



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

**APPROVAL OF**

**PRAIRIE BAND POTAWATOMI NATION  
RESIDENTIAL LEASING ORDINANCE**

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The attached Residential 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 17 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. Carlson".

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Assistant Secretary – Indian Affairs  
United States Department of the Interior

Pursuant to the authority delegated by 209 DM 8

## Title 33

### Residential Leasing and Recording Ordinance

#### CHAPTER 33-1

#### INTRODUCTION

##### **33-1-1. 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.

##### **33-1-2. Scope.**

The scope of application of this title shall be limited to all residential 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 residential properties on the Nation's lands. 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 any fee lands, individually owned Indian lands, fractionated interests, or mineral interests.

##### **33-1-3. 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 residential leases and establish Nation-specific procedures for environmental review; and
- (B) Set out the standards for issuance, review, approval and enforcement of residential leases; and
- (C) Set out the standards and processes for recording and record-keeping for residential leases as well as for other conveyance and title documents impacting residential use of the Nation's Tribal Land; and
- (D) Promote self-determination, encourage Nation member residency on Nation Tribal Land, strengthen community, and increase available housing on the lands of the Prairie Band Potawatomi Nation.

##### **33-1-4. Applicable Law.**

This Title implements the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012, 25 U.S.C. §415(h).

##### **33-1-5. Short Title.**

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

## CHAPTER 33-2

### DEFINITIONS

#### 33-2-1. Definitions.

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

**(A) 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 the Lessee's obligations under a residential lease.

**(B) Best Interest of the Nation.** The balancing of interests in order to attain sufficient housing, preserve and enhance the value of Nation's Trust Land, increase housing supply 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.

**(C) BIA.** The Bureau of Indian Affairs, United States Department of the Interior.

**(D) Change in Land Use.** The change from one use to another that significantly differs from the former use.

**(E) Deed.** A legal document by which the owner of residential property transfers the owner's interests and rights in that residential property to another person or entity.

**(F) Development Period.** The time period from when a lease is executed to when improvements are expected to be substantially completed.

**(G) Environmental Review Process.** The process for conducting Nation environmental review to assess whether a proposed development or project as defined under applicable Nation law or regulations will have a significant effect on the environment.

**(H) Environmental Reviewer.** The Prairie Band Potawatomi Nation Planning and Environmental Protection Department (PEPD) which is the department that conducts, coordinates, and oversees the Nation's environmental review process.

**(I) Executing Official.** The Chairperson of the Nation (or such other official) properly delegated the responsibility by the Tribal Council to execute all residential leases of the Nation and take all necessary and proper action on leases and subleases including amendments, assignments, and cancellations of leases and subleases.

**(J) Fair Market Lease Value.** The amount of rental income that a leased tract of land would most probably command in an open and competitive market, or as determined by competitive bidding.

**(K) Holdover.** Circumstances in which a Lessee remains in possession of the leased premises after the lease term expires.

**(L) Housing for Public Purposes.** This term shall have the same meaning as the definition set out in 25 CFR §162.003.

**(M) Lease.** A written agreement or contract between the Lessor and a Lessee whereby the Lessee is granted a right to possess the Nation's Trust Land for a specified purpose and duration. The Lessee's right to possess will limit the Lessor's right to possess the leased premises only to the extent provided in the lease.

**(N) 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.

**(O) Leasing Decision.** The following type of lease transactions that will be acted on by the Tribal Council: lease issuance, lease amendment, subleasing, lease assignment, lease renewal and any other action taken involving a residential lease under this title.

**(P) Lessee.** A person or entity who has acquired a legal right to possess Nation's Trust Land by a lease pursuant to this title.

**(Q) Lessor.** The Nation whose rights are exercised by the Tribal Council. The Lessor can only be the Nation.

**(R) LTRO.** The Land Titles and Records Office of the BIA.

**(S) Nation.** The Prairie Band Potawatomi Nation.

**(T) Nation Housing Department.** The designated housing department providing assistance to Members for affordable housing.

**(U) 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.A. §5124).

**(V) Owner.** For the purposes of a deed under this title, an owner is the person or entity who owns a residential or improvement on the Nation's Trust Land, and who has the right to convey that ownership interest to another person or entity.

**(W) 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.

**(X) Project.** Any residential housing project occurring on the Nation's Trust Land, including but not limited to housing for public purposes.

**(Y) 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.

**(Z) Residential Lease(s).** Any "lease" for a single-family residence or housing for public purpose issued upon the Nation's Trust Land under the authority of this title. This term shall have the same meaning as the leases described in 25 CFR §162.301, covering both ground leases and leases of developed land (together with the permanent improvements thereon).

**(AA) Residential 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.

**(BB) Secretary.** The Secretary of the Department of the Interior.

**(CC) 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.

**(DD) 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 a residential lease.

**(EE) 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 residential leases and has authority to delegate some or all of its statutory authority to Nation agencies on behalf of the Nation.

**(FF) Tribal Land Office.** The agency 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.

**(GG) Termination.** An action by the Nation to end a residential lease.

**(HH) Trust or Restricted Land.** Any tract held in trust or restricted status.

**(II) 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.

## **CHAPTER 33-3**

### **RESIDENTIAL LEASE REQUIREMENTS**

#### **33-3-1. Terms and Conditions.**

Residential leases shall be governed by the terms and conditions set forth in the residential 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 the terms and conditions within the lease.

#### **33-3-2. Duration and Renewal.**

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 residential lease. For leases approved for the purposes of carrying out affordable housing activities pursuant to the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012 (HEARTH) Act, 25 U.S.C.A. §415(h), the maximum term shall not be more than seventy-five (75) years. The Tribal Council will not make an approval determination regarding a lease renewal, unless the Lessee notifies the Tribal Council of the intent to renew, no later than one year before such lease is due to expire.

If the Lease provides for an option to renew, the Lease must specify:

- (A)** The time and manner in which the option must be exercised or whether it is automatically effective;
- (B)** Lease term;
- (C)** That confirmation of the renewal will be submitted to the Tribal Land Office, unless the lease provides for automatic renewal;
- (D)** Whether approval by the Tribal Council to the renewal is required;
- (E)** That the Lessee must provide notice of the renewal to the Nation Housing Department and any sureties and mortgagees;

**(F)** The additional consideration, if any, that will be due upon the exercise of the option to renew or the start of the renewal term; and

**(G)** Any other conditions for renewal (e.g., that the Lessee not be in violation of the Lease at the time of renewal).

All approved lease renewals will be recorded with the Tribal Land Office and LTRO.

### **33-3-3. Obtaining a Residential Lease.**

Information on obtaining a residential lease shall be available from the Nation's Housing Department or such other Nation department properly delegated the responsibility by the Tribal Council.

**(A)** All applicants for a residential lease shall submit the following information, in the appropriate form, to the Nation Housing Department 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 33-3-5;
- (3)** Nation environmental review as required pursuant to Chapter 33-7; and
- (4)** Other documents as may be required by the Tribal Council and pursuant to the residential leasing procedures.

**(B)** All residential leases shall contain, at a minimum, the following provisions:

- (1)** The legal description of the tract, location, or parcel of the land being leased as provided in Section 33-3-5;
- (2)** The purpose of the lease and authorized uses of the leased premises;
- (3)** The parties to the lease;
- (4)** The term of the lease;
- (5)** The effective date of the lease;
- (6)** The ownership of permanent improvements and identification of the responsible party for constructing, operating, maintaining, and managing permanent improvements on the leased premises;
- (7)** Payment requirements, including provisions regarding acceptable forms of payment, late payments, penalties, and interest, among others;
- (8)** The dates on which all payments are due;
- (9)** Language specifying that the Lessee shall make payments directly to the Nation Housing Department, which shall maintain documentation of lease payments that are sufficient to enable the Secretary to discharge the trust responsibility of the United States;
- (10)** Unless otherwise provided in the lease, payments may not be made or accepted more than one year in advance of the due date;

**(11)** 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;

**(12)** There must not be any unlawful conduct, creation of a nuisance, illegal activity, negligent use, or waste of the leased premises;

**(13)** The Lessee must comply with all applicable Nation and federal laws, ordinances, rules, regulations, and other legal requirements;

**(14)** If historic properties, archeological resources, human remains, or other cultural items not previously reported are encountered during the course of any activity associated with this lease, all activity in the immediate vicinity of the properties, resources, remains, or items shall cease and the Lessee will contact the Nation and the BIA to determine how to proceed and appropriate disposition;

**(15)** The Nation and the BIA have the right, at any reasonable time during the term of the lease and upon reasonable notice, in accordance with this law and any other applicable laws, policies, and rules of the Nation, to enter the leased premises for inspection and to ensure compliance;

**(16)** The Nation and the BIA may, at their discretion, treat any failure by the Lessee to cooperate with a request to make appropriate records, reports, or information available for inspection and duplication as a lease violation;

**(17)** The Lessee holds the Nation and the United States harmless from any loss, liability, or damages, including costs and attorneys' fees, resulting from the Lessee's use or occupation of the leased premises;

**(18)** The Lessee indemnifies the Nation and the United States against all liabilities or costs relating to use, handling, treatment, removal, storage, transportation, or disposal of hazardous materials, or the release or discharge of any hazardous material from the leased premises that occurs during the lease term, regardless of fault, with the exception that the lease may contain a provision providing that the Lessee is not required to indemnify the Nation for liability or cost arising from the Nation's negligence or willful misconduct;

**(19)** Due diligence, insurance, and bonding requirements as provided in this chapter; and

**(20)** 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."

**(C)** The Nation Housing Department or other Nation department, if delegated to the said office or department by the Tribal Council, shall ensure that a copy of all deeds, leases, subleases, assignments, amendments, and renewal notices related to leases, leasehold mortgages, and terminations shall be provided to the Secretary of the Interior, or such other office delegated authority by the Secretary, 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.

**(D)** The Nation Housing Department is responsible for executing and managing all residential leases and maintaining the records of all deeds and residential leases. The Nation Housing Department prepares leases for Tribal Council review and approval. The Nation Housing Department will file the executed lease with the Tribal Land Office for recording.

### **33-3-4. Recording.**

(A) The Tribal Land Office is responsible for recording all deeds and residential leases. In carrying out the responsibility to maintain all records of residential leases, the Tribal Land Office shall:

- (1) Record each deed, lease and leasehold mortgage in a log which shall contain, at a minimum, the following information:
  - (a) The name(s) of the grantor and grantee of each deed, the name of 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 deed, 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 deed, 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, leasehold mortgage, or deed 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, leasehold mortgages, and deeds, and their accompanying documents, are located and may be retrieved by a search based on the legal description of the leased, mortgaged or deeded premises. After recording, the lease will be returned to the Nation Housing Department for retention and management.
- (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.

### **33-3-5. Land Descriptions.**

Residential 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.

### **33-3-6. 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.

**33-3-7. Fair Market Lease Value.**

**(A)** No lease shall be approved for less than the present fair market lease value as set forth in the appraisal, except as follows:

**(1)** The lease is for housing for public purposes; or

**(2)** The Nation submits a signed certification or Nation authorization stating that it has determined the negotiated amount to be in the Best Interest of the Nation.

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

**(C)** A residential lease 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.

**(D)** A lease may provide for periodic review for rent adjustments. Such reviews may give consideration to the economic conditions, current housing supply, and other public needs.

**(E)** The Tribal Land Office shall keep written records of the basis used in determining the fair market lease value, as well as the basis for any rent adjustments.

**33-3-8. Environmental Review Process.**

Unless exempted pursuant to Chapter 33-7, the Tribal Council shall not approve a residential lease until the residential Lessee has completed the environmental review process herein. Any lease approved and executed without complying with this section shall be null and void.

**33-3-9. Insurance.**

**(A)** 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.

**(B)** The insurance may include, but is not limited to, property, liability or casualty insurance, or other insurance as specified in the residential lease.

**(C)** The Lessor and the United States must be identified as additional insured parties.

**(D)** The Tribal Council may waive this requirement if the waiver is in the Best Interest of the Nation. The waiver may be revoked at any time if the waiver ceases to be in the Nation's Best Interest .

### **33-3-10. Performance Bond.**

**(A)** If a performance bond is required by the lease, 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 residential lease and may guarantee:

- (1)** The annual lease payment;
- (2)** The estimated development cost of improvements;
- (3)** Any additional amount necessary to ensure compliance with the lease; and
- (4)** Restoration and reclamation of the leased premises.

**(B)** The Tribal Council may waive the bond requirement, or reduce the amount, if the lease is for housing for public purposes or if doing so is in the Best Interest of the Nation. The Nation Housing Department or other Nation department, if delegated to the said office or department by the Tribal Council, shall maintain written records of waivers and reductions.

**(C)** The performance bond may be in one of the following forms:

- (1)** Certificates of deposit issued by a federally insured financial institution authorized to do business in the United States;
- (2)** Irrevocable letters of credit issued by a federally insured financial institution authorized to do business in the United States;
- (3)** Negotiable Treasury securities; or
- (4)** Surety bond issued by a company approved by the U.S. Department of the Treasury.

**(D)** 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.

**(E)** The performance bond must require the surety to provide the Nation Housing Department or other Nation department, if delegated to be said office or department by the Tribal Council, notice at least sixty (60) days before canceling a performance bond or other security. This will allow the Nation to notify the Lessee of its obligation to provide a substitute performance bond or other security and require collection of the bond or security before the cancellation date. Failure to provide a substitute performance bond or security is a violation of the lease. The Nation may allow for notice that is less than sixty (60) days if the Tribal Council determines that doing so is in the Best Interest of the Nation.

**(F)** 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.

### **33-3-11. Improvements.**

All residential leases shall require the Lessee to exercise due diligence and best efforts to complete construction of any improvements within the schedule specified in the residential lease.

**(A)** Lessee, at Lessee's expense or as otherwise provided in the residential lease, may construct improvements under a residential 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 Nation Housing Department and the Nation's Construction Management 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 Nation Housing Department or other Nation department shall report such information to the Tribal Council.

(C) When requested by the Tribal Council, or Nation Housing Department or other Nation department, if delegated to said office or department by the Tribal Council, or otherwise required in the residential lease, Lessee shall further provide the Nation Housing Department or other Nation department, in writing, an updated schedule for construction. The Nation Housing Department or other Nation department shall report such information to the Tribal Council.

(D) The construction of any improvement must comply with all applicable Nation laws.

(E) Failure of the Lessee to comply with these requirements will be deemed a violation of the residential lease and may lead to termination of the residential lease pursuant to Chapter 33-5 of this Title.

(F) Improvements to the premises shall become the property of the Nation unless otherwise provided for in the residential lease. If improvements will be removed, the residential lease shall specify the maximum time allowed for such removal. If the improvements are to remain the property of the Lessee pursuant to 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 33-3-4.

(G) 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 residential lease based on the equity value. The Tribal Council, on behalf of the Nation, has a right of first refusal to purchase the interest.

(H) The residential lease may provide that upon expiration of the residential 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.

(I) If the residential lease provides that upon expiration of the residential 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.

(J) 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 residential leases, or the leasehold or possessory interest on the Nation's Trust Land. The Nation may impose its own taxes or other charges on the same.

### **33-3-12. Subleases, Assignments, Amendments and Leasehold Mortgage.**

(A) Subleases, assignments, amendments, or leasehold mortgages of any residential lease shall be by written consent of the Tribal Council and Lessee, unless otherwise provided herein.

(B) The residential 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 Nation Housing Department or other Nation department designated by the Tribal Council, and the following conditions, where applicable, are met and stated in the residential lease:

(1) There is no event of default under the residential 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 residential lease, except as otherwise expressly authorized therein;

(5) The Lessee's mortgagees have consented;

(6) It is in the Nation's Best Interest .

This subsection (B) in no way relieves the Lessee or the sublessee from carrying out their duties under the residential 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.

### **33-3-13. Applicable Law.**

The lease shall state that it is governed by Nation law and applicable 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 residential leasing procedures.

### **33-3-14. Lease Approval and Issuance.**

The Tribal Council has the authority to give final approval for all residential leases and may delegate some or all of its authority to other Nation departments on behalf of the Nation.

(A) Unless otherwise provided pursuant to Section 33-3-12, a lease that meets the requirements of this title shall be submitted to the Nation Housing Department or other Nation department designated by the Tribal Council, for consideration. Final determination of whether the lease shall be approved or not rests with the Tribal Council. After review, if an approval is given, the executing officials shall be authorized to sign the lease on behalf of the Nation.

(B) **Notice of Decision.** The Nation Housing Department 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.

## **CHAPTER 33-4**

### **RESIDENTIAL LEASE MANAGEMENT**

#### **33-4-1. Management.**

**(A)** Except where required otherwise by agreement or applicable law, the Nation Housing Department shall manage all residential leases pursuant to this title.

**(B)** The Tribal Council shall institute a residential leasing management plan or policy that employs real estate management practices, addresses accounting, collections, monitoring, enforcement, relief, and remedies. The Tribal Council may delegate this authority to Nation agencies on behalf of the Nation.

#### **33-4-2. Administrative 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.

## **CHAPTER 33-5**

### **ENFORCEMENT**

#### **33-5-1. Generally.**

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 residential leasing procedures. This includes, but is not limited to, 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 Tribal Council may delegate this authority to Nation agencies.

#### **33-5-2. Defaults.**

**(A)** If the Nation Housing Department or delegated department determines the Lessee is in default, the Nation Housing Department or delegated department shall take action to have the Lessee cure the default by sending 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 residential 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 Nation Housing Department or delegated department in writing that the default has been cured;

**(2)** Dispute the Nation Housing Department'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.

#### **33-5-3. Remedies.**

**(A)** If the Lessee fails to cure the default within the prescribed period, the Nation Housing Department shall notify the Tribal Council. 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 residential lease procedures.

(B) If the Tribal Council or delegated department terminates a residential lease, the Nation Housing Department or delegated department 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 or delegated department and the request is received within seven (7) business days of the mailing date of the order to vacate, the Tribal Council or delegated department 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 or delegated department 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.

#### **33-5-4. 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.

#### **33-5-5. 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 or unlawful conduct thereon, the Tribal Council or delegated department may take appropriate emergency action, which may include terminating the lease and/or securing judicial relief.

### **33-5-6. Holdover.**

If a Lessee remains in possession after the expiration or termination of a lease, the Tribal Council or delegated department shall treat such occupation as a trespass. The Tribal Council or delegated department shall take action to recover possession and pursue additional remedies. Filing shall be pursuant to Nation 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.

### **33-5-7. Trespass.**

If a person occupies the premises without the Tribal Council or delegated department's approval, the Tribal Council or delegated department may pursue appropriate remedies, including the filing of a trespass action to regain possession under the applicable title of the Nation's Law and Order Code. Alternatively, the Tribal Council may make a written request sent by certified mail to the BIA for resolution under any applicable federal laws.

## **CHAPTER 33-6**

### **APPEALS**

#### **33-6-1. Appeals.**

Appeals may be filed with the Tribal Council or other official as designated in the residential 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.

If a party appeals a decision under this law to the Tribal Council or other official as designated in the residential leasing procedures, the Nation Housing Department may determine that the appealing party must post a bond with the Nation in an amount that reflects a reasonable estimate of any damage to the Nation from deferring action pending the appeal. The Nation will not require an appeal bond for an appeal of a decision on a leasehold mortgage or if the Nation is a party to the appeal and requests a waiver of the appeal bond. The appellant may not appeal an appeal bond decision by the Nation Housing Department. The appellant may, however, request that the Nation Housing Department reconsider the bond decision based on extraordinary circumstances. Any reconsideration decision is final.

#### **33-6-2. Scope of Review.**

The Tribal Council or other official as designated in the residential 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.

## **CHAPTER 33-7**

### **ENVIRONMENTAL REVIEW PROCESS**

#### **33-7-1. Generally.**

Unless exempt under this chapter, the Tribal Council shall not approve a residential lease until the residential lease applicant has completed the environmental review process pursuant to this chapter and

applicable Nation regulations. Leases approved and executed without compliance with this chapter shall be null and void.

### **33-7-2. Threshold Determination.**

**(A) 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 Nation environmental regulations. As a threshold matter, the leasing decision is exempt from the environmental review process if the environmental reviewer determines that: (1) there is no significant change in land use resulting from the proposed residential lease; (2) the environmental reviewer confirms that the site was the subject of a prior environmental review process by a Federal agency; (3) the residential premises is within the footprint of an existing site for which an environmental review process has already been conducted; or (4) the nature of the leasing decision, and the actions taken under it, would not have a significant effect on the environment.

**(B) 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, the Lessee must fulfill the requirements of the environmental review process.

### **33-7-3. 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 Nation environmental regulations.

### **33-7-4. Environmental Review Process.**

**(A)** Unless an exemption applies or a lease is otherwise not subject to the environmental review process, then, before the execution of any residential lease, the Nation Housing Department shall cause to be prepared a comprehensive and adequate Nation 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:

- (1)** 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;
- (2)** All significant effects on the environment of the proposed lease;
- (3)** In a separate section:
  - (a)** Any significant effect on the environment that cannot be avoided if the lease is executed;
  - (b)** Any significant effect on the environment that would be irreversible if the lease is executed; and
  - (c)** Any mitigation measures proposed, recommended, or required.



**(B)** 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.

### **33-7-5. Notice of Completion of Draft TEIR.**

**(A)** Within thirty (30) business days following the completion of the draft TEIR, the Nation Housing Department shall file a copy of the draft TEIR and a notice of completion with the Secretary of the Tribal Council. The Tribal Council 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:

- (1)** A brief description of the project;
- (2)** The proposed location of the project;
- (3)** An address where copies of the draft TEIR are available; and
- (4)** Notice of a period of thirty (30) business days during which the Nation will receive comments on the draft TEIR.

**(B)** To satisfy the requirement for public notice and opportunity to comment, the Tribal Council will provide public notice by at least one of the procedures specified below:

- (1)** 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.
- (2)** 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.
- (3)** 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.

### **33-7-6. Response to Public Comments.**

After the thirty (30) day comment period has ended, the Tribal Council will review all comments received from the public. Prior to the approval and execution of the residential lease, the Tribal Council will provide a final TEIR, using the same notification process as provided in Section 33-7-5(B), responding to relevant and substantive public comments on any significant effect on the environment arising as a result of the proposed project and proposed or recommended mitigation measures addressing any such impacts.

## **CHAPTER 33-8**

### **SOVEREIGN IMMUNITY**

#### **33-8-1. Sovereign Immunity.**

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

## **CHAPTER 33-9**

### **EFFECTIVE DATE; AMENDMENT; SEVERABILITY**

#### **33-9-1. 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.

#### **33-9-2. 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.

#### **33-9-3. Severability Clause.**

Should a provision of this law or the application thereof to any person or circumstances be held as invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.