



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

APPROVAL OF

**PRAIRIE BAND POTAWATOMI NATION
AGRICULTURAL LEASING ORDINANCE**

The attached Agricultural Leasing Ordinance, submitted by the Prairie Band Potawatomi Nation (listed in the Federal Register, Vol. 88, No. 8 FR 2114 (January 12, 2023) as the Prairie Band Potawatomi Nation), and prepared in accordance with the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012, consisting of 25 pages and adopted by the Prairie Band Tribal Council on August 10, 2023, is hereby approved.

Dated: **SEP 21 2023**

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

Assistant Secretary – Indian Affairs
United States Department of the Interior

Pursuant to the authority delegated by 209 DM 8

TITLE 34

AGRICULTURAL LEASING AND RECORDING ORDINANCE

CHAPTER 34-1

INTRODUCTION

34-1-1. Authority and Delegation.

The ordinance codified in this title is enacted by the Tribal Council pursuant to the powers vested to it under Article V of the Constitution of the Prairie Band Potawatomi Nation, approved December 6, 2007, as may be amended from time to time ("Constitution").

Consistent with these constitutional powers, the Tribal Council may delegate some or all of its statutory authority to tribal agencies on behalf of the Nation when acting in the capacity as a Lessor of the real property of the Nation.

34-1-2. Scope.

The scope of application of this title shall be limited to all Agricultural Leases involving any tract or parcel held by the Nation in trust or restricted status approved pursuant to this title, to all actions and decisions taken in connection with those Leases, and to recording and record-keeping requirements for agricultural properties on the Nation's Tribal Land. Nothing herein shall be construed to affect the terms and conditions of Leases existing or in effect on or prior to the effective date of the ordinance codified in this title. This title does not apply to fee lands, individually owned Indian lands, fractionalized interests, or mineral interests.

34-1-3. Purpose.

The purposes of this title are to:

- (A)** Recognize the authority of the Prairie Band Potawatomi Nation ("Nation") to issue, review, approve, and enforce Agricultural Leases and establish streamlined procedures for environmental review;
- (B)** Set out the standards for issuance, review, approval, and enforcement of Agricultural Leases;

- (C)** Set out the standards and processes for recording and record-keeping for Agricultural Leases as well as for other conveyance and title documents impacting Agricultural Uses of the Nation's Tribal Land lands;
- (D)** Promote self-determination, encourage economic self-sufficiency, effectively protect the environment, strengthen community, and increase agricultural activity and employment on land of the Nation's Tribal Land; and
- (E)** Implement the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012, H.R. 205, 112th Cong. (2012) ("HEARTH Act"), as amended, 25 USCA §415.

34-1-4. Short Title.

This title shall be known and cited as the "Agricultural Leasing and Recording Ordinance."

CHAPTER 34-2

DEFINITIONS

34-2-1. Definitions.

As used in this title, the terms set forth below shall have the following meanings:

- (A) Agricultural Land.** The Nation's land suited or used for the production of crops, livestock or other Agricultural Products, or the Nation's land suited or used for a business that supports the surrounding agricultural community.
- (B) Agricultural Lease.** Lease of the Nation's Agricultural Land for Agricultural Uses.
- (C) Agriculture Leasing Procedures.** Procedures promulgated under this title by the Tribal Council, or such other Nation agency properly delegated the responsibility by the Tribal Council to implement this title and execute the duties contained therein, provided such procedures are consistent with this Title.
- (D) Agricultural Products.** Agricultural, horticultural, viticultural, and dairy products, including fruits, vegetables, other food, feed, and fiber commodities, livestock, poultry, bees, and the products thereof, the edible products of

forestry, sod, ornamental, nursery, and horticultural crops, and any other products raised or produced on farms and processed or manufactured products thereof.

- (E) Agriculture Resource Management Plan (ARMP).** Refers to a plan developed under section 3711(b) of the AIARMA.
- (F) Agricultural Use.** The production, processing, manufacturing, or distribution of Agricultural Products, including farming and grazing activities.
- (G) AIARMA.** The American Indian Agricultural Resources Management Act of December 3, 1993 (107 Stat. 2011, 25 U.S.C. 3701 et seq.), as amended on November 2, 1994 (108 Stat. 4572).
- (H) Assignment.** 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.
- (I) Best Interest of the Nation.** The balancing of interests in order to attain sufficient employment opportunities, preserve and enhance the value of Nation's Trust Land, increase and diversify food sources on the Nation's Trust Land, and preserve the sovereignty of the Nation as determined by, and in the sole discretion of, the Tribal Council.
- (J) BIA.** The Bureau of Indian Affairs, United States Department of the Interior.
- (K) Bond.** 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.
- (L) Change in Land Use.** The change from one (1) use to another that significantly differs from the former use.
- (M) Environmental Review Process.** The process for conducting environmental review to identify and evaluate any significant effects of a proposed action on the environment.
- (N) Environmental Reviewer.** The Planning and Environmental Protection Department (PEPD), the entity that conducts, coordinates, and oversees the Environmental Review Process on behalf of the Nation.

- (O) Executing Official.** The Chairperson of the Nation (or such other official) properly delegated the responsibility by the Tribal Council to execute all Agricultural Leases of the Nation and take all necessary and proper action on Leases and Subleases including amendments, Assignments, and cancellations of Leases and Subleases.
- (P) Fair Annual Lease Value.** The amount of rental income that a leased tract of the Nation's land would most probably command in an open and competitive market, or as determined by competitive bidding.
- (Q) Grazing Management Plan.** A grazing management plan is a site specific grazing lands resource conservation plan designed by the local service area Natural Resource Conservation Service (NRCS), USDA.
- (R) Holdover.** Circumstances in which a Lessee remains in possession of the leased premises after the Lease term expires, or the Lease is cancelled or terminated.
- (S) Land Maintenance Department.** The office delegated the authority to execute and manage all Agricultural Leases of the Nation.
- (T) Lease.** A written agreement between the Nation and a Lessee whereby the Lessee is granted a right to possess a specified portion of the Nation's Trust Land for a specified purpose and duration. The Lessee's right to possess will limit the Nation's rights to possess the Nation's Trust Land only to the extent provided in the Lease.
- (U) Leasehold Interest.** The possessory interest in the Nation's Trust Land established pursuant to a Lease between the Nation and a Lessee.
- (V) Leasehold Mortgage.** A mortgage, deed of trust, or other instrument in which a Lessee pledges the Lessee's Leasehold Interest as security for a debt or other obligation owed by the Lessee to a lender or other mortgagee.
- (W) Leasing Decision.** A Lease issuance, Lease amendment, Sublease, Lease Assignment, Lease renewal, or any other action taken by Tribal Council or other Nation agency or Nation official properly delegated under this title.
- (X) Lessee.** A person or entity who has acquired a right to possess the Nation's Trust Land by executing a Lease.

- (Y) Lessor.** The Nation, whose rights are exercised by the Tribal Council. The Lessor can only be the Nation.
- (Z) LTRO.** The Land Titles and Records Office of the BIA.
- (AA) Nation.** The Prairie Band Potawatomi Nation.
- (BB) Nation's Tribal Land.** Tribal land means any tract in which the surface estate is owned by the Nation in trust or restricted status, and includes such lands reserved for BIA administrative purposes. The term also includes the surface estate of lands held by the United States in trust for an Indian corporation chartered under section 17 of the Act of June 18, 1934 (48 Stat. 988; 25 U.S.C. 5124).
- (CC) Permanent Improvements.** Buildings, other structures, and associated infrastructure attached to the land described in the Lease that is now an integral part of the property.
- (DD) Public.** For purposes of the Environmental Review Process, "Public" means any person or entity who can demonstrate that they will be directly substantially affected by the Lease or Lease activity.
- (EE) Secretary.** The Secretary of the Department of the Interior.
- (FF) Significant Effect on the Environment.** A substantial, or potentially substantial, impact on the environment, including land, air, water, minerals, flora, fauna, ambient noise, cultural areas and objects of historic, cultural or aesthetic significance.
- (GG) Sublease.** 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 an Agricultural Lease.
- (HH) Surety.** One who guarantees the performance of another.
- (II) TEIR.** Tribal Environmental Impact Report.
- (JJ) Tribal Council.** The duly elected governing body of the Nation pursuant to the Constitution, and as such is vested with the authority to perform the duties and responsibilities of the Lessor, and to approve or disapprove leasing transactions, which include but are not limited to: lease issuance, bond, lease amendment, subleasing, lease assignment, leases, and lease terminations.

The Tribal Council has the statutory authority to give final approval for all agricultural leases and has authority to delegate some or all of its statutory authority to Nation agencies on behalf of the Nation.

(KK) Tribal Land Office. The department of the Nation delegated authority under this Ordinance and elsewhere to oversee and administer matters relating to the Nation's lands, including but not limited to recording and other record-keeping related to such property.

(LL) Termination. An action by the Nation to end an Agricultural Lease.

(MM) Trust or Restricted Status. Land (1) that the United States holds title to the tract in trust for the benefit of the Nation; or (2) that the Nation 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.

(NN) Violation. A failure to comply with the terms of a Lease, including failure to take an action required under a Lease such as payment of compensation. This definition applies for purposes of this title without regard to how "violation" or "default" are defined in the Lease.

CHAPTER 34-3

AGRICULTURAL LEASE REQUIREMENTS

34-3-1. Terms and Conditions.

Agricultural Leases shall be governed by the terms and conditions set forth in the Lease, subject to the provisions of this title. The terms and conditions of a Lease may be modified only with the approval of the Tribal Council. The Lessee is responsible for understanding and complying with the terms and conditions of the Lease.

34-3-2. Duration and Renewal.

- (A) **Date of Commencement.** Unless otherwise stated in the Lease, no Lease shall be approved more than twelve (12) months prior to the commencement of the term of the Lease.
- (B) **Term and Renewal.** The term of an Agricultural Lease must be reasonable, given the purpose of the lease and the level of investment required, shall not be more than twenty five (25) years with an option to renew for two (2) additional terms of which shall not exceed twenty five (25) years. An Agricultural Lease may not be renewed or extended by holdover.

34-3-3. Obtaining an Agricultural Lease.

(A) **Required Submissions.** Unless otherwise provided pursuant to Section 34-3-10, a Lease that meets the requirements shall be submitted along with the following information, in the appropriate form, to the Tribal Council, the Tribal Land Office or such other Nation department properly delegated the responsibility by the Tribal Council:

- (1) Financial information that is sufficient to determine the Lessee's ability to carry out the Lease;
- (2) Site survey and legal description, as required under Section 34-3-6;
- (3) TEIR or exemption as required pursuant to Section 34-3-9;
- (4) Grazing Management Plan, if the purpose of the lease is grazing,
- (5) If the Lessee is a corporation, partnership or other legal entity, it must provide organizational and financial documents, as needed to show that the lease will be enforceable against the Lessee and the Lessee will be able to perform all of its lease obligations, and
- (6) Other documents as may be required by the Tribal Council and pursuant to the Agricultural Leasing Procedures.

34-3-4. Required Agriculture Lease Provisions.

All Agricultural Leases shall contain, at a minimum, the following provisions:

- (A) The parties to the Lease possessing the required legal interest in the land leased and having the necessary capacity and authority to execute the Lease;

- (B)** The term of the Lease;
- (C)** The effective date of the Lease, which must be on all Lease documents;
- (D)** The purpose of the Lease and authorized uses of the leased premises;
- (E)** The legal description of the tract, location, or parcel of the land being leased as provided in Section 34-3-6;
- (F)** Compensation requirements under the Lease;
- (G)** Dates on which all payments are due and that, unless otherwise provided in the Lease, payments may not be made more than twelve (12) months in advance of their due date;
- (H)** Language specifying that the Lessee shall make payments directly to the Nation's Land Maintenance Department, which shall maintain documentation of lease payments that are sufficient to enable the Secretary to discharge the trust responsibility of the United States;
- (I)** Acceptable forms of payment;
- (J)** Any late penalties, interest, or other special fees that apply;
- (K)** Due diligence, insurance, and bonding requirements;
- (L)** Describe the type and location of any improvements to be constructed and state whether plans of development or construction schedules are required;
- (M)** Language identifying what reports, surveys, site assessments, or other documents are needed to facilitate compliance with applicable tribal environmental, cultural, resource, and land use requirements;
- (N)** If the leased premises are within an Indian irrigation project or drainage district, Lease must state the following: "If the leased premises are within an Indian irrigation project or drainage district, except as provided by 25 C.F.R. 171, the Lessee must pay all operation and maintenance charges that accrue during the Lease term. The Lessee must pay these amounts to the appropriate office in charge of the irrigation project or drainage district.";
- (O)** Language, including any appropriate stipulations, requiring that land must be managed in accordance with any ARMP and/or conservation plan

developed by the Nation, or by the BIA in close consultation with the Nation, under AIARMA;

- (P)** That the obligations of the Lessee to the Nation are also enforceable by the United States so long as the land remains in Trust or Restricted Status;
- (Q)** That there may not be any unlawful conduct, creation of a nuisance, illegal activity, or negligent use or waste of the leased premises;
- (R)** Requirements for Lessee to comply with all applicable Nation and federal laws, ordinances, rules, regulations, and other legal requirements;
- (S)** Language providing that the Nation has the right, at any reasonable time during the term of the Lease and upon reasonable notice, to enter the leased premises for inspection and to ensure compliance with lease terms and conditions, and applicable Nation and federal law and regulations;
- (T)** That failure to cooperate with requests to make appropriate records, reports, or information available for inspection and duplication may be considered a Lease Violation;
- (U)** That the Lessee indemnifies and holds harmless the Nation and the United States from any loss, liability, or damages, including costs and attorneys' fees, resulting from the Lessee's use or occupation;
- (V)** That the Lessee indemnifies and holds harmless the Nation and the United States from all liabilities or costs relating to use, handling, treatment, removal, storage, transportation, or disposal of hazardous materials, or release or discharge of any hazardous materials from the leased premises that occurs during the Lease term, regardless of fault, except that the Lease may provide an exception for liability or cost arising from the Nation's negligence or willful misconduct.

34-3-5. Recording Requirements.

- (A)** The Tribal Land Office is responsible for recording all Agricultural Leases. In carrying out the responsibility to maintain all records of Agricultural Leases, the Tribal Land Office shall:
 - (1)** Record each Lease and Leasehold Mortgage in a log which shall contain, at a minimum, the following information:

- (a) The name(s) of the Lessee of each Lease, or the name of the Lessee and mortgagee in the case of a Leasehold Mortgage, identified as such;
- (b) The date and time of receiving the document(s) for recording;
- (c) The filing number to be assigned by the Tribal Land Office, which shall be a unique number for each Lease, Leasehold Mortgage, and accompanying document; and
- (d) The name of the Tribal Land Office staff person receiving the Lease.

(2) Endorse the following information from the log upon any Lease received for recording:

- (a) The date and time of receipt of the Lease or Leasehold Mortgage;
- (b) The filing number assigned by the Tribal Land Office; and
- (c) The name of the Tribal Land Office staff person receiving the Lease or Leasehold Mortgage.

(3) The Tribal Land Office shall make a true and correct copy of the Lease or Leasehold Mortgage and shall certify it as follows:

I certify that this is a true and correct copy of a document received for recording this date.

Given under my hand and seal this _____ day of _____.

(Signature)

(Date)

(4) The Tribal Land Office shall maintain an index where copies of all certified Leases and Leasehold Mortgages, and their accompanying documents, are located and may be retrieved by a search based on the legal description of the Leased or mortgaged premises. After recording the lease, the Tribal Land Office will return the original lease to the Land Maintenance Department for retention and management. The Land Maintenance Department will provide a copy of the recorded lease to the Lessee.

(5) The Tribal Land Office shall record copies of all leases and lease documents with the LTRO.

- (B)** Records of activities taken pursuant to this title are the property of the Nation. Records compiled, developed, or received by the Secretary are the property of the United States.

34-3-6. Land Descriptions.

Agricultural Leases and deeds shall contain adequate site surveys and legal descriptions based on metes and bounds, rectangular or lot and block systems sufficient to permit the LTRO to identify the particular leased site and record the Lease.

34-3-7. Appraisal; Local Studies.

- (A)** The fair market lease value shall be determined by an appraisal or equivalent procedure performed by the Tribal Land Office and approved by the Tribal Council utilizing the following data: improvement cost, replacement cost, and sales and lease data of comparable sites or by similar methodology as approved by the Tribal Council and deemed to be in the Best Interest of the Nation. An appraisal log reporting the methods of appraisal and value of the Nation's Trust Land shall be attached to every residential lease.

- (B)** Alternatively, the fair market lease value shall be determined by an appraisal performed by a licensed appraiser utilizing the Uniform Standards of Professional Appraisal Practice, or other commonly accepted method of appraisal. An appraisal log describing the method of appraisal and value of the Nation's Trust Land and shall be attached to every residential lease.

34-3-8. Fair Annual Lease Value.

- (A)** No Agricultural Lease shall be approved for less than the present Fair Annual Lease Value as set forth in the appraisal, except as follows:

- (1)** The Tribal Council is providing an incentive for agricultural activities to locate on the Nation's lands, and desires to provide lease concessions to attract such activities; or
- (2)** The Tribal Council determines such action is in the Best Interest of the Nation.

- (B)** A Lease may be structured as a flat lease rate.

- (C)** An Agricultural Lease with a term for five (5) years or less may allow for rent adjustments. The Lease shall specify how adjustments will be made, who will

make such adjustments, when adjustments will go into effect, and how rent adjustment disputes shall be resolved. Agricultural Leases with a term for more than five (5) years must provide for one or more lease value adjustment(s), unless the Lease:

- (1) Provides for payment of less than Fair Annual Lease Value; or
 - (2) A lease value is 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.
- (D) The Land Maintenance Department, with the approval of the Tribal Council, shall have discretion to negotiate or establish Agricultural Leases of the Nation's lands at nominal annual rent or for rates less than fair annual rent, based on the Best Interest of the Nation.
- (E) A Lease may provide for periodic review for rent adjustments. Such reviews may give consideration to the economic conditions, current availability of Agricultural Lands, and other tribal or public needs.
- (F) The Tribal Land Office shall keep written records of the basis used in determining the Fair Annual Lease Value, as well as the basis for any rent adjustments.

34-3-9. Environmental Review.

- (A) Unless exempt under this chapter, the Tribal Council shall not approve an Agricultural Lease until the Agricultural Lease applicant has completed the Environmental Review Process pursuant to this Section and applicable Nation regulations. Leases approved and executed without compliance with this chapter shall be null and void.
- (B) If historic properties, archeological resources, human remains, or other cultural items not previously reported are encountered during any activity associated with a Lease, all activity in the immediate vicinity of the Leased premises, resources, remains or items will cease, and the Lessee shall notify the Nation and BIA.
- (C) **Threshold Determination.**
- (1) **Lessee Exempt from Environmental Review Process.** If the Environmental Reviewer determines as a threshold matter that the Leasing Decision would not have a Significant Effect on the Environment,

the Leasing Decision is exempt from the Environmental Review Process herein, subject to any other applicable tribal environmental regulations. As a threshold matter, the Leasing Decision is exempt from the Environmental Review Process if the Environmental Reviewer determines that:

- (a) There is no significant Change in Land Use resulting from the proposed Agricultural Lease;
- (b) The Environmental Reviewer confirms that the site was the subject of a prior Environmental Review Process by a Federal agency; or
- (c) The nature of the Leasing Decision, and the actions taken under it, would not have a Significant Effect on the Environment.

(2) Lessee Subject to Environmental Review Process. If the Environmental Reviewer determines that the Leasing Decision might be expected to have a Significant Effect on the Environment, including historic properties, archeological resources, human remains, or other items not previously reported the Lessee must fulfill the requirements of the Environmental Review Process.

(D) Action on Leasing Decision Subject to Completion of Environmental Review Process. If the Environmental Reviewer determines that the Leasing Decision is subject to the Environmental Review Process, the Tribal Council may not consider the Leasing Decision until the Environmental Reviewer closes the Environmental Review Process in accordance with this chapter and other applicable tribal environmental regulations.

(E) Environmental Review Process.

(1) Unless an exemption applies or a Lease is otherwise not subject to the Environmental Review Process, then, before the execution of any Agricultural Lease, the Tribal Council shall cause to be prepared a comprehensive and adequate tribal environmental impact report ("TEIR"), analyzing the potentially significant effects of the proposed action on the environment; provided, however, that information or data which is relevant to such a TEIR and is a matter of public record or is generally available to the public need not be repeated in its entirety in the TEIR, but may be specifically cited as the source for conclusions stated therein; and provided further, that such information or data shall be briefly described, that its relationship to the TEIR shall be indicated, and that the source thereof shall be reasonably available for inspection at a public place or public building. The TEIR shall provide detailed information about the Significant Effect(s) on the Environment which 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 project (such as 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;
 - (c)** In a separate section:
 - (i)** Any Significant Effect on the Environment that cannot be avoided if the Lease is executed;
 - (ii)** Any Significant Effect on the Environment that would be irreversible if the Lease is executed; and
 - (iii)** Any mitigation measures proposed, recommended, or required.
- (2)** In addition to the information required pursuant to subsection (A) of this section, the TEIR shall also contain a statement indicating the reasons for determining that various effects of the Lease on the off-reservation environment are not significant and consequently have not been discussed in detail in the TEIR. In the TEIR, the direct and indirect Significant Effect on the Environment shall be clearly identified and described, giving due consideration to both the short-term and long-term effects.

(F) Notice of Completion of Draft TEIR.

- (1)** Within thirty (30) business days following the completion of the draft TEIR, the Tribal Council or Land Maintenance Department shall file a copy of the draft TEIR and a notice of completion with the Secretary of the Tribal Council. The Tribal Council or Land Maintenance Department shall also post the notice of completion and a copy of the draft TEIR at the government offices of the Nation and on the Nation's official website. The notice of completion shall include all of the following information:
 - (a)** A brief description of the proposed use of the land;
 - (b)** The proposed location of the land;
 - (c)** An address where copies of the draft TEIR are available; and
 - (d)** Notice of a period of thirty (30) business days during which the Nation will receive Public comments on the draft TEIR.
- (2)** To satisfy the requirement for public notice and opportunity to comment, the Tribal Council or Land Maintenance Department will provide public notice by at least one (1) of the procedures specified below:

- (a) Posting of the Nation's draft TEIR in the government offices of the Nation and the Tribal Council with notice to the Public of the opportunity to comment on any Significant Effect on the Environment of the proposed action.
- (b) Posting of the Nation's draft TEIR on the Nation's official website with notice to the Public of the opportunity to comment on any Significant Effect on the Environment of the proposed action.
- (c) Posting the Nation's draft TEIR at the Mayetta, Kansas, United States Post Office with notice to the Public of the opportunity to comment on any Significant Effect on the Environment of the proposed action.

(G) Response to Public Comments. After the thirty (30) day comment period has ended, the Tribal Council and Land Maintenance Department will review all comments received from the Public. Prior to the approval and execution of the Agricultural Lease, the Tribal Council or Land Maintenance will provide responses, using the same notification process as provided in Section 34-3-9(F)(2), to relevant and substantive Public comments on any Significant Effect on the Environment arising as a result of the proposed agriculture lease and proposed or recommended mitigation measures addressing any such impacts.

34-3-10. Insurance and Bonding.

(A) Insurance.

- (1) A Lessee shall provide insurance necessary to protect the interests of the Lessor and in amounts sufficient to protect all insurable improvements on the premises.
- (2) The insurance may include, but is not limited to, property, crop, liability or casualty insurance, or other insurance as specified in the Agricultural Lease.
- (3) The Lessor and the United States must be identified as additional insured parties.
- (4) The Tribal Council may waive this requirement if the waiver is in the Best Interest of the Nation, as defined in this title. The waiver may be revoked at any time if the waiver ceases to be in the Best Interest of the Nation.

(B) Performance Bond.

- (1)** The Lessee shall obtain a satisfactory performance Bond in an amount sufficient to secure the contractual obligations of the Lease. Such Bond shall be for the purpose of securing the Lessee's contractual obligations under the Agricultural Lease and must secure:

 - (a)** The payment of one year's rental;
 - (b)** The construction costs of any required improvements;
 - (c)** The performance of any additional Lease obligations, including the payment of operation and maintenance charges;
 - (d)** The operation and maintenance charges for any land within an irrigation project; and
 - (e)** The restoration and reclamation of the leased premises, to the condition at the commencement of the Lease term, unless otherwise specified in the Lease.

- (2)** The Tribal Council may waive the Bond requirement, or reduce the amount, if doing so is in the Best Interest of the Nation. The Tribal Council, the Tribal Land Office, or other Nation department, if delegated to the said office or department by the Tribal Council, shall maintain written records of waivers and reductions.

- (3)** The performance Bond may be in any of the following forms:

 - (a)** Cash;
 - (b)** Negotiable Treasury securities that:

 - (i)** Have a market value at least equal to the Bond amount; and
 - (ii)** Are accompanied by a statement granting full authority to the Nation to sell such securities in case of a Violation of the terms of the Agricultural Lease.
 - (c)** Certificates of deposit that indicate on their face that Tribal Council approval is required prior to redemption by any party;
 - (d)** Irrevocable letters of credit issued by a federally insured financial institution authorized to do business in the United States. A letter of credit must:

 - (i)** Contain a clause that grants the Nation the authority to demand immediate payment if the Lessee violates the Lease or fails to replace the letter of credit at least thirty (30) days prior to its expiration date;
 - (ii)** Be payable to the Nation;

- (iii) Be irrevocable during its term and have an initial expiration date of not less than one (1) year following the date of issuance;
 - (iv) Be automatically renewable for a period of not less than one (1) year, unless the issuing financial institution provides the Nation with written notice that it will not be renewed, at least ninety (90) calendar days before the letter of credit's expiration date; and
 - (v) The performance bond requires the surety to provides advance notice to the Nation before cancellation of the bond.
 - (e) Surety Bond issued by a company approved by the U.S. Department of the Treasury; or
 - (f) Any other form of highly liquid, non-volatile security that is easily convertible to cash and for which Tribal Council approval is required prior to redemption by any party.
- (4) The Tribal Council may impose additional requirements for performance Bonds beyond those listed in this title; including, but not limited to, requiring performance Bonds to be irrevocable, or requiring notification to the Nation in the event the performance Bond is cancelled.
- (5) The obligations of the Lessee and its sureties to the Nation will be enforceable by the United States so long as the land remains in trust or restricted status.

34-3-11. Improvements.

All Agricultural Leases shall require the Lessee to exercise due diligence and best efforts to complete construction of any improvements within the schedule specified in the Agricultural Lease.

- (A)** Lessee, at Lessee's expense or as otherwise provided in the Agricultural Lease, may construct improvements under an Agricultural Lease if the Lease specifies or provides for the development of:
- (1) A plan that describes the type and location of any improvements to be built by the Lessee; and
 - (2) A general schedule for construction of the improvements.

- (B)** Lessee shall provide the Tribal Council, or the Land Maintenance Department or other Nation department, if delegated to the said office or department by the Tribal Council, written justification as to the nature of any delay, the anticipated date of construction of the improvements, and evidence of progress toward commencement of construction. The Land Maintenance Department or other Nation department, if delegated to the said office or department by the Tribal Council, shall report such information to the Tribal Council. The change in schedule shall be approved by mutual consent of the Lessee and the Tribal Council.
- (C)** When requested by the Tribal Council, or Land Maintenance Department or other Nation department, if delegated to said office or department by the Tribal Council, or otherwise required in the Agricultural Lease, Lessee shall further provide the Tribal Council, Land Maintenance Department or other Nation department, in writing, an updated schedule for construction. The Land Maintenance Department or other Nation department shall report such information to the Tribal Council.
- (D)** Failure of the Lessee to comply with these requirements will be deemed a Violation of the Agricultural Lease and may lead to Termination or cancellation of the Agricultural Lease pursuant to Chapter 34-4.
- (E)** Improvements to the premises shall become the property of the Nation unless otherwise provided for in the Agricultural Lease. If improvements will be removed, the Agricultural Lease shall specify the maximum amount of time allowed for such removal, which party is responsible for costs associated with the removal of the improvement, and if the removal is not completed by the end of the agreed to period, title to the improvements revert to the Nation. If the improvements are to remain the property of the Lessee per specific terms of the Lease, title to such improvements shall be recorded in the Tribal Land Office through the procedures referenced in this title at Section 34-3-5.
- (F)** Under those Leases where improvements remain the property of the Lessee, said Lessee may develop equity value in the improvements, and sell its interest in the Agricultural Lease based on the equity value. The Tribal Council, on behalf of the Nation, has a right of first refusal to purchase the interest.
- (G)** The Agricultural Lease may provide that upon expiration of the Agricultural Lease, the Lessor may purchase improvements to the premises (if the Lease provides that such improvements remain the property of Lessee) at fair market value.

- (H)** If the Agricultural Lease provides that upon expiration of the Agricultural Lease any reclamation, restoration, or remediation is required due to the nature of the improvements, then a plan for such action shall be included that sets forth the obligations of the Lessor and the Lessee.
- (I)** Unless required by applicable federal law, no fee, tax, assessment, levy, or charge imposed by a state or political subdivision shall apply to Permanent Improvements, activities under Agricultural Leases, or the possessory or Leasehold Interest on the Nation's Trust Land. The Nation may impose its own taxes or other charges on the same.

34-3-12. Subleases, Assignments, Amendments, and Leasehold Mortgages.

- (A)** Subleases, Assignments, amendments, or Leasehold Mortgages of any Agricultural Lease shall be by written consent of the Tribal Council and Lessee, unless otherwise provided herein.
- (B)** The Agricultural Lease may authorize Subleases and Assignments, in whole or in part, without approval from the Tribal Council and execution from the Executing Official, provided a copy of the Sublease or Assignment is provided to the Tribal Council through the Land Maintenance Department or Tribal Land Office or other Nation department designated by the Tribal Council, and the following conditions, where applicable, are met and stated in the Agricultural Lease:
 - (1)** There is no event of default under the Agricultural Lease or Violation of this title;
 - (2)** Any restrictions and use limitations on the use of the premises shall continue to apply to any sublessee or assignee;
 - (3)** The proposed assignee or sublessee submits current financial information sufficient to show the sublessee's or assignee's financial adequacy;
 - (4)** The Lessee shall not be relieved or released from any of its obligations under the Agricultural Lease, except as otherwise expressly authorized therein.

This subsection (B) in no way relieves the Lessee or the sublessee from carrying out their duties under the Agricultural Lease, which may contain additional restrictions and conditions.

(C) The Lease may authorize a Leasehold Mortgage for the purpose of financing to develop and improve the premises subject to approval by the Tribal Council and execution from the Executing Official.

(D) If a sale or foreclosure of the Lessee's premises or improvements on the premises occurs and the mortgagee is also the purchaser, the mortgagee may assign the Lease without approval of the Tribal Council or Lessee, provided the assignee agrees in writing to be bound by all the terms and conditions of the Lease. If the purchaser is a party other than the mortgagee, approval by the Tribal Council and execution from the Executing Official is required, provided the purchaser agrees in writing to be bound by all terms and conditions of the Lease.

34-3-13. Applicable Law.

The Lease shall state that it is governed by Nation and federal law. The parties to the Lease may further provide for the application of any other body of law, such as the laws of a specified state and the order of application. The Lease shall further mandate compliance with all applicable laws, ordinances, rules, and regulations, and the Agricultural Leasing Procedures.

CHAPTER 34-4

TRIBAL COUNCIL LEASE MANAGEMENT AND ENFORCEMENT

34-4-1. Management.

Except where required otherwise by agreement or applicable law, the Tribal Council shall manage all Agricultural Leases pursuant to this title.

(A) Plan. Tribal Council shall institute an agricultural leasing management plan or policy that employs real estate management practices, conservation practices consistent with the ARMP that is current as of the date of the agricultural lease and follows the Natural Resources Conservation Services (NRCS) tillage and residue management practices for all farming operations, including repairing any erosion or gullies, particularly on Highly Erodible Land (HEL) soil.

(B) Fees. The Tribal Council may charge administrative fees for costs associated with issuing or recording a deed, Lease, Sublease, Assignment, Leasehold Mortgage, amendment, or other administrative transaction.

(C) Authority to Approve. Final determination of whether the Lease shall be approved or not rests with the Tribal Council. Tribal Council has the authority to delegate some or all of its authority to tribal departments on behalf of the Nation.

(D) Notice of Decision. The Executing Official or other such person designated by the Tribal Council shall provide written notice of all final Tribal Council decisions to the prospective Lessee, by personal delivery, facsimile transmission, email, or United States first class mail to the mailing address as set forth in the Lease documents. Failure to give or receive such notice shall not affect the validity of any determination, recommendation, or action.

(E) Appeals.

(1) Generally. Appeals may be filed with the Tribal Council or other official as designated in the Agricultural Leasing Procedures. Such appeals shall be initiated by a written notice setting forth the basis for the appeal, a short statement indicating the nature and circumstances of the appeal, and a short statement indicating the remedy being sought. An appeal must be filed within ten (10) business days of a final determination made pursuant to this title.

(2) Scope of Review. The Tribal Council or other official as designated in the Agricultural Leasing Procedures shall review whether the determination was arbitrary, capricious, or an abuse of discretion; not supported by substantial evidence in the record; or otherwise not in accordance with the law. The decision of the Tribal Council or aforementioned other official shall be final.

(F) Execution of Lease. If Tribal Council approval is given pursuant to this subsection, the Executing Official shall be authorized to sign and execute the Lease on behalf of the Nation.

(G) Filing with the Secretary. The Tribal Council, Tribal Land Office, or other Nation department, if delegated to the said office or department by the Tribal Council, shall ensure that a copy of all Leases, Subleases, Assignments, amendments, and renewal notices related to Leases, Leasehold Mortgages, and Terminations, with supporting documentation, shall be provided to the

Secretary of the Interior, or such other office delegated authority by the Secretary, as required by 25 U.S.C. § 415(h)(6)(A) and for purpose of recording with the LTRO. The Tribal Council shall endeavor to provide such notices within thirty (30) days of the effective date of the instrument or action. Additionally, proof of Lease payment(s) made directly to the Nation shall also be provided to the Secretary.

(H) Availability of Information. Information on obtaining an Agricultural Lease shall be available from the Tribal Council, the Land Maintenance Department or such other Nation department properly delegated the responsibility by the Tribal Council.

34-4-2. Enforcement.

The Tribal Council shall have all powers necessary and proper to enforce the Lease terms, laws, ordinances, regulations, rules, policies, and covenants, consistent with the Agricultural Leasing Procedures. This includes the power to enter the premises for reasonable cause at a reasonable time, with reasonable notice, assess late payment interest and penalties, and assess late payments.

The Secretary may, upon the request of the Nation, at his/her discretion, enter the Leased premises to enforce any Lease executed under this Chapter.

34-4-3. Defaults.

(A) If the Tribal Council determines the Lessee is in default, the Tribal Council shall send the Lessee a notice of default within a reasonable time of the determination. Such time period for notice shall be expressly provided for either in the Agricultural Leasing Procedures or in the Lease itself. The notice of default may be provided by certified mail, return receipt requested.

(B) Within ten (10) business days of receipt of the mailing, the Lessee shall:

- (1)** Cure the default and notify the Tribal Council in writing that the default has been cured;
- (2)** Dispute the Tribal Council's determination that the Lease is in default and explain why the Lease should not be terminated; or
- (3)** Request additional time to cure the default.

34-4-4. Remedies.

(A) If the Lessee fails to cure the default within the prescribed period, the Tribal Council may:

- (1)** Terminate the Lease pursuant to the Lease or this title;
- (2)** Grant an extension of time to cure the default;
- (3)** Pursue other negotiated remedies, including execution on Bonds or collection of insurance proceeds;
- (4)** Any combination of remedies listed above; or
- (5)** Any other remedy set forth in the Agricultural Lease procedures.

(B) If the Tribal Council terminates an Agricultural Lease, the Tribal Council shall send the Lessee a Termination letter within a reasonable time period. The Termination letter may be sent to the Lessee by certified mail, return receipt requested. The Termination letter shall:

- (1)** Explain the grounds for Termination;
- (2)** Notify the Lessee of unpaid amounts, interest charges, or late payment penalties due under the Lease;
- (3)** Notify the Lessee of their right to appeal; and
- (4)** Order the Lessee to vacate the premises within thirty (30) business days of receipt of mailing of the Termination letter, if an appeal is not filed by that time.

(C) A Termination shall become immediately effective thirty-one (31) business days after receipt of mailing of the order to vacate. The filing of an appeal shall not change the effective date of the Termination. If the Lessee submits a request in writing to the Tribal Council and the request is received within seven (7) business days of the mailing date of the order to vacate, the Tribal Council in its discretion may grant the Lessee permission to occupy the premises beyond the Termination effective date during the pendency of an appeal. If permission is granted, the Lessee shall be required to make Lease payments during the pendency of the appeal. Pending the outcome of an appeal, the Lessee shall comply with the terms of the Lease.

(D) If the Tribal Council decides to grant an extension of time to cure a default, the Lessee shall proceed diligently to perform and complete the corrective actions within a reasonable time period.

(E) At the Nation's request, the BIA may, upon reasonable notice from the Nation and at the BIA's discretion, enforce the provisions of, or cancel, a Lease document.

34-4-5. Penalties.

The Lease shall specify the rate of interest to be charged if the Lessee fails to make payments in a timely manner. The Lease shall identify additional late payment penalties. Unless the Lease provides otherwise, interest charges and late payment penalties are not subject to notice and shall apply automatically, and the failure to pay such amount shall be treated as a Violation of the Lease.

34-4-6. Harmful or Threatening Activities.

If a Lessee or other party causes or threatens to cause immediate and significant harm to the premises under the Lease, or undertakes illegal activity thereon, the Tribal Council may take appropriate emergency action.

34-4-7. Holdover.

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

34-4-8. Trespass.

If a person occupies the premises without the Tribal Council's approval, the Tribal Council may pursue appropriate remedies, including the filing of a trespass action to regain possession under tribal law. Alternatively, the Tribal Council may make a written request sent by certified mail to the BIA for resolution under any applicable federal laws.

CHAPTER 34-5

MISCELLANEOUS PROVISIONS

34-5-1. Sovereign Immunity.

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

34-5-2. Effective Date.

The ordinance codified in this title shall take effect upon its adoption by the Tribal Council and approval by the Secretary of the Interior.

34-5-3. Amendments.

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

34-5-4. Severability; Effect of Invalidity of Part of this Chapter.

If a court of competent jurisdiction shall adjudge to be invalid or unconstitutional any clause, sentence, paragraph, section, article or part of this Chapter, such judgment or decree shall not affect, impair, invalidate or nullify the remainder of this Chapter, but the effect thereof shall be confined to the clause, sentence, paragraph, section, article or part of this Chapter as adjudged to be invalid or unconstitutional.