be appropriate.

SECTION 10, AMENDMENT OF LAND LEASES AND SPACE LEASES.

A. A Lease, Space Lease or Sublease may be amended by the mutual agreement of the Tribe and the Lessee or Sublessee.

B. Unless the Tribe's General Membership has delegated to the Tribal Council the authority to approve an amendment to a Lease of Tribal Land, any amendment that would:

- (i) change the duration or purpose of the Lease;
- (ii) reduce the compensation to be paid by the Lessee;
- (iii) increase any cost to be borne by the Tribe under the Lease; or
- (iv) cause a Significant Effect on the Environment beyond any such Effects identified in a FTEIS,

shall require the approval of the General Membership through a ballot measure. The Tribal Council shall have the authority to approve amendments to a Lease of Tribal Land that would not:

- (i) change the duration or purpose of the Lease
- (ii) reduce the compensation to be paid by the Lessee;
- (iii) increase any cost to be borne by the Tribe under the Lease; or
- (iv) cause a Significant Effect on the Environment beyond any such Effects identified in a FTEIS.

C. The Tribal Council shall

- (i) have sole authority to approve amendments to Space Leases, Subleases and

Assignments of Leases or Subleases, provided that

(ii) the Tribal Council shall

(a) have no authority to approve any amendment to a Space Lease, Sublease or Assignment that would violate any applicable Tribal or federal law or regulation.

#### SECTION 11, MORTGAGING OF LEASEHOLD INTERESTS.

A Lessee or Sublessee may mortgage a Lease or Sublease if expressly allowed under the terms of the Lease or Sublease itself, or with the prior consent of the Tribal Council, and provided that the mortgagee(s) must agree in writing to assume all of the obligations and conditions of the Lease or Sublease, including submission to the jurisdiction of the Morongo Tribal Court if the Lease or Sublease so provides, and agrees in writing that any transfer of the Lease or Sublease will be in accordance with and subject to Tribal and all other applicable laws.

#### SECTION 12, TERMINATION OF LEASES AND SUBLEASES.

A. Voluntary Termination Prior to Expiration. A Lease or Sublease may be terminated at any time prior to its stated expiration date under such terms and conditions as the Tribe and the Lessee or Sublessee mutually may agree, and provided that such termination is not inconsistent with applicable laws. The Tribal Council hereby is authorized to consent to the early voluntary termination of a Lease or Sublease based on its determination that early voluntary termination would be in the Tribe's best interests.

B. Involuntary Termination Prior to Expiration. Every Lease and Sublease must set forth:

(i) the grounds and circumstances for which one or the other party or parties to the Lease or Sublease may terminate the Lease or Sublease prior to its stated expiration date without the consent of the other party;

(ii) whether, to what extent, and if so how long a defaulting party will be have in which to cure a default under the Lease or Sublease;

(iii) a procedure for resolving disputes arising out of the involuntary termination of the Lease or Sublease, and the remedies available to the prevailing party in any such dispute, including

(a) specifying the forum or fora in which disputes are to be resolved, and (b) setting forth both parties' consent to the jurisdiction of the specified forum; provided, that

(c) unless otherwise specified in the Lease or Sublease, the Morongo Tribal Court shall

(i) have exclusive jurisdiction over all disputes arising under or in connection with the Lease or Sublease, and

(ii) to order exclusion of the Lessee or Sublessee from the Leased

Premises upon involuntary termination of the Lease or Sublease.

#### SECTION 13, DISPOSITION OF LEASEHOLD IMPROVEMENTS.

A. If a Lease or Sublease is terminated by the Tribe based on the Lessee's or Sublessee's uncured default, the Tribe shall

(i) have the right either to require the Lessee or Sublessee to remove all above-ground permanent improvements at Lessee's or Sublessee's sole expense within thirty (30) days after termination of the Lease or Sublease, or

(ii) to retain the Tribe's ownership of said improvements without compensating the Lessee or Sublessee therefor. If the Tribe requires the Lessee or Sublessee to remove above-ground permanent improvements and the Lessee fails timely to remove same, the Tribe

(a) may remove or arrange for removal of said improvements and the Lessee or Sublessee shall be obligated to reimburse the Tribe for the cost of removing said improvements.

(b) The obligation to reimburse the Tribe shall be enforceable in the Morongo Tribal Court or such other court having jurisdiction over the subject matter.

(c) All surface and subsurface improvements shall become the property of the Tribe without further compensation to the Lessee or Sublessee, unless such improvements constitute a hazard to health, safety or the environment, in which event the Lessee or Sublessee shall

(i) be obligated to remove or repair such improvements at the Lessee's or Sublessee's sole expense, or

(ii) to reimburse the Tribe for the cost of removing or repairing such improvements.

B. Enforcement or Cancellation of Leases by the BIA. As required by federal law, every Lease of Tribal Land shall

(i) state that, upon reasonable notice from the Tribe to the BIA, the BIA, in its discretion, may enforce the provisions of, or cancel, a Lease.

#### SECTION 14, PERFORMANCE BONDS.

Unless the Tribal Council determines that a waiver of a performance bond or alternative form of security is in the Tribe's best interest, a Lessee or Sublessee must provide a performance bond or alternative form of security meeting the following criteria:

1. The performance bond or alternative form of security must be in an amount sufficient to secure the Lessee's or Sublessee's contractual obligations to the Tribe, including:

(a) No less than:



if paid annually; or

- (i) The highest annual rental specified in the Lease or Sublease,

- (ii) If the compensation is not paid annually, another amount established by the Tribal Council for Tribal Land;

- (b) The construction of any required permanent improvements;

- (c) The operation and maintenance charges for any Tribal Land located within an irrigation project; and

- (d) The restoration and reclamation of the Leased Premises to their condition at the start of the Lease Term, or to some other specified condition.

2. The performance bond or other security:

- (a) Must be deposited with the Tribe's Chief Financial Officer and made payable only to the Tribe, and may not be modified without the Tribal Council's approval;

- (b) The Lease must specify the conditions under which the Tribal Council may adjust security or performance bond requirements to reflect changing conditions;

- (c) The Tribal Council may require that the surety provide any supporting documents needed to show that the performance bond or alternative forms of security will be enforceable, and that the surety will be able to perform the guaranteed obligations; and

- (d) The performance bond or other security instrument must require
  - (i) the surety to provide notice to the Tribe's Chief Financial Officer at least sixty (60) days before canceling a performance bond or other security, in order to allow the Tribe to

- (a) notify the Lessee of its obligation to provide a substitute performance bond or

- (b) other security and require collection of the bond or security before the cancellation date.

- (c) Failure timely to provide a substitute performance bond or security shall be deemed to be a material violation of the Lease.

3. Acceptable forms of a performance bond shall include

- (a) only 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 U.S. Treasury securities, or surety bonds issued by a company approved by the U.S. Department of the Treasury or the



California State Department of Insurance.

4. All forms of performance bonds or alternative security must, if applicable:
  - (a) Indicate on their face that the Tribal Council's approval is required for redemption;
  - (b) Be accompanied by a statement granting full authority to the Tribal Council 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.
5. Upon expiration, termination, or cancellation of the Lease for any reason other than the Lessee's uncured or incurable default, the Lessee may
  - (a) request the Tribal Council in writing to release the performance bond or alternative form of security. Upon receiving a request to release the performance bond or alternative form of security, the Tribal Council or its designee will
  - (b) confirm whether the Lessee has complied with all Lease obligations, and will
  - (c) release the performance bond or alternative form of security to the Lessee unless the Tribal Council determines that the bond or security must be redeemed to fulfill the Lessee's Lease obligations.

#### SECTION 15, CONSTRUCTION COMPLETION AND PAYMENT BONDS.

At the Tribal Council's discretion,

- (i) the Lessee may be required to furnish a bond or bonds issued by a bonding company acceptable to the Tribal Council in an amount or amounts sufficient to secure completion of the construction of all planned improvements to the Leased Premises, and
- (ii) to protect the Tribe, its officers, members, agents and employees from any claims or liability associated with the failure of the Lessee or any contractor or agent of the Lessee to timely complete construction of all planned improvements on the Leased Premises, or
- (iii) to pay in full all costs and debts incurred in connection with such construction.

#### SECTION 16, INSURANCE REQUIREMENTS.

1. Unless the Tribal Council grants a waiver pursuant to subsection 2 of this section, a Lessee must
  - (i) provide liability insurance in an amount and under such terms that the Tribal Council determines is necessary to protect the interests of the Tribe and the general public, and
  - (ii) casualty insurance in an amount sufficient to protect all insurable permanent

improvements on the premises.

(iii) Notwithstanding any waiver of insurance requirements by the Tribal Council, every Lease shall require that the United States be insured and indemnified against any and all claims arising under the Lease.

2. If the Tribal Council determines that the best interest of the Tribe would be served by waiving or lowering the requirement that the Lessee provide either liability or casualty insurance, the Tribal Council may

(i) waive all or some of the insurance and indemnity requirement as to the Tribe, but not as to the United States.

#### SECTION 17, EFFECTIVE DATE OF LEASE.

Unless otherwise specified in the Lease itself, a Lease approved pursuant to this Ordinance shall

(i) be effective on the date that it has been executed by the authorized signatories of the Tribe and each other party to the Lease.

A Lease may

(i) specify a date that is either before or after the date on which the Lease is approved by the Tribal Council on which the obligations between the parties to the Lease will or did commence.

(ii) Notwithstanding anything to the contrary in this Ordinance, no Lease approved pursuant to this Ordinance shall become effective prior to the date upon which this Ordinance was approved by the Secretary.

#### SECTION 18, RECORDING OF LEASES.

1. All Lease documents pertaining to Tribal Land, including Leases, Subleases or Assignments of a Lease or Sublease, and including leases to or by a corporate entity formed under 25 U.S.C. § 5124, must be recorded in the LTRO.

2. If a Lease document requires approval by the Tribal Council, the Lease document shall be recorded in the LTRO upon receipt of the fully-executed Lease document and a copy of the Tribal Council motion approving the Lease document.

3. If a Lease document does not require approval by the Tribal Council, the Lease document shall be recorded in the LTRO upon the LTRO's receipt of the fully-executed lease document.

#### SECTION 19, ASSIGNMENT OF LEASES.

1. A Lessee may assign its entire interest in a Lease by

(i) obtaining the consent of the Tribal Council, or

(ii) by meeting the conditions in subparagraphs 2 or 3 of this section.

2. If allowed in the Lease, the Lessee may assign the Lease to the following without meeting consent requirements, as long as the Lessee notifies the Tribe of the assignment within 30 days after it is executed:

- (a) Not more than three distinct legal entities specified in the Lease; or
- (b) The Lessee's own wholly owned subsidiary or subsidiaries.

3. The Lessee may assign the Lease without the Tribal Council's approval or meeting consent requirements if:

- (a) 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, consents and conditions of the Lease; and
- (c) The assignee agrees in writing that any transfer of the Lease will be in accordance with this Ordinance and all other applicable laws.

4. If a Lease requires approval of an assignment, the request for approval must
- (a) be submitted to the Morongo Band's Chief Executive Officer, who shall
    - (i) promptly determine whether the requirements of this subpart have been met, and
    - (ii) notify the parties of the date it was received.
    - (iii) A copy of the request shall simultaneously be provided to the Morongo Realty Department.
- If the Tribal Council's approval is required by the terms of the Lease, the Tribal Council shall
- (iv) have (60) days from receipt of the executed assignment,
  - (v) proof of required consents, and
  - (vi) required documentation to approve or disapprove the assignment;
- provided, that if the request is received in a month in which the Tribal Council is not regularly scheduled to meet, the Tribal Council's time to act on the request will be
- (a) extended by sixty (60) days from the first day of the next month in which the Tribal Council is regularly scheduled to meet.
  - (vii) The Tribal Council's determination whether to approve the assignment shall
    - (a) be in writing and state the basis for its approval or disapproval.
    - (viii) A copy of the Tribal Council's determination shall be provided to the Morongo Realty Department and the LTRO.
    - (ix) If the Lease provides that the Tribe's CEO may approve an assignment,



the Tribal Council will be notified of the assignment, but no Tribal Council approval will be required.

## SECTION 20, DISPUTE RESOLUTION.

### A. Dispute Resolution.

1. All Leases and Subleases approved under this Ordinance shall include provisions governing the resolution of disputes between the Tribe and Lessee or Sublessee.

2. Unless otherwise specifically provided in the Lease, all disputes between a Lessee, Sublessee or Assignee and the Tribe that cannot be resolved informally shall be resolved by the Morongo Tribal Court in accordance with the rules of that Court, to the jurisdiction of which both the Tribe and Lessee, Assignee or Sublessee shall be deemed to have consented by entering into the Lease or Sublease.

3. Unless otherwise specifically provided in the Lease or Sublease, the party claiming a violation of the Lease or Sublease shall have 365 days from the date the claim arose to file an action seeking relief in the court specified in the Lease or Sublease.

4. Unless otherwise specified in the Lease or Sublease, disputes arising under the Lease or Sublease shall

(i) be resolved in accordance with the laws of the Tribe, or if no tribal law addresses the issue(s) in dispute,

(ii) by the laws of the United States and the State of California.

B. Appeals. Unless otherwise specified in the Lease or Sublease, the Morongo Tribal Court of Appeals shall have exclusive jurisdiction over appeals from the judgments of the Morongo Tribal Court, with the time for filing appeals and other procedural issues governed by the rules of that Court.

## SECTION 21, TRIBAL SOVEREIGN IMMUNITY.

Except as expressly provided in either this Ordinance or in the Lease, nothing herein shall be deemed or be interpreted as a waiver of the Tribe's sovereign immunity, or the immunity of its officials, employees, attorneys and agents when acting on the Tribe's behalf within the course and scope of the authority that the Tribe validly has conferred upon them.

## SECTION 22, MANAGEMENT AND ENFORCEMENT.

The Tribe's authority to monitor and enforce compliance with the terms and conditions of Leases and Subleases is vested in the Tribal Council, which may delegate some or all of its authority to the Chief Executive Officer who may, in turn, delegate some or all of that authority to one or more tribal departments or agencies; *provided*, that only the Chairperson, Vice-Chairperson

or other Tribal Council Member designated by the Tribal Council shall be have the authority to execute any Lease, Sublease, Assignment of a Lease or Sublease, or any Amendment of a Lease or Sublease on behalf of the Tribe.