

RESIDENTIAL LEASE OF TRIBAL OWNED LAND

Lease No. _____

Contract No. _____

THIS Lease is made and entered into by and between _____ for and on behalf of _____ Tribe of Indians, hereinafter designated as "Lessor," and _____, members of the _____ Tribe and residing upon the _____ Indian Reservation, hereinafter designated as "Lessee."

WITNESSETH

1. SECRETARIAL APPROVAL; FEDERAL AGENCY APPROVAL; DEFINITIONS OF FEDERAL AGENCY, TRIBE, and LENDER. As used in this Lease, the term "Secretary" means the Secretary of the Interior or his or her duly authorized representative. This Lease is subject to the approval of the Secretary pursuant to the Act of August 9, 1955, 69 Stat. 539, as amended, 25 U.S.C. § 415, as implemented by Title 25, Code of Federal Regulations, Part 162. The form of this Lease has been accepted by the Secretary of Housing and Urban Development (HUD) pursuant to 24 C.F.R. § 203.43h(c), which implements Section 248 of the National Housing Act, 12 U.S.C. § 1715z-13, for use in connection with Federal Housing Administration (FHA) insurance of a mortgage on the interest created by this Lease, and pursuant to 24 C.F.R. § 1005.107, which implements Section 184 of the Housing and Community Development Act of 1992 (Pub. L.102-550) for use in connection with HUD's issuance of a loan guarantee of a mortgage on the interest created by this Lease. The form of this Lease has also been accepted by the Secretary of the United States Department of Agriculture (USDA) for use in connection with the issuance by USDA or its Rural Housing Service (RHS) of a direct or guaranteed loan pursuant to section 502 of the Housing Act of 1949 as amended, 42 U.S.C. § 1472, and accepted by the Secretary of the Veterans Affairs (VA) for use in connection with the issuance by VA of a direct or guaranteed loan pursuant to chapter 37 of Title 38, United States Code, secured by the interest created by this Lease. As used in the context of this Lease, the term "Tribe or Tribal" refers to the respective Tribe who enters into this Lease as the "Lessor". For future reference, "Federal Agency" refers to HUD, VA, and USDA. When used in this Lease, the "lender" is any mortgagee that a Federal Agency has approved or a Federal Agency which makes a direct loan. With respect to mortgages which are insured under Section 248 of the National Housing Act, the lender must be approved by the Federal Housing Administration. The term "lender" also includes any of the lender's successors or assigns of the lender's right, title to, or interest in, the Mortgage and any subsequent noteholder secured by the Mortgage. The assignment of the mortgage or any interest therein does not require the consent of the Tribe.

2. PREMISES. Lessor hereby Leases to the Lessee all that tract or parcel of land situated on the _____ Indian Reservation, County of _____, State of _____, and described as follows (the Leased Premises):

[description], _____ County, _____ Indian Reservation, _____, approximately _____ acres.

3. USE OF PREMISES. The purpose of this Lease is to enable the Lessee to construct, improve, and maintain a dwelling and related structures on the Leased Premises, and otherwise to use said premises as a principal residence. The Lessee agrees not to use any part of the Leased Premises for any unlawful conduct or purposes and will comply with all applicable Federal Laws.

4. TERM. Lessee shall have and hold the Leased Premises for a term of ____ years beginning on the effective date of this Lease. This Lease may not be terminated by either or both parties during its term if, and as long as, the Lease and/or any improvements on the premises, or any interest therein, is mortgaged or otherwise pledged as security for any loan in accordance with the provisions hereof, unless consent in writing to such termination is given by the lender and, if the loan is guaranteed, insured, or made by a Federal Agency, a written consent of that agency is also required. This Lease shall not be subject to any forfeiture or reversion and shall not be otherwise terminable, if such event would adversely affect any interest in the Leased Premises, including improvements thereon, acquired in accordance with the provisions hereof by the holder of any mortgage or other lien, or of any purchaser at a foreclosure sale under such mortgage (or lien) or under any conveyance given in lieu of foreclosure, or of any holder subsequent to such purchase. In the event a Federal Agency acquires a mortgage on the interest created by this Lease by assignment from a lender, the Lessor shall not terminate the Lease without the written consent of the respective Federal Agency, as long as the mortgage is in force.

5. RENT. The improvement of housing for Tribal families is a public purpose of the Lessor. The consideration for this Lease is (1) the obligation of Lessee to further said purpose, (2) the promise hereby given by Lessee to pay the Lessor rent at the rate of \$ _____ per _____, (3) the extinguishment, hereby agreed to by Lessee, of any and all use rights heretofore held by Lessee in the Leased Premises, so that Lessee shall hereafter hold rights only by virtue of this Lease, and (4) other good and valuable considerations, the receipt of which is hereby acknowledged by Lessor. Rent may be subject to adjustment pursuant to 25 CFR 162.

6. IMPROVEMENTS. All buildings or other improvements now existing or hereafter constructed on the Leased Premises shall be the leasehold property of the Lessee during the term of this Lease, including any extension or renewal thereof. During the term of this Lease, Lessee shall obtain any necessary governmental permits, approvals or authorization required for the construction and use of all improvements he or she (they) places or cause(s) to be placed on the Leased Premises, and shall comply with all laws applicable to the construction and use of improvements.

7. USE RIGHT. Upon expiration of this Lease, or upon its termination in accordance with the terms hereof, unless such termination is due to default upon the part of Lessee, Lessee or any successors in interest shall be entitled to use rights in the Leased Premises if qualified under the laws of the Tribe. If not so eligible, Lessee, his or her (their) subLessee and any successors in interest shall, upon demand, surrender to Lessor upon expiration or other termination of this Lease complete and peaceable possession of the Leased Premises and all improvements thereon which have not been relocated as permitted under Paragraph 23 of this Lease, which shall be the property of the Tribe.

8. FEDERAL SUPERVISION.

- (a) Nothing contained in this Lease shall operate to delay or prevent a termination of Federal responsibilities with respect to the Leased Premises by the issuance of a fee patent, the lifting of restrictions on alienation, or otherwise during the term of the Lease; such termination, however, shall not serve to abrogate the Lease.
- (b) No member of Congress or any delegate thereto or any Resident Commissioner shall be admitted to any share or part of this Lease or to any benefit that may arise herefrom.

9. QUIET ENJOYMENT. Lessor agrees to defend the title to the Leased Premises and also agrees that Lessee and any successors in interest shall peaceably and quietly hold, enjoy and occupy the Leased Premises for the duration of this Lease without any hindrance, interruption, ejection or molestation by Lessor or by any other persons whomsoever, except if the requirements of any part of this Lease are not kept by the Lessee. Notwithstanding the foregoing, Lessee and his or her (their) assigns is (are) subject to all the laws of the Tribe to the same extent as any other Tribal member or resident.

10. ASSIGNMENT AND SUBLEASE. (a) Except as otherwise provided herein, Lessee shall not assign or sublet this Lease without the prior written consent of the Lessor and sureties (as found in 25 CFR 162), and approval of the Secretary of the Interior. If this Lease and/or any improvements on the Leased Premises are mortgaged or pledged as security for a loan, Lessee shall not assign or sublet this Lease without the written approval of the lender and the respective Federal Agency. Lessee may assign the Lease and deliver possession of the Leased Premises, including any improvements thereon, to the lender or its successors, or Federal Agency guaranteeing or insuring the loan, if Lessee default(s) in any mortgage or other loan agreement for which the Lease and/or improvements on the Leased Premises are pledged as security, and, in such event, the lender or its successors in interest may transfer this Lease or possession of the Leased Premises to a successor Lessee; provided, however, that the Lease may only be transferred to another member of the Tribe or tribal entity. Nothing in this Lease shall prevent the Lessee, with the approval of the Secretary of the Interior and the Secretary of HUD (for Section 248 insured loans), from executing and recording a mortgage, declaration of trust and/or other security instrument as may be necessary to obtain financing for the purchase of a dwelling, refinancing of an existing mortgage, construction and/or improvement of a dwelling and related structures, or shall prevent the mortgagee or other lender from foreclosing or instituting other appropriate proceedings under law in the event of default of any mortgage or other loan agreement by the Lessee, or assigns. Except in cases involving loans for home construction or home improvement by a bank, recognized lending institution, or a lending agency of the United States Government, where no such consent or approval of Lessor shall be required, Lessee may not execute a mortgage, declaration of trust or other security instrument pledging their interest in this Lease or any improvements on the Leased Premises without the prior written consent of Lessor and the approval of the Secretary.

Notwithstanding the provisions contained above, the following additional requirements shall be applicable to a Lease which secures a mortgage insured, guaranteed or held by a Federal Agency:

(b) Notwithstanding that the term sublease is used herein, the Lessee shall not sublease the premises if the Lease is the security for a mortgage insured under Section 248. The lessee may assign the lease in accordance with the terms hereunder.

In the event a Federal Agency is the lender or acquires the mortgage secured by this Lease, and subsequently acquires said Lease by foreclosure, or by the assignment of said Lease by Lessee, his or her (their) Lessees or assigns (for which the approval of the Tribe is not required), then:

- (1) The appropriate Federal Agency, (the Agency involved in this transaction) will notify the Tribe of the availability of the Lease for sale, the sales price of the home and other terms of sale.
- (2) The Lease may only be assigned to another tribal member or tribal entity, except that the appropriate Federal Agency may lease the Leased Premises to a non-member under the conditions specified herein. Any such sublease or assignment shall be executed consistent with tribal law and Federal law.
- (3) If a purchaser is found, the Lease will be transferred by the Federal Agency, to the purchaser, with the prior written consent of the appropriate Tribe.
- (4) If a purchaser cannot be found, the appropriate Federal Agency, shall be entitled to sublease the Leased Premises and improvements without the prior written approval of the Tribe. Such sublease shall be to a member of the Tribe, unless a tribal member Lessee cannot be found, in which case the Federal Agency may sub-Lease to any individual. The term of the initial Lease period and any succeeding period shall not exceed one year each. Any purchase of the Lease shall be subject to any sublease by the Federal Agency pursuant to this subsection.
- (5) No mortgagee (except a Federal Agency as mortgagee or assignee of a mortgagee) may obtain title to the interest created by this Lease without the prior written consent of the Tribe.

In the event that the lender is the entity responsible for acquiring the Lease and the leasehold estate by foreclosure, the lender shall have the rights of the Federal Agency who had insured or guaranteed the foreclosed mortgage under subparagraphs (1) through (5) above, provided this sentence does not apply to loans insured under HUD/FHA's Section 248 program.

11. OPTION. Subsequent to Lessee's breach of any covenant or agreement under a mortgage or other security instrument for which the Lease or any improvements on the Leased Premises are pledged as security, and upon the expiration of any applicable cure period, the Lessor shall have an option (the "option" herein) to acquire the Lessee's Leasehold interest, (subject to all valid liens and encumbrances) upon either payment in full of all sums secured by the mortgage or assumption of the loan with the approval of the lender or the applicable Federal Agency as evidenced by the note and mortgage and execution of an assumption agreement acceptable in all respects to the Lender. Such option is subject to the following conditions:

- (a) If the Lessee or any assignee of Lessee fails to cure the default, The lender shall give written notice to the Lessor and any applicable Tribal housing authority of Lessee's of its assignee's failure,
- (b) If the Lessee fails to cure the default, and said notice shall be given before the lender or successor invokes any other remedies provided under the mortgage or by law. Thereafter, the lender may issue an acceleration notice to the Lessee, its Lessees or assigns, under the mortgage or other security instrument, requiring the Lessee, its Lessees or assigns to pay all sums secured by the mortgage or other security instrument. If the Lessee, its Lessees or assigns fail to cure the default in accordance with the terms of the lender's acceleration notice, the lender shall give the Lessor written notice of said failure to cure. The Lessor may exercise its option at any time within thirty

(30) days of the date of the lender's written notice to the Tribe of said failure to cure. This option shall be exercised by notice in writing from the Lessor to the Lessee and the lender.

- (3) Notwithstanding the Lessor's option to acquire the Lessee's interest in the Leased Premises, such option shall be subject to any right the Lessee may have under the mortgage or by law to reinstatement after the acceleration, and the right to bring appropriate court action to assert the non-existence of a default or any other defense to acceleration and sale or foreclosure.
- (4) The estate acquired by the Lessor through the exercise of the option shall not merge with any other estate or title held by the Lessor as long as the leasehold interest or any improvements on the Leased Premises, or any interest therein, are mortgaged or otherwise pledged as security for any loan, and the leasehold interest shall remain subject to any valid and subsisting mortgage or other security instrument.

12. RESERVATIONS: Lessee shall use the premises exclusively for residential purposes, except as otherwise agreed to by the parties. Any rights not expressly provided are reserved by the Lessor.

Minerals: The Lessor reserves all rights, as owned by the Lessor, to all mineral rights, including but not limited to oil, gas, or hydrocarbon substances. The Lessor shall not exercise surface entry in connection with reserved mineral rights without prior consent of the Lessee and sureties (as found in 25 CFR 162).

Timber: The Lessor reserves all rights, as owned by the Lessor to timber and forest products on the premises.

Water: The Lessor reserves all rights, as owned by the Lessor, to water on the premises, except that which is needed for residential purposes.

13. EFFECTIVE DATE. This Lease and all its terms and provisions shall be binding upon the successors, and assigns of the Lessee and any successor in interest to the Lessor, and shall take effect on the ____ day of _____, _____, or upon the date of approval by the Secretary, whichever is later.

14. OBLIGATION TO THE UNITED STATES. It is understood and agreed that while the Leased Premises are in trust or restricted status, all of the Lessee's obligations under this Lease, and the obligation of his, hers (theirs) sureties, are to the United States as well as to the owner of the land.

15. ASSENT NOT WAIVER OF FUTURE BREACH OF COVENANTS. No assent, express or implied, to any breach of any of the Lessee's covenants, shall be deemed to be a waiver of any succeeding breach of any covenants.

16. VIOLATIONS OF Lease. It is understood and agreed that violations of this Lease shall be acted upon in accordance with the regulations in 25 C.F.R. Part 162.

17. CARE OF PREMISES. It is understood and agreed that the Lessee is to keep the premises covered by this lease in good repair. Lessee shall not commit or permit to be committed any waste whatever on said premises and shall not remove or tear down any building or other improvements thereto, but shall keep the same in good repair. Lessee shall not destroy or permit to be destroyed any trees, except with the consent of the Lessor and the approval of the Secretary, and shall not permit the premises to become unsightly. The Lessee will be held financially responsible for all unrepaired damages to buildings, fences, improvements or appearance, except for the usual wear and decay.

18. FORCE MAJEURE. Whenever under this instrument a time is stated within which or by which original construction, repairs or re-construction of said improvements shall be completed, and if during such period any cause reasonably beyond the Lessee's power to control occurs, the period of delay so caused shall be added to the period allowed herein for the completion of such work.

19. INSPECTION OF THE PREMISES. The Secretary, lender, applicable Federal Agency, and the Lessor and their authorized representative shall have the rights, at any reasonable times during the term of this lease, and with reasonable notice, to enter upon the leased premises, or any part thereof, to inspect the same and all buildings and other improvements erected and placed thereon.

20. INDEMNIFICATION. Neither the Lessor nor the United States, nor their officers, agents,

and employees shall be liable for any loss, damage, or injury of any kind whatsoever to the person or property of the Lessee or sublessees or any other person whomsoever, caused by any use of the leased premises, or by any defect in any structure erected thereon, or arising from any accident, fire, or other casualty on said premises or from any other cause whatsoever; and Lessee, as a material part of the consideration for this lease, hereby waives on Lessee's behalf all claims against Lessor and/or the United States and agrees to hold Lessor and/or the United States free and harmless from liability for all claims for any loss, damage, or injury arising from the use for the premises by Lessee, together with all costs and expenses in connection therewith.

21. UTILITIES. Neither the Lessor nor the United States shall have any obligation to provide utilities as of the commencement of this Lease. In the event that the Lessee requires utilities, the installation and maintenance thereof shall be the Lessee's sole obligation, provided that such installation shall be subject to the written consent of the Lessor, which the Lessor will not unreasonably withhold. The Lessee shall pay, as they become due, all bills for electricity and other utilities that are furnished to the leased premises.

22. LATE PAYMENT INTEREST. It is understood and agreed between the parties hereto that, if any installment of rental is not paid within 30 days after becoming due, interest will be assessed at the existing prime rate, plus three (3) percent, times the amount owed for the period during which payments are delinquent. Interest will become due and payable from the date such rental becomes due and will run until said rental is paid. The interest rate formula is $\text{Interest} = (\text{Prime rate} + 3\%) \times (\text{amount due})$.

23. RIGHT OF REMOVAL. Upon the termination of the lease, the Lessee of a one-unit single family dwelling shall be entitled, within _____ days, to remove the dwelling and related structures from the leased premises and relocate such improvements to an alternative site, not located on the leased premises. Any Lessee who exercises such a right shall be required to pay all costs related to the relocation of the dwelling unit. Lessee shall leave the land in good order and condition. All other improvements shall become the property of the Lessor at the expiration of this lease. This paragraph does not apply to Section 248 insured mortgage loans

24. INSURANCE. The Lessee agrees, so long as this lease is in effect, to keep buildings and improvements on the leased premises insured against loss or damage by fire with extended coverage endorsements in an amount equal to the full insurable value of the buildings and improvements insured. Said policy is to be made payable to the Bureau of Indian Affairs for the benefit of the Lessor. Said policy or policies shall be deposited with the Secretary and Lessee shall pay all premiums and other charges payable in respect to such insurance and shall deposit with the Secretary the receipt for each premium or other charge as paid or satisfactory evidence thereof. Except, during such time that a mortgage is in effect against this Leasehold interest, that said policy is to be made jointly payable to the Lessee and the Lender, and premium payments provided for per specific requirements of the Lender.

25. ADDITIONS. Prior to execution of this Lease, provision (s) number (s) _____ has (have) been added hereto and by reference is (are) made a part hereof.

WITNESS:

_____, Lessor

WITNESS:

_____, Lessee

APPROVED:

SECRETARY OF THE INTERIOR

BY:

Date

This lease is approved pursuant to the authority delegated by

Approving Official

Date

HEARTH Act of 2012

The Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012 (the HEARTH Act) creates a voluntary, alternative land leasing process available to tribes by amending the Indian Long-Term Leasing Act of 1955, 25 U.S.C. Sec. 415. Under the Act, once their governing tribal leasing regulations have been submitted to, and approved by, the Secretary of the Interior, tribes are authorized to negotiate and enter into leases without further approvals by the Secretary. Specifically, the Act authorizes tribes to execute agricultural and business leases of tribal trust lands for a primary term of 25 years and up to two renewal terms of 25 years each. Leases of tribal trust lands for residential, recreational, religious or educational purposes may be executed for a primary term of up to 75 years. In support of tribal self-determination, the Act requires the Secretary to approve tribal leasing regulations if the regulations are consistent with the Department of the Interior's leasing regulations at 25 CFR Part 162 and they provide for an environmental review process that meets requirements set forth in the Act. Interested tribes may submit their regulations to the Deputy Bureau Director, Bureau of Indian Affairs–Office of Trust Services.

REGULATIONS & DATE APPROVED BY THE SECRETARY OF THE INTERIOR

- Federated Indians of Graton Rancheria (Business), February 1, 2013
- Pueblo of Sandia (Business), March 14, 2013
- Pokagon Band of Potawatomi Indians (Residential), April 11, 2013; Amended November 24, 2014
- Ak-Chin Indian Community (Business), November 10, 2013
- Santa Rosa Band of Cahuilla Indians (Business), November 10, 2013
- Citizen Potawatomi Nation (Business), November 10, 2013
- Ewilaapaayp Band of Kumeyaay Indians (Business), December 10, 2013
- Kaw Nation (Business), December 13, 2013
- Jamestown S'Klallam Tribe (Business), April 4, 2014
- Dry Creek Rancheria Band of Pomo Indians (Business), April 4, 2014
- Wichita and Affiliated Tribes (Business), April 8, 2014
- Navajo General Leasing, May, 16, 2014
- Mohegan Tribe of Indians of Connecticut (Business), April 8, 2014
- Agua Caliente Band of Cahuilla Indians (Business), September 23, 2014
- Agua Caliente Band of Cahuilla Indians (Business), Amended February 9, 2016
- Seminole Tribe of Florida (Business), January 8, 2015
- Seminole Tribe of Florida (Residential), January 8, 2015
- Cowlitz Indian Tribe (Business), January 22, 2015
- Oneida Indian Nation of New York (Business), January 28, 2015
- Oneida Indian Nation of New York (Residential), June 14, 2016
- Ho-Chunk Nation (Business), February 4, 2015
- Ho-Chunk Nation (Residential), February 4, 2015
- Ho-Chunk Nation (Agricultural), February 4, 2015
- Absentee Shawnee Tribe of Oklahoma (Business), June 3, 2015
- Rincon Band of Luiseno Mission Indians (Business), June 4, 2015
- Makah Indian Tribe (Business/Residential), August 18, 2015
- Squaxin Island Tribe (Business), August 20, 2015
- Gila River Indian Community (Business/Solar), November 20, 2015
- Ohkay Owingeh (Business/Agricultural/Residential/Wind & Solar), January 4, 2016
- Shakopee Mdewakanton Sioux Community (Business), March 3, 2016
- Twenty-Nine Palms Band of Mission Indians of California (Business), June 14, 2016
- Chemehuevi Indian Tribe (Business), October 7, 2016
- Osage Nation (Business), July 17, 2017
- Stillaguamish Tribe of Indians, July 17, 2017
- Cheyenne and Arapaho Tribe of Oklahoma (Business), November 9, 2017
- Kootenai Tribe of Idaho (Residential), November 9, 2017
- Lummi Nation (Business), November 9, 2017

- Little Traverse Bay Bands of Odawa Indians (Business, Agricultural, and Residential), December 29, 2017
- Ramona Band of Cahuilla (Business), December 29, 2017
- Torres Martinez Desert Cahuilla Indians, December 29, 2017
- Confederated Tribes of Warm Springs (Business), June 11, 2018
- San Manuel Band of Mission Indians, June 11, 2018
- Mississippi Band of Choctaw, March 5, 2019
- Pueblo of Isleta Leasing Regs, April 17, 2019
- Jamul Indian Village (Business), June 14, 2019
- Coquille Indian Tribe (Business), November 9, 2019
- Apache Tribe of Oklahoma (Business), December 28, 2017
- Oneida Nation Leasing Law (Business, Agricultural, and Residential), January 23, 2018
- Prairie Band Potawatomi Nation Business Site Ordinance, September 18, 2018
- Quinault Indian Nation (Business and Residential), October 31, 2018
- Pechanga Band of Luiseno Mission Indians (Business), December 28, 2017
- Minnesota Chippewa Tribe, Fond Du Lac Band Leasing Ordinance, March 6, 2019
- Pueblo of Laguna Residential Leasing Code, April 13, 2020
- Shingle Springs Band of Miwok Indians (Business), April 13, 2020
- Menominee Indian Tribe of Wisconsin Agriculture, Business, and Residential Leasing July 25, 2019
- Fort Belknap Indian Community Leasing Act June 12, 2020
- Catawba Indian Nation Business Leasing Ordinance June 25, 2020

RELATED LINKS & DOCUMENTS

- HEARTH Act Info. Series Part 1 - General Overview (.pdf-view with Internet Explorer or download)
- HEARTH Act Info. Series Part 2 - Business Leasing: Submitting Regulations (.pdf)
- § 415 Leases of restricted lands (.pdf)
- National Policy Memorandum - HEARTH Act (.pdf)
- SAMPLE-Acknowledgment Ltr Hearth Submissions 2014.04.29 (.docx)
- SAMPLE-Checklist (HEARTH Act) for Tribal Reference (.pdf)
- SAMPLE-Notice Ltr Hearth Approval 2014.05.09 (.docx)

TRAINING

Between July 2014 and September 2014, the BIA held three initial HEARTH Act presentations to assist tribes and BIA personnel in processing tribal leasing regulations submitted for review and approval under the HEARTH Act. Since the initial presentations, the BIA has continued to offer HEARTH Act information to groups consisting of, or serving, tribal governments, including the National Congress of American Indians, USDA's Rural Development, HUD's Office of Native American Programs, the National Tribal Land Association, and at sessions for tribes and BIA personnel hosted by BIA Regional and Agency Offices. Additional sessions will be scheduled in the future. If you are interested in attending a HEARTH Act presentation, or have questions regarding the BIA's HEARTH Act review process for tribal leasing regulations, please email or contact:

Sharlene M. Round Face
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PUBLIC NOTICE OF DRAFT ORDINANCE GOVERNING LAND TRANSACTIONS

Pursuant to Resolution No. 2011-076, "Enacting a Public Review and Input Process for Tribal Ordinances," **PUBLIC NOTICE IS HEREBY GIVEN** that the Pueblo of Isleta Tribal Council has determined that the draft Ordinance Governing Land Transactions ("Ordinance") is ready for public review and input.

The Ordinance Governing Land Transactions proposes to:

- create uniform recording of land transactions on the Pueblo;
- have all land transactions recorded in one location; and
- standardize valid conveyances in land.

The draft Ordinance may be downloaded, free of charge, from the official Pueblo of Isleta website at <https://www.isletapueblo.com/government/tribal-council/poi-regulations-ordinances-standards/> or you may request a copy from Tribal Council staff.

Your input on the draft Ordinance is important. Please provide your input in writing to:

Tribal Council Office

RE: "Draft Ordinance Governing Land Transaction"

P.O. Box 850

Isleta, NM 87022

You may also hand-deliver your comments to the Tribal Council office during regular business hours. Comments will be time-stamped and compiled by Tribal Council staff. Should you have any questions please call the Tribal Council office at 505-869-9695 or 505-869-9746.

The public comment period will end at close of business on **March 31, 2020**.

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**PUEBLO OF ISLETA
ORDINANCE GOVERNING LAND TRANSACTIONS**

Drafted October 12, 2018, last revised October 17, 2019

I. Purpose of Ordinance

- A. This Ordinance is enacted for the purpose of recording Pueblo of Isleta practices governing land transactions of tribal lands, and ensuring that land transactions are conducted in a uniform manner and recorded in a uniform and consistent manner for the benefit of the Pueblo of Isleta and its tribal members.
- B. This Ordinance affirms customary authorities of the Governor and Lieutenant Governors and various departments of the Pueblo of Isleta government authorized by the Tribal Council. Specifically, this Ordinance authorizes the Pueblo of Isleta ("POP") Realty Department (also referred to as the Surveying and Mapping Department) to develop policies, processes and forms for land transactions and recording in a uniform manner.
- C. This Ordinance is not intended to supersede customary and traditional powers and authorities of the traditional government of the Pueblo of Isleta, and shall not be interpreted as such.

II. Definitions

As used in this Ordinance, the following definitions shall mean:

- A. Governor – refers to the Governor of the Pueblo of Isleta.
- B. Land Assignment – refers to a transfer of an interest in tribal lands to a tribal member in accordance with the laws of the Tribe. It typically refers to the land conveyance document used by the Tribe to give tribal members an indefinite possessory interest in tribal lands.
- C. Lease – refers to an agreement for the use of land, including Trust Land or Restricted Land, or other real property.
- D. Lieutenant Governors – refers to the first and second Lieutenant Governors of the Pueblo of Isleta.
- E. Realty Department– refers to the Pueblo of Isleta Realty Department, also referred to as the Surveying and Mapping Department, or other departments created to carry out the purposes of this Ordinance.
- F. Restricted Land – refers to land within the jurisdiction of the Tribe that is subject to restrictions against alienation imposed by federal treaty, statute, Executive Order, or the Tribe.
- G. Tribal community property – refers to tribal lands that have not been assigned to a tribal member or tribal entity, or tribal lands that have not been leased to a tribal member or other person or entity, or tribal lands that have reverted back to the Tribe.
- H. Tribal Council – refers to the Tribal Council of the Pueblo of Isleta.
- I. Tribal lands – refers to the lands owned by the Tribe, including Restricted and Trust land.

- J. Tribal member – refers to any person recognized as being an Isleta tribal member by the laws of the Tribe.
- K. Tribe – refers to the Pueblo of Isleta.
- L. Trust Land – refers to land within the jurisdiction of the Pueblo, title to which is held by the United States for the benefit of the Tribe or an individual tribal member.

III. Authorities

- A. The Realty Department is hereby delegated authority to develop land conveyance policies and procedures to ensure that land transactions are governed uniformly and standard practices are adopted for the uniform recording of land transactions.
- B. The Governor and Lieutenant Governors have authority to develop a process for reviewing and approving leases authorized under the POI Leasing Law.
- C. The Governor and Lieutenant Governors have authority to create, establish, and confirm easements, including ditch easements and road easements, through tribal lands to ensure that any land holding is not landlocked, having proper ingress and egress, with coordination with the Realty Department.
- D. The delegation of authorities under this Ordinance shall not be interpreted as a new authority but rather an affirmation of said authorities.

IV. Land Transactions

- A. The Realty Department shall develop policies governing land transactions.
- B. No land transaction of tribal lands, including a Land Assignment, shall be valid unless said document has the signature of the Governor or one of the Lieutenant Governors.
 - 1. Exception – No land transaction of tribal community property shall be valid except with the approval of the Tribal Council and signed by the Governor or one of the Lieutenant Governors.
- C. No land lease from the Tribe shall be valid unless said lease is approved by the Tribal Council and signed by the Governor or one of the Lieutenant Governors.
- D. Tribal lands shall not be transferred to non tribal members.

V. Effect of Recording

The recording of a land transaction at the Realty Department shall be evidence of valid title to a land interest, such as a Lease or Land Assignment.



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

APPROVAL OF

PUEBLO OF ISLETA, NEW MEXICO

PUEBLO OF ISLETA LEASING LAW

The attached Pueblo of Isleta Leasing Law, submitted by the Pueblo of Isleta (listed in the Federal Register, 83FR 34865 (July 23, 2018) as the Pueblo of Isleta, New Mexico), and prepared in accordance with the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012, consisting of 41 pages and adopted by the Pueblo Tribal Council on May 9, 2018, is hereby approved.

Dated: APR 17 2019

Assistant Secretary – Indian Affairs
United States Department of the Interior

Pursuant to the authority delegated by 209 DM 8

**PUEBLO OF ISLETA
LEASING LAW**

**CHAPTER 100
GENERAL PROVISIONS**

101 – Authority

This Pueblo of Isleta Leasing Law (“Leasing Law”) is enacted by the Tribal Council pursuant to Article V, Section 2, Subsections (k) and (l) of the Pueblo’s Constitution, and is subject to, and will be effective upon the date of approval of this Leasing Law by the U.S. Secretary of the Interior pursuant to Helping Expedite and Advance Responsible Tribal Home Ownership of 2012, P.L. 112-151(codified at 25 U.S.C. § 415(h) (“HEARTH Act”) in accordance with Section 108 hereof.

102 – Scope

(a) This Leasing Law shall apply to all Leases of Pueblo Trust or Restricted Lands specified in (c) below entered into on or after the Effective Date of this Leasing Law. In accordance with the HEARTH Act, this Leasing Law does not apply to any lease for the exploration development, or extraction of any mineral resource, which requires approval by BIA.

(b) This Leasing Law does not apply to individually owned land, Permits of Pueblo Trust or Restricted Land or to Tribal Land Assignments, which may be granted, transferred and terminated only in accordance with Tribal Law.

(c) This Leasing Law applies to Business, Agricultural, Residential, Wind and Solar and Public Purpose Leases of Pueblo Trust or Restricted Lands, as hereinafter defined. Chapters 100 through 300, and 800 through 1100 generally apply to all Leases, except as otherwise expressly provided in this Leasing Law. Provisions specifically applicable to (a) Business Leases and Public Purpose Leases appear at Chapter 400, (b) Agricultural Leases appear at Chapter 500, (c) Residential Leases appear at Chapter 600, and (d) WEEL and WSR Leases appear at Chapter 700.

(d) Nothing contained herein shall be construed to affect any Lease that has been entered into prior to the Effective Date of this Leasing Law or any Lease approved by the Secretary under 25 U.S.C. 415 after the Effective Date.

103 – Purpose

The purposes of this Leasing Law are to:

(a) Recognize and assert the authority of the Pueblo to grant Leases, establish streamlined procedures for Environmental Review, and provide for the

management and enforcement of Leases with respect to Pueblo Trust or Restricted Land;

- (b) Promote self-determination, encourage economic development and self-sufficiency, assist tribal members to obtain affordable and suitable housing, facilitate and control the use of the Pueblo's agricultural, wind and solar resources, and increase business activity and employment on the lands of the Pueblo; and
- (c) Implement the authority recognized by the HEARTH Act.

104 – Definitions

For purposes of this Leasing Law:

- (a) *Agricultural Land* means Pueblo Trust or Restricted Land suited or used for the production of crops, livestock or other agricultural products, or Pueblo Trust or Restricted Land suited or used principally to support the surrounding agricultural community.
- (b) *Agricultural Lease* means a Lease of Agricultural Land for farming, grazing or associated agricultural purposes not designated/defined as a Business Lease.
- (c) *AIARMA* means 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).
- (d) *Assignment* means an agreement between a Lessee and an assignee, whereby the assignee acquires all or some of the Lessee's rights, and assumes all or some of the Lessee's obligations, under a Lease. This defined term does not mean or apply to a Tribal Land Assignment.
- (e) *Authorized Official* means the Governor, a Lieutenant Governor or other person authorized to execute Leases or Lease Documents by Tribal Law.
- (f) *BIA* means the Bureau of Indian Affairs of the U.S. Department of the Interior.
- (g) *Best Interest of the Pueblo* means a determination by the Tribal Council that the inclusion or waiver of any Lease term, or the taking or omitting to take any action with respect to a Lease by or on behalf of the Pueblo, furthers the economic, social, environmental or other interests and objectives of the Pueblo.
- (h) *Business Day* means Monday through Friday, excluding federally recognized holidays and other days that the offices of the Pueblo are closed to the public.

- (i) *Business Lease* means any Lease that is not defined and covered as an Agricultural Lease, Residential Lease, WEEL, WSR Lease or Public Purpose Lease under this Leasing Law. Business Leases may be for commercial, industrial, retail, entertainment, office, manufacturing, storage, distribution, waste-to-energy or other business purposes. Business Leases may authorize the construction of single-purpose or mixed use projects designed for use by any number of occupants.
- (j) *Cancellation* means Pueblo action to end a Lease pursuant to this Leasing Law.
- (k) *Consent* or *consenting* means written authorization by the Pueblo concerning a specified action.
- (l) *Day* means a calendar day, unless otherwise specified.
- (m) *Environmental Review Process* means the process for conducting Pueblo environmental review under Chapter 1100 of this Leasing Law to assess whether a proposed Leasehold Use will have a Significant Effect on the Environment.
- (n) *Fair Market Rental* means the amount of rental income that a leased tract of Pueblo Trust or Restricted Land would most probably command in an open and competitive market, or as determined by competitive bidding.
- (o) *Governor* means the Governor of the Pueblo of Isleta.
- (p) *Holdover* means circumstances in which a Lessee remains in possession of the leased Premises after the Lease term expires.
- (q) *IPHA* means the Isleta Pueblo Housing Authority.
- (r) *Lease* means a written contract between the Pueblo and a Lessee, whereby the Lessee is granted a right to possess Pueblo Trust or Restricted Land for a specified purpose and duration., The Lessee's right to possess will limit the Pueblo's right to possess the leased Premises only to the extent provided in the Lease. A Lease may be a ground Lease (undeveloped land) or a Lease of developed land (together with the Permanent Improvements thereon).
- (s) *Lease Document* means a Lease, Amendment, Assignment, Sublease, or Leasehold Mortgage.
- (t) *Leasehold Mortgage* means a mortgage, deed of trust, or other instrument that pledges a Lessee's Leasehold interest as security for a debt or other obligation owed by the Lessee to a Mortgagee.
- (u) *Leasing Officer* means the Governor or other official designated by the Governor or Tribal Council in accordance with Tribal Law to negotiate and administer a

Lease on behalf of the Pueblo. Different Leasing Officers may be designated for different forms of Leases, such as Business, Agricultural or Residential Leases.

- (v) *Leasehold Use* means any use, improvement, development or activity contemplated to occur on Pueblo Trust or Restricted Land pursuant to an existing or proposed Lease.
- (w) *Lessee* means a person or entity who has acquired a legal right to possess Pueblo Trust or Restricted Land by a Lease granted under this Leasing Law.
- (x) *LTRO* means the appropriate Regional Land Titles and Records Office of the BIA.
- (y) *LRO* means the Pueblo Surveying and Mapping Division, or other Pueblo agency authorized under Tribal Law to record and maintain records pertaining to Pueblo Trust or Restricted Land for the purposes of this Leasing Law.
- (z) *Mortgagee* means the holder of a Leasehold Mortgage.
- (aa) *NEPA* means the National Environmental Policy Act of 1969, 42 U.S.C. 4321 et seq.
- (bb) *Notice of Violation* means a letter notifying a Lessee of a violation of a Lease and providing the Lessee with a specified period of time to show cause why such Lease should not be cancelled for the violation. A 10-day show cause letter is one type of notice of violation.
- (cc) *Permanent Improvements* means buildings, other structures, agricultural facilities, wind or solar testing or generation facilities, and associated infrastructure attached to the leased Premises.
- (dd) *Permit* means a written, non-assignable agreement between the Pueblo and the Permittee, whereby the Permittee is granted a temporary, revocable privilege to use Pueblo Trust or Restricted Land, for a specified purpose.
- (ee) *Permittee* means a person or entity who has acquired a privilege to use Pueblo Trust or Restricted Land by a Permit.
- (ff) *Premises* means the specifically identified parcel(s) or tract(s) of Pueblo Trust or Restricted Land that is subject to a particular Lease.
- (gg) *Public* means, for purposes of an Environmental Review pursuant to Chapter 1100, (a) any Tribal Member of the Pueblo maintaining a residence on Pueblo Trust and Restricted Land, and (b) any person holding an interest in land contiguous to a proposed Leasehold which may reasonably be expected to experience a Significant Environmental Effect from the intended Leasehold Use.

- (hh) *Public Purpose Lease* means a Lease, other than a Residential Lease, for religious, educational, recreational or other purpose primarily for the social or cultural betterment of the Pueblo community, rather than a commercial or profit-making purpose.
- (ii) *Pueblo* means the Pueblo of Isleta. When this Leasing Law refer to action to be taken by the Pueblo, such action may be taken by the Governor, Tribal Council or their designee(s), including the Leasing Officer or Responsible Official, as appropriate to the specific action at issue.
- (jj) *Pueblo Trust or Restricted Land* means any tract, or interest therein:
- (1) to which the United States holds title in trust for the benefit of the Pueblo; or
 - (2) that the Pueblo holds title to, but can alienate or encumber only with the approval of the United States because of limitations in the conveyance instrument or other limitations under federal law.
- (kk) *Residential Lease* means a Lease for affordable housing purposes and other housing programs established by the Pueblo and/or IPHA on Pueblo Trust or Restricted Land, but shall not include any Lease designated as a Business Lease by Tribal Council.
- (ll) *Responsible Official* means the person designated from time to time by the Governor and/or Tribal Council in accordance with Tribal Law to conduct Environmental Reviews, and to perform duties and take the actions specified in Chapter 1100 hereof. A different Responsible Official may be designated for different forms of Lease, e.g. Business, Agricultural or Residential.
- (mm) *Secretary* means the Secretary of the U.S. Department of the Interior.
- (nn) *Significant Effect on the Environment* means a substantial, or potentially substantial, adverse change in the environment, including land, air, water, minerals, flora, fauna, ambient noise, cultural areas and objects of historic or cultural significance.
- (oo) *Sublease* means a written agreement by which the Lessee grants to an individual or entity a right to possession and use of Pueblo Trust or Restricted Land no greater than that held by the Lessee under the Lease.
- (pp) *Surety* means one who guarantees the performance of another.
- (qq) *Termination* means action by the Pueblo to end a Lease.
- (rr) *Trespass* means any unauthorized occupancy, use of, or action on any Pueblo Trust or Restricted Land.

(ss) *Tribal Council Authorization* means a duly adopted Tribal Council Resolution, tribal ordinance, or other appropriate tribal document authorizing the specified action.

(tt) *Tribal Council* means the Tribal Council of the Pueblo of Isleta.

(uu) *Tribal Council Resolution* means a resolution of the Tribal Council duly adopted in accordance with Tribal Law.

(vv) *Tribal Court* means the Pueblo of Isleta Tribal Court.

(ww) *Tribal Land Assignment* means a Tribal Council Authorization, agreement or other action or document recognized under Tribal Law that conveys to (a) tribal member(s), a family of tribal members, a tribal entity, or a wholly owned tribal corporation, any right to possess or use a particular parcel or tract of Pueblo Trust or Restricted Land in accordance with Tribal Law, other than a Lease.

(xx) *Tribal Law* means the body of non-federal law that governs lands and activities under the jurisdiction of the Pueblo, including ordinances or other enactments by the Pueblo's Tribal Council, Tribal Court rulings, and generally recognized Pueblo custom and tradition.

(yy) *Violation* means a failure to take an action, including payment of compensation, when required by the Lease, or to otherwise not comply with a term or condition of the Lease. This definition applies for purposes of enforcement of a Lease under this Leasing Law no matter how "violation" or "default" is defined in the Lease.

(zz) *WEEL* means a wind energy evaluation Lease authorizing short term possession of Pueblo Trust or Restricted Land for the purpose of installing, operating and maintaining, instrumentation and associated infrastructure, such as meteorological towers, to evaluate wind resources for electrical generation.

(aaa) *WSR Lease* means a Lease that authorizes possession of Pueblo Trust or Restricted Land for the purpose of installing, operating and maintaining instrumentation, facilities and associated infrastructure, such as wind turbines and solar panels, to harness wind power and solar power to generate and supply electricity for resale (i) on a for-profit or not-for-profit basis; (ii) to a utility serving the public generally; or (iii) to users within the local community on or near Pueblo Trust or Restricted Land.

105 – Applicable Law

- (a) In addition to this Leasing Law itself, Leases approved under this Leasing Law:
- (1) are subject to applicable federal laws;
 - (2) are subject to applicable Tribal Law; and

- (3) are not subject to state law or the law of a political subdivision thereof, except if (a) particular state law is expressly made applicable by federal or Tribal Law, or the interpretive use of state law is elected pursuant to paragraph (b) of this section.
- (b) Unless prohibited by federal law, the parties to a Lease may agree to interpret the terms of such Lease in accordance with state or local law, in the absence of federal or Tribal Law, if:
 - (1) the particular Lease includes a provision to this effect; and
 - (2) the Pueblo expressly agrees to the interpretive application of state or local law; provided that such reference to state law for purposes of Lease interpretation shall not in any event be deemed to consent to or grant to the state of any jurisdiction over the Pueblo or its Trust or Restricted Lands.
- (c) An agreement under paragraph (b) of this section shall not waive the Pueblo's sovereign immunity, unless the Pueblo expressly states its intention to waive sovereign immunity in the Lease.

106 – Applicable Taxes

- (a) Subject only to applicable federal law, Permanent Improvements on the leased Premises, without regard to ownership of those Permanent Improvements, are not subject to any fee, tax, assessment, levy or other charge imposed by the State of New Mexico or any political subdivision thereof; provided that such Permanent Improvements may be subject to taxation under the Pueblo's Possessory Interest Tax and other Pueblo taxes, as may apply.
- (b) Subject only to applicable federal law, activities under a Lease conducted on the leased Premises are not subject to any fee, tax assessment, levy, or other charge (e.g. business use, privilege, public utility, excise, gross revenue taxes) imposed by the State of New Mexico or any political subdivision thereof; provided that such activity may be subject to Pueblo Gross Receipts Tax and other Pueblo taxes, as may apply.
- (c) Subject only to applicable federal law, the leasehold or possessory interest under a Lease is not subject to any fee, tax assessment, levy, or other charge imposed by the State of New Mexico or any political subdivision thereof; provided that such leasehold may be subject to the Pueblo's Possessory Interest Tax and other Pueblo taxes, as may apply.

107 – Permitted Term

- (a) No Lease shall be approved under this Leasing Law more than 12 months prior to the commencement of the term of such Lease.

- (b) The term of a Business Lease or WSR Lease shall not exceed 25 years, except that any Lease may include an option to renew for up to two additional terms, each of which may not exceed 25 years.
- (c) The term of an Agricultural Lease may not exceed ten years, unless a substantial investment in the improvement of the leased Premises is required, in which case the term may not exceed 25 years.
- (d) The term of a Public Purpose Lease or a Residential Lease may not exceed 75 years.
- (e) The term of a WEEL shall not exceed the period described in Section 704 hereof.

108 – Effective Date

This Leasing Law shall go into effect and apply from and after the date of its approval by the Secretary or her or his authorized designee pursuant to 25 U.S.C. § 415(h).

CHAPTER 200 OBTAINING A LEASE

201 – Leasing Information

Information concerning the leasing of Pueblo Trust or Restricted Land, including the Lease negotiation and approval process established under this Leasing Law, may be obtained from the Governor, a Leasing Officer or other source designated by the Governor or Tribal Council.

202 – Leasing Proposals

The Pueblo may invite proposals for Leases with respect to Pueblo Trust or Restricted Land approved by the Tribal Council and may consider unsolicited Lease proposals, at its discretion. Lease proposals shall be initially reviewed by the Leasing Officer under the supervision of the Governor and in consultation with the Tribal Council. Whether to pursue development of any such proposal and negotiation of a Lease shall be determined based on the substance and merits of each proposal by the Governor and Tribal Council.

203 – Negotiation of Leases

The Leasing Officer may negotiate proposed terms and conditions of a Lease with a proposed Lessee. Such terms and conditions shall address all material features of the proposed Leasehold Use and shall be consistent with the generally applicable requirements of Chapter 300 of this Leasing Law, and any other requirements applicable to a specific form of Lease described at Chapters 400 through 700, as the case may be. If the Leasing Officer is satisfied with the terms and conditions of a proposed Lease, he or she shall forward such proposed Lease to the Governor and Tribal Council for consideration and approval.

204 – Lease Approval

All Leases must be approved by the Tribal Council prior to execution by the Authorized Official. The Tribal Council shall document its approval of a Lease by duly adopted Tribal Council Resolution, and such approval may be:

- (a) following completion of the Environmental Review Process; or
- (b) subject to completion of the Environmental Review Process, but without further Tribal Council Authorization required.

205 – Execution of Leases

A Tribal Council approved Lease shall be executed by an Authorized Official. A Lease shall be effective upon execution, unless otherwise provided in the terms and conditions of such Lease.

206 – Amendments, Assignments, Subleases and Leasehold Mortgages

Any amendment to a Lease must be approved by Tribal Council Resolution, and any Assignment, Sublease or Leasehold Mortgage, must be consented to or approved by Tribal Council Authorization, unless the terms and conditions of the Lease expressly provide otherwise.

207 – Recording, Administration and Enforcement

Leases shall be recorded in accordance with Chapter 800 of this Leasing Law, and administered and enforced in accordance with Chapter 900 hereof.

208 – Permits

If an intended access or use of Pueblo Trust or Restricted Land does not require the right of possession of such land, such access or use may be authorized by a Permit granted pursuant to any Tribal Council Authorization in lieu of a Lease granted under this Leasing Law, and this Leasing Law will not apply to such Permit.

CHAPTER 300 REQUIRED LEASE TERMS AND CONDITIONS

301 – Required Lease Terms

- (a) Except as otherwise expressly provided in this Chapter 300, or in Chapters 400, 500, 600 or 700, as applicable to a particular form of Lease, all Leases must identify:

- (1) the Premises being leased;

- (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 ownership of any Permanent Improvements on, or to be constructed on, the Premises and the responsibility for constructing, operating, maintaining, and managing Permanent Improvements under and in accordance with this Leasing Law;
 - (6) rent and other payment requirements and late payment charges, including interest;
 - (7) due diligence requirements under and in accordance with this Leasing Law;
 - (8) insurance requirements under and in accordance with this Leasing Law; and
 - (9) bonding requirements under and in accordance with this Leasing Law, if any. If a performance bond is required, the Lease must state that the Lessee must obtain the consent of the Surety for any legal instrument that directly affects such Surety's obligations and liabilities.
- (b) Where a representative executes a Lease on behalf of the Lessee, the Lease must identify the Lessee being represented and the authority under which the action is taken.
- (c) All Leases must include provisions addressing the following:
- (1) the obligations of the Lessee and its Sureties to the Pueblo are also enforceable by the United States, so long as the land remains Pueblo Trust or Restricted Land;
 - (2) there must not be any unlawful conduct, creation of a nuisance, illegal activity, or negligent use or waste of the leased Premises;
 - (3) the Lessee must comply with all applicable laws, ordinances, rules, regulations, and other applicable legal requirements;
 - (4) if historic properties, archeological resources, human remains, or other cultural items not previously reported are encountered during the course of any activity associated with this Lease, all activity in the immediate vicinity of the properties, resources, remains, or items will cease and the Lessee will

contact the Leasing Officer and any other Pueblo official with jurisdiction to determine how to proceed and appropriate disposition;

- (5) the Leasing Officer has the right, at any reasonable time during the term of the Lease and upon reasonable notice, in accordance with Section 805, to enter the leased Premises for inspection and to ensure compliance; and
 - (6) the Leasing Officer may, at his or her discretion, treat as a Lease violation any failure by the Lessee to cooperate with the Leasing Officers' request to make appropriate records, reports, or information available for the Leasing Officer's inspection and duplication.
- (d) Unless the Lessee would be prohibited by law from doing so, the Lease must also contain the following provisions:
- (1) the Lessee holds the United States and the Pueblo harmless from any loss, liability, or damages resulting from the Lessee's use or occupation of the leased Premises; and
 - (2) the Lessee indemnifies the United States and the Pueblo against all liabilities or costs relating to the use, handling, treatment, removal, storage, transportation, or disposal of hazardous materials, or the release or discharge of any hazardous material from the leased Premises that occurs during the Lease term, regardless of fault, with the exception that the Lessee is not required to indemnify the Pueblo for liability or cost arising from the Pueblo's negligence or willful misconduct.
- (e) The Leasing Officer may treat any provision of a Lease Document that violates Tribal Law or federal law as a violation of the Lease.
- (f) Unless the Tribal Council determines that it is in the Best Interest of the Pueblo to waive or omit such provision, the Lease may include a provision requiring the Lessee to give preference with respect to employment and contracting on Pueblo Trust or Restricted Land to tribal members and tribal member owned businesses.

302 – Permanent Improvements to Premises

- (a) The Lessee may construct Permanent Improvements under a Lease if the Lease specifies, permits, or provides for the development of:
- (1) a plan that describes the type and location of any Permanent Improvements to be constructed by the Lessee; and
 - (2) except for Residential Leases, a general schedule for construction of the Permanent Improvements, including dates for commencement and completion of construction.

- (b) A Lease must specify who will own any Permanent Improvements the Lessee constructs during the Lease term and may specify under what conditions, if any, Permanent Improvements the Lessee constructs may be conveyed to the Pueblo during the Lease term. In addition, the Lease must indicate whether each specific Permanent Improvement the Lessee constructs will:
 - (1) remain on the leased Premises, upon the expiration, cancellation, or termination of the Lease, in a condition satisfactory to the Pueblo, and become the property of the Pueblo;
 - (2) be removed within a time period specified in the Lease, at the Lessee's expense, with the leased Premises to be restored as closely as possible to their condition before construction of the Permanent Improvements; or
 - (3) be disposed of by other specified means.
- (c) A Lease that requires the Lessee to remove the Permanent Improvements must also provide the Pueblo with an option to take possession of and title to the Permanent Improvements if the improvements are not removed within the specified time period.
- (d) The Leasing Officer may take appropriate enforcement action to ensure removal of the Permanent Improvements and restoration of the Premises at the Lessee's expense:
 - (1) in consultation with the Governor and Tribal Council; and
 - (2) before or after expiration, termination, or cancellation of the Lease.
- (e) The Leasing Officer may collect and hold any performance bond until removal and restoration are completed.

303 – Due Diligence Requirements For Permanent Improvements

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

- (b) Failure of the Lessee to comply with the due diligence requirements of the Lease is a violation of the Lease and may lead to cancellation of the Lease under Sections 903 and 905.
- (c) The Tribal Council may waive any of the requirements in this section if the Tribal Council determines that such waiver is in the best interest of the Pueblo.
- (d) The requirements of this section do not apply to Public Purpose Leases, Residential Leases, or WSR Leases.

304 – Description of Leased Premises

- (a) A Lease must describe the leased Premises by reference to an official or certified survey, if possible. If the leased Premises cannot be so described, the Lease must include one or more of the following:
 - (1) a legal description;
 - (2) a survey-grade global positioning system description; or
 - (3) another description prepared by a registered land surveyor that is sufficient to identify the leased Premises.
- (b) Each description must be of sufficient detail to meet recording requirements of the BIA's LTRO in accordance with 25 C.F.R. Part 150.

305 – Compatible Retained Uses

A Lease may reserve the right of or Permit the Pueblo to use, or authorize others to use, the leased Premises for other uses compatible with the purpose of the Lease and consistent with the terms of the Lease. Any such use or authorization by the Pueblo will not reduce or offset the monetary compensation for the Lease.

306 – Determination of Rental Amount

- (a) A Lease of Pueblo Trust or Restricted Land may provide for the payment of any amount or rent or other compensation negotiated by the Pueblo through the Leasing Officer, and approved by Tribal Council, if the Tribal Council Authorization expressly states that:
 - (1) the negotiated compensation is satisfactory to the Tribal Council;
 - (2) the Tribal Council waives valuation; and
 - (3) the Tribal Council has determined that accepting such negotiated compensation and waiving valuation is in the Pueblo's best interest.

- (b) The Tribal Council may request, in writing, that the Leasing Officer determine fair market rental, in which case the Leasing Officer will use a valuation method in accordance with Section 307. After providing the Tribal Council with the fair market rental appraisal or analysis, the Leasing Officer will defer to the Tribal Council's decision to agree to any rent or other payment amount negotiated by the Pueblo.
- (c) If the conditions in paragraph (a) or (b) of this section are not met, the Leasing Officer will require that the Lease provide for fair market rental based on a valuation in accordance with Section 307.
- (d) Residential Leases or Public Purpose Leases may provide for nominal rent.

307 – Determination of Fair Market Rent

- (a) Except as provided in Section 306, or in any other provisions of Chapters 500, 600, or 700, as may apply in a particular case, the Leasing Officer will use a market analysis, appraisal, or other appropriate valuation method to determine the fair market rental before he or she submits a business Lease, to the Tribal Council for approval.
- (b) The Leasing Officer will either:
 - (1) prepare, or have prepared, a market analysis, appraisal, or other appropriate valuation method; or
 - (2) use an approved market analysis, appraisal, or other appropriate valuation method provided by the Pueblo or Lessee.
- (c) The Leasing Officer will use or approve use of a market analysis, appraisal, or other appropriate valuation method only if it:
 - (1) has been prepared in accordance with the Uniform Standards of Professional Appraisal Practice promulgated by the Appraisal Standards Board of the Appraisal Foundation or another recognized valuation method; and
 - (2) complies with Pueblo policies regarding appraisals, including third-party appraisals.
- (d) The Pueblo may use competitive bidding as a valuation method if approved by the Tribal Council.

308 – Time For Payment of Rent

- (a) A Lease must specify the dates on which all rent and other payments are due.

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

309 – Lease must Specify Recipient of Rent

- (a) A Lease must specify whether the Lessee will make payments directly to the Pueblo (direct pay) or to the Secretary in accordance with 25 C.F.R. Part 115.
- (b) If the Lease provides that the Lessee will directly pay the Pueblo, then:
 - (1) the Lease must include provisions for proof of payment upon the Secretary's request; and
 - (2) direct payments must continue through the duration of the Lease.
- (c) The Lessee must send direct payments to the addresses specified in the Lease, unless the Lessee receives notice of a change of recipient or address from the Pueblo or BIA.
- (d) Unless the Lease provides otherwise, compensation payments may not be made payable directly to anyone other than the Pueblo or the Secretary.

310 – Medium of Payment

- (a) When payments are made directly to the Pueblo, the form of payment must be acceptable to the Pueblo.
- (b) When payments are made to the Secretary, its preferred method of payment is electronic funds transfer payments in accordance with 25 C.F.R. Part 162. The Secretary will also accept:
 - (1) money orders;
 - (2) personal checks;
 - (3) certified checks; or
 - (4) cashier's checks.
- (c) The Secretary will not accept cash or foreign currency.
- (d) The Secretary will accept third-party checks only from financial institutions or federal agencies.

311 – Alternative Form of Rent

A Lease may provide for:

- (a) alternative forms of compensation, including but not limited to, in-kind consideration and payments based on percentage of income; or
- (b) varying types of compensation at specific stages during the life of the Lease, including but not limited to fixed annual payments during construction, payments based on income during an operational period, and bonuses;

If the Tribal Council determines any form of compensation described in clause (a) or (b) of this section is in the Pueblo's best interest and approves the Lease providing for such form of compensation.

312 – Notice of Payment Due Not Required

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

313 – Adjustments of Rental Amount

- (a) Unless the Lease provides otherwise, no periodic review of the adequacy of compensation or adjustment is required (1) for an Agricultural Lease, Residential Lease, WSR Lease or Public Purpose Lease, or (2) for a Business Lease if the Tribal Council states in a Tribal Council Resolution or other Tribal Council Authorization that it has determined that not having compensation reviews and/or adjustments is in the Pueblo's best interest.
- (b) If for a Business Lease the condition in clause (2) of paragraph (a) of this section is not met, a review of the adequacy of compensation must occur at least every fifth year, in the manner specified in the Lease. The Lease must specify:
 - (1) when adjustments take effect;
 - (2) who can make adjustments;
 - (3) what the adjustments are based on; and
 - (4) how to resolve disputes arising from the adjustments.
- (c) When a review results in the need for adjustment of compensation, the Pueblo must consent to the adjustment, unless the Lease provides otherwise.

314 – Payments Required in Addition to Rent

The Lessee may be required to pay additional fees, taxes, and assessments associated with the use of the Premises, as determined by the Pueblo, and specified in a Lease. The Lessee must pay these amounts to the appropriate office at the Pueblo or to any other party specified in the Lease.

315 – Performance Bond

Unless waived by Tribal Council Resolution, the Lessee of a Business Lease or WSR Lease must provide a performance bond issued by a Surety licensed to do business in New Mexico and named in the current list of Companies Holding Certificates as Acceptable Sureties on Federal Bonds as published in Federal Circular 570 by the Audit Staff Bureau of Accounts, U.S. Treasury Department.

- (a) The performance bond must be in an amount reasonably sufficient to secure the contractual obligations including:
 - (1) payment of rent expected to be due over a reasonable period before other enforcement actions can take effect;
 - (2) the construction of any required Permanent Improvements; and
 - (3) the restoration and reclamation of the leased Premises to their condition at the start of the Lease term or some other specified condition.
- (b) The performance bond must be deposited with the Leasing Officer, and made payable only to the Pueblo, and may not be modified without the Pueblo's approval.
- (c) The Lease must specify the conditions under which the Leasing Officer may adjust performance bond requirements to reflect changing conditions, including consultation with and approval by the Governor and Tribal Council before the adjustment.
- (d) The Leasing Officer may require that the Surety provide any supporting documents needed to show that the performance bond will be enforceable, and that the Surety will be able to perform the guaranteed obligations.
- (e) The performance bond must require the Surety to provide notice to the Leasing Officer at least 60 days before canceling a performance bond. This will allow the Leasing Officer to notify the Lessee of its obligation to provide a substitute performance bond and require collection of the bond before the cancellation date. Failure to provide a substitute performance bond is a violation of the Lease.

316 – Insurance

- (a) Except as provided in Section 605 with respect to a Residential Lease, the Lessee shall provide insurance from a nationally accredited insurance company satisfactory to the Pueblo covering all foreseeable risks and interests of the Pueblo including, as appropriate, property, casualty, general and relevant special liabilities, business interruption, and such other risks and interests that may apply, in amounts satisfactory to the Pueblo. The policy shall (1) include the Pueblo and United States as additional insureds on liability coverage, and (2) cover the Pueblo's interest in all Permanent Improvements and other property as they may appear. The forms of coverage shall be satisfactory to the Pueblo.
- (b) As necessary and appropriate, the Leasing Officer shall consult with the Pueblo's insurance broker or agent to determine the appropriate coverages and forms of insurance to be provided by the Lessee to protect the Pueblo's interests, and shall report on such consultations to the Tribal Council with respect to its consideration of a proposed Lease for approval.

317 – Option to Renew

- (a) If the Lease provides for an option to renew, the Lease must specify:
 - (1) the time and manner in which the option must be exercised or is automatically effective;
 - (2) that confirmation of the renewal will be submitted to the Leasing Officer, unless the Lease provides for automatic renewal;
 - (3) whether Pueblo consent to the renewal is required;
 - (4) that the Lessee must provide notice of the renewal to the Leasing Officer and any Sureties and Mortgagees;
 - (5) the additional consideration, if any, that will be due upon the exercise of the option to renew or the start of the renewal term; and
 - (6) any other conditions for renewal (e.g., that the Lessee not be in violation of the Lease at the time of renewal).
- (b) The Leasing Officer will record any renewal of a Lease in the LRO and LTRO.

318 – Subleases, Assignments and Encumbrances

- (a) Except as otherwise expressly allowed by the terms and condition of an approved Lease, any Sublease, Assignment or Leasehold Mortgage shall be valid only if

approved by Tribal Council Resolution and executed by the Governor or other Authorized Official.

- (b) Leases may by their express terms authorize Subleases and Assignments, in whole or part, without approval from the Pueblo, provided the following conditions are met:
- (1) Except for Residential Leases, a copy of the Sublease or Assignment is promptly provided to the Leasing Officer;
 - (2) there is no uncured default under the terms of the Lease or violation of this Leasing Law by the Lessee;
 - (3) any limitations and restrictions on the use of the leased Premises shall apply to any Subtenant or assignee;
 - (4) the proposed assignee or sublessee provides evidence of financial capacity to perform the Lease in accordance with its terms reasonably satisfactory to the Pueblo; and
 - (5) the Lessee shall continue to be responsible for, and shall not be or be deemed released or relieved from, any of its obligation under the Lease.

This Subsection 318(b) shall in no way relieve the Lessee or any sublessee or assignee from performing and carrying out their duties in accordance with all of the terms and conditions of the Lease.

- (c) The Lease, or Sublease thereof, may authorize a Leasehold Mortgage of the leasehold or subleasehold, as the case may be, for the purpose of financing the development and improvement of the leased Premises. Unless otherwise expressly allowed under the terms and conditions of the Lease, the grant of any such Leasehold Mortgage shall require approval by the Tribal Council and a written consent executed by the Governor or other Authorized Official.
- (d) If the lien granted by a Leasehold Mortgage is foreclosed and the approved encumbrancer is the purchaser of the Leasehold, the approved encumbrancer may assign the Lease without approval by the Pueblo, provided that the assignee agrees in writing to be bound by all the terms and conditions of the Lease. If the Lease so provides, the class of such assignees may be limited to tribal members, tribal entities or enterprises, or another specified group of potential assignees. If the purchaser of the Leasehold is other than the approved encumbrancer, the Assignment shall require Tribal Council approval and a written consent executed by the Governor or other Authorized Official, provided that the assignee agrees in writing to be bound by all terms and conditions of the Lease.

319 – Access to Leased Premises

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

320 – Waiver or Modification of Requirements

Any term or provision described in this Chapter 300 may be waived or modified by the Tribal Council if it determines such waiver or modification of the term or provision is in the Best Interest of the Pueblo.

CHAPTER 400 BUSINESS AND PUBLIC PURPOSE LEASES

401 – Designation as Business Lease

As provided in Sections 501 and 601, Leases of Agricultural Land or for residential purposes may be designated as Business Leases by Tribal Council if their purpose is primarily to make a profit or further economic development, rather than typical agricultural leasing or affordable/public housing purposes.

402 – Business Lease Requirements

Certain generally required terms and conditions of a Business Lease are set forth in Chapter 300; provided that particular requirements of Chapter 300 may be waived or modified with respect to a particular Business Lease pursuant to Section 320.

403 – Public Purpose Leases

Public Purpose Leases shall conform to the requirements of Chapter 300, subject to Section 320.

CHAPTER 500 AGRICULTURAL LEASE SPECIFIC PROVISIONS

501 – Leases Covered

(a) In addition to other generally applicable provisions of this Leasing Law, Agricultural Leases and Leases of Agricultural Land designated by Tribal Council as Business Leases pursuant to Subsection (c) are subject to the provisions of this Chapter 500.

This Leasing Law, including this Chapter 500, does not apply to agreements and transactions between tribal members or entities wholly owned by tribal members, with respect to the use of a Tribal Land Assignment held by one of them other than an Agricultural Lease. Such non-Agricultural Lease agreements and transactions are excluded from the scope of this Leasing Law and are subject only to other applicable Tribal Law.

(b) The Tribal Council may designate a Lease of Agricultural Land as a Business Lease, rather than an Agricultural Lease, if it is granted primarily for purposes of revenue generation and economic development, rather than a typical Leasehold Use for use of Agricultural Land.

(c) A Lease of Pueblo Trust or Restricted Land that is subject to a Tribal Land Assignment to a non-tribal member or non-member owned entity is covered by this Leasing Law and shall be granted and administered as an Agricultural Lease in accordance with Section 504 below.

502 – Management Plan

Agricultural Land that is subject to an Agricultural Lease and a Lease of Agricultural Land designated as Business Lease shall be managed in accordance with the goals and objectives of any agricultural management plan developed by the Pueblo and, as applicable, AIARMA.

503 – Tribal Law

Without limitation to the general application of Tribal Law or Section 105 of this Leasing Law, Tribal Laws regulating Agricultural Land, including those relating to land use, environmental protection, historic and cultural preservation, irrigation and water use, grazing or other aspects of the possession and use of Agricultural Land, shall apply to all Agricultural Leases and Leases of Agricultural Land designated as a Business Lease.

504 – Leasing of Agricultural Lands subject to a Tribal Land Assignment

(a) Agricultural Land that is subject to a Tribal Land Assignment may be leased to any person other than a tribal member or member-owned entity only by the Pueblo as the legal owner of the Pueblo Trust or Restricted Land that is subject to the Tribal Land Assignment in accordance with this Leasing Law. Any purported Lease of such Agricultural Lands to any person other than a tribal member or member-owned entity by any person other than the Pueblo shall be null, void and unenforceable.

(b) The Pueblo shall lease any Agricultural Land that is subject to a Tribal Land Assignment only with the prior written consent and approval of the Tribal Land Assignment holder recognized by the Pueblo. The rights, interests and obligations of the Pueblo and Tribal Land Assignment holder in a Lease shall be clearly set forth in the Lease and/or by separate written agreement between the Pueblo and such holders. In no event shall the Pueblo have any obligation to

lease Agricultural Land subject to a Tribal Land Assignment regardless of whether the holder requests or wishes that a Lease be granted for such Agricultural Lands, and the Tribal Council may decline to grant such an Agricultural Lease for any or no reason at its discretion.

- (c) The grant, terms and conditions, and administration of any Lease of Agricultural Land that is subject to a Tribal Land Assignment shall be in accordance with and subject to this Leasing Law and any and all Tribal Laws and policies adopted by the Tribal Council.

505 – Alternate Form of Rental

Section 311 is supplemented, with respect to Agricultural Leases and Leases of Agricultural Land designated as a Business Lease to provide that rent may be based on a share of the agricultural products yielded by the leased Premises, or a percentage of the income to be derived from the sale of such agricultural products.

506 – Term

- (a) Except for a Lease for Agricultural Land that is designated as a Business Lease by the Tribal Council (which may have a term up to the maximum allowed by Section 106), an Agricultural Lease may not exceed ten years, unless a substantial investment is required, in which case the maximum term may be up to 25 years.
- (b) Other than a Lease of Agricultural Land that is designated as a Business Lease by the Tribal Council, an Agricultural Lease may not provide the Lessee with an option to renew, and such an Agricultural Lease may not be renewed or extended by holdover.

507 – Use of Agricultural Land

An Agricultural Lease shall require that farming and grazing operations thereunder be conducted in accordance with reorganized principles of sustained yield management, integrated resource management planning, sound conservation practices, and other community goals as expressed in applicable Tribal Law, policies and agricultural resource management plans. Appropriate stipulations or conservation plans shall be developed and incorporated in all Agricultural Leases.

508 – Crop Insurance

In addition to insurance required by Section 316, an Agricultural Lease may, but is not required, to provide that the Lessee maintain crop insurance and/or other forms of insurance specific to agricultural operations.

**CHAPTER 600
RESIDENTIAL LEASE
SPECIFIC PROVISIONS**

601 – Residential Leases Covered

- (a) Residential Leases covered by this Chapter include ground leases (undeveloped land) and leases of developed land (together with the Permanent Improvements thereon) on Pueblo Trust and Restricted Land. Residential Leases approved under this Leasing Law may authorize the construction or use of:
 - (1) a single family residence;
 - (2) housing for Public Purposes, which may include office and warehouse space necessary to administer programs for housing for Public Purposes; and
 - (3) community development tracts to be used by IPHA for sublease (without further consent or approval) to program beneficiaries.
- (b) Leases for purposes other than a single family residence, affordable or public housing, or any other Pueblo/IPHA housing programs (for example, single family and multi-family residential developments that are for revenue generation and/or economic development purposes rather than affordable public housing, or other governmental housing programs) may be designated as Business Leases by Tribal Council.

602 – Term

- (a) A Residential Lease may be month-to-month or shall be for a stated term.
- (b) As provided by Section 107(d) of this Leasing Law, and the Act, the maximum term of a Residential Lease shall be not more than 75 years, inclusive of any option terms.
- (c) A Residential Lease may provide for one or more option terms, subject to the maximum term provided in Subsection 602(b) above. The terms upon which any option may be exercised shall be clearly stated in a Residential Lease.

603 – Insurance

Except as otherwise required by Tribal Council, IPHA regulations or policies, and/or lender requirements, and notwithstanding Section 316 of this Leasing Law, a Lessee, assignee, or sublessee shall not be required to provide insurance for a Residential Lease.

604 – No appeal Bond Required

Notwithstanding Section 1004 of this Leasing Law, the Tribal Court shall not require an appeal bond for an appeal of a decision on a Residential Lease.

605 – Assignment

Notwithstanding Section 318 of this Leasing Law, a Lessee of a Residential Lease, may assign the Residential Lease without further approval or consent if:

- (a) (1) the assignee is a tribal member, or (2) the assignee is a Leasehold Mortgagee or its designee acquiring the Residential Lease either through foreclosure or by conveyance, and such Mortgagee or designee conveys the Residential Lease to a tribal member, tribal entity or tribally owned corporation;
- (b) the assignee agrees in writing to assume all of the obligations and conditions of the Residential Lease; and
- (c) such assignment is in accordance with Tribal Law and any other applicable law.

606 – Coordination With Other Tribal Law and Practice

- (a) In accordance with the Mortgage Code and Residential Lease Policies previously adopted by the Tribal Council, and subject to any amendments to such Code and Policies, Residential Leases may be granted only to and held by Tribal Members, IPHA, any future tribally designated developer of affordable housing, or a tribally controlled agency or entity.
- (b) In accordance with existing Pueblo practice, Pueblo Trust and Restricted Land may be designated for use and administration of IPHA for housing purposes without any formal Lease of such Lands to IPHA; provided that any Lease to an individual Tribal Member of a portion of such Lands shall be subject to this Leasing Law.

CHAPTER 700
WIND AND SOLAR LEASES
(WEELs & WSR Leases)
SPECIFIC PROVISIONS

701 – WEELs and WSR Leases Covered

- (a) This Chapter contains provisions specifically applicable to WEELs and WSR Leases. In the event of conflicts between this Chapter and other portions of this

Leasing Law concerning WEELs and WSR Leases, this Chapter will control as to any conflicting provision, but WEELs and WSR Leases will remain subject to the remainder of this Leasing Law.

- (b) If the generation of electricity is solely to support a use of Pueblo Trust or Restricted Land covered by an approved Business Lease, Agricultural Lease, Residential Lease or Public Purpose Lease, then the installation, operation, and maintenance of instrumentation, facilities, and associated infrastructure for such purpose shall be governed by Chapters 300–600, as appropriate, and this Chapter 700 shall not apply to such Leases.

702 – Leasehold Use’s for which a WEEL or WSR Lease is Required

- (a) Anyone other than the Pueblo or its instrumentalities and enterprises seeking to possess Pueblo Trust or Restricted Land to conduct activities associated with the evaluation of wind resources must obtain a WEEL, except that a WEEL is not required if a limited use of Pueblo Trust or Restricted Land is authorized by a Permit.
- (b) Except as provided at Subsection 701(b), anyone other than the Pueblo or its instrumentalities and enterprises seeking to possess Pueblo Trust or Restricted Land to conduct activities associated with the development of wind and/or solar resources must obtain a WSR Lease.

703 – Purpose of a WEEL

A WEEL is a short-term Lease for the purpose of evaluating wind resources. The Lessee may use information collected under the WEEL to assess the potential for wind energy technology to use in developing the energy resource potential of the leased Premises.

704 – Term of a WEEL

- (a) A WEEL must provide for a definite term, state if there is any option to renew and, if so, provide for a definite period for the renewal term. WEELs are for limited purposes of wind resource evaluation and therefore may have:
 - (1) an initial term no longer than 3 years; and
 - (2) a renewal term not to exceed 3 years.
- (b) The exercise of the option to renew must be in writing and the WEEL must specify:
 - (1) the time and manner by which the option must be exercised, or if it is automatically effective;

- (2) whether further consent or approval is required; and
- (3) the additional consideration, if any, due upon exercise of the option to renew or start of the renewal term.

Unless the renewal is automatic, the Leasing Officer shall provide copies of the renewal documentation to the LTRO and record them in the LRO.

705 – Permanent Improvements

- (a) A WEEL anticipates the installation of facilities and associated infrastructure of a size and magnitude necessary for evaluation of wind resource capacity and potential effects of wind resource development that are considered Permanent Improvements.
- (b) The proposed Lessee of a WEEL will, before completion of the negotiation of the WEEL and submission for Tribal Council review and approval, provide to the Leasing Officer:
 - (1) an equipment installation plan;
 - (2) a restoration and reclamation plan; and
 - (3) documents that demonstrate the technical capability of the proposed Lessee or its agent to construct, operate, maintain, and terminate the proposed Leasehold Use's evaluation phase and the proposed Lessee's ability to successfully design, construct, or obtain the funding for a project similar to the proposed Leasehold Use's development phase if pursued and approved.
- (c) If any of the following changes are made to the equipment installation plan, the Pueblo must approve the revised plan and provide a copy to the BIA:
 - (1) location of Permanent Improvements;
 - (2) type of Permanent Improvements; or
 - (3) delay of 90 days or more in any segment of the evaluation phase.

706 – Ownership and Disposition of Permanent Improvements

- (a) A WEEL must specify who will own any Permanent Improvement the Lessee installs during the Lease term. In addition, the WEEL must provide whether any Permanent Improvements that the Lessee installs:

- (1) will remain on the Premises upon expiration, termination, or cancellation of the WEEL (whether or not the WEEL is followed by a WSR Lease), in a condition satisfactory to the Pueblo;
 - (2) may be conveyed to the Pueblo during the WEEL term and under what conditions the Permanent Improvements may be conveyed;
 - (3) will be removed within a time period specified in a WEEL, at the Lessee's expense, with the leased Premises to be restored as closely as possible to their condition before installation of the Permanent Improvements; or
 - (4) will be disposed of by other specified means.
- (b) A WEEL that requires the Lessee to remove the Permanent Improvements must also provide the Pueblo with an option to take possession and title to the Permanent Improvements, if they are not removed within the specified time period, and without limitation to the Pueblo's ability to recover against any bond.

707 – Due Diligence Regarding Installation of Permanent Improvements

- (a) A WEEL must include due diligence provisions that require the Lessee to:
- (1) install testing and monitoring facilities within 12 months after the effective date of the WEEL (or another period designated in the WEEL), and consistent with the plan of development; and
 - (2) if installation does not occur, or is not expected within the time period allowed by Subsection (1) or the WEEL, provide the Leasing Officer with an explanation of good cause for any delay, the estimated completion date for installation of the facilities, and evidence of progress concerning installation.
- (b) Failure of the Lessee to comply with the due diligence requirements of the WEEL is a violation of the WEEL and may lead to:
- (1) cancellation of the WEEL under Sections 903 and 905; and
 - (2) application of the transfer of ownership requirement for energy resource information collected under the WEEL to the Pueblo pursuant to Section 708.

708 – Ownership of Energy Resource Information

- (a) The WEEL must specify the ownership of any energy resource information the Lessee obtains during the WEEL term.
- (b) Unless otherwise specified in the WEEL, the energy resource information that the Lessee obtains during the term of the WEEL becomes the property of the Pueblo at the expiration, termination, or cancellation of the WEEL or upon failure by the

Lessee to diligently install testing and monitoring equipment on the leased Premises in accordance with Section 707.

709 – Incorporation of WEEL Analyses Into WSR Analyses

Any analyses a Lessee uses to bring a WEEL Leasehold Use into compliance with applicable laws, ordinances, rules, and regulations, including those under Section 105 and any other legal requirements, may be incorporated by reference, as appropriate into a proposed WSR Lease.

710 – WSR Lease Option

A WEEL may provide for an option period following expiration of the WEEL term during which the Lessee and Pueblo may enter into a WSR Lease. Unless the WSR Lease or the principal terms thereof are agreed and approved by the Tribal Council at the time of WEEL approval, the WSR Lease requires the separate approval of the Tribal Council.

711 – No Valuation or Bond Required

Unless the terms of a WEEL approved by Tribal Council provide otherwise, the Lessee is not required to provide a rental valuation of the Premises or a performance bond for a WEEL.

712 – Purpose of WSR Lease

A WSR Lease authorizes a Lessee to possess the leased Premises to conduct activity related to the installation, operation and maintenance of wind and/or solar energy generation projects, including facilities and infrastructure associated with the generation, transmission and storage of electricity and other associated activities. A Lease for biomass or waste-to-energy purposes shall be treated as a Business Lease under this Leasing Law.

713 – WEEL Not Required Prior to WSR

Obtaining a WEEL is not required as a precondition to a WSR Lease, and with Tribal Council approval the Pueblo and a Lessee may directly enter into a WSR Lease without having had a WEEL.

714 – Responsibilities of Lessee of WSR Lease

Unless a WSR Lease expressly provides otherwise, the Lessee shall be responsible for evaluating the leased Premises for suitability; purchasing, installing, operating, and maintaining WSR equipment; negotiating power purchase agreements; and arranging for electricity transmission.

715 – Information and Documentation Required from Prospective Lessee of a WSR Lease

- (a) Prior to submission of a WSR Lease to the Tribal Council for approval, the proposed Lease shall submit to the Leasing Officer documents that demonstrate the technical capability of the proposed Lessee or its agent to construct, operate, maintain, and terminate the contemplated Leasehold Use, and the proposed Lessee's ability to successfully design, construct, and obtain funding for the contemplated Leasehold Use.
- (b) The proposed Lessee shall also provide to the Leasing Officer for incorporation in the WSR Lease, by reference or otherwise:
 - (1) a resource development plan that describes the type and location of any Permanent Improvements the proposed Lessee plans to install on the Premises and a schedule showing the tentative commencement and completion dates for these Permanent Improvements; and
 - (2) a restoration and reclamation plan for the Premises upon expiration, termination or cancellation of the WSR Lease.

716 – Permanent Improvements Installed Under a WSR Lease

A WSR Lease shall provide for the installation of facilities and associated infrastructure of a size and magnitude necessary for the generation and delivery of electricity as contemplated by the Leasehold Use and in accordance with the resource development plan incorporated in the WSR Lease pursuant to Subsection 715 (b)(1). All such facilities and infrastructure shall be considered Permanent Improvements.

717 – Ownership of Permanent Improvements Installed under a WSR Lease

- (a) A WSR must specify who will own any Permanent Improvement that the Lessee installs during the WSR Lease term, and may specify under what conditions, if any, such Permanent Improvements may be conveyed to the Pueblo during such WSR Lease term. In addition, the WSR Lease must provide whether each such specific Permanent Improvement will:
 - (1) remain on the Premises upon expiration, termination, or cancellation of the WSR Lease in a condition satisfactory to the Pueblo and become the property of the Pueblo;
 - (2) be removed within a time period specified in a WSR Lease, at the Lessee's expense, with the leased Premises to be restored as closely as possible to their condition before installation of the Permanent Improvements; or
 - (3) be disposed of by other specified means.

- (b) A WSR Lease that requires the Lessee to remove the Permanent Improvements must also provide the Pueblo with an option to take possession and title to the Permanent Improvements if not timely removed, and to charge the cost of removal and restoration to any performance bond held by the Pueblo or recover such cost from Lessee.

718 – Due Diligence of WSR Lease Lessee Concerning Permanent Improvements

- (a) A WSR Lease shall include due diligence requirements that require the Lessee to:
 - (1) commence installation of energy facilities within 2 years after the effective date of the WSR Lease (or consistent with a timeframe stated in the applicable resource development plan incorporated in the WSR Lease);
 - (2) if installation does not occur, or is not expected to be completed within the timeframe specified in the WSR Lease, provide the Leasing Officer with an explanation of good cause as to the nature of any delay, the anticipated date of installation of the facilities, and evidence of progress toward completion of installation, which information and evidence the Leasing Officer shall share with the Governor and Tribal Council;
 - (3) maintain all on-site electrical generation equipment, facilities and related infrastructure in accordance with the design standards in the resource development plan and best industry practice; and
 - (4) repair, place into service, or remove from the Premises, within a time period specified in the WSR Lease, any idle, improperly functioning, or abandoned equipment or facilities that have been for a continuous period specified in the WSR Lease (unless due to planned suspension of operations, for example, for grid operations or during bird migration season).
- (b) Failure of the Lessee to comply with the due diligence requirements of the WSR Lease is a violation thereof and may lead to the cancellation of the WSR Lease under Section 903 and 905.

719 – Compensation Reviews and Adjustments

The compensation to the Pueblo under a WSR Lease may be reviewed and adjusted at such times and on such terms as may be specified in the WSR Lease. If a Tribal Council approved WSR Lease so provides, no periodic review of the adequacy of compensation or adjustment is required.

720 – Performance Bond

- (a) Unless waived by Tribal Council Authorization or the terms of a Tribal Council approved WSR Lease, the Lessee of a WSR Lease must provide a performance

bond. The performance bond must be in an amount sufficient to secure Lessee's obligations under the WSR Lease, including:

- (1) the amount of the expected maximum annual payment of rent and other compensation to the Pueblo;
 - (2) the cost of installing any required Permanent Improvements; and
 - (3) the cost of removing any Permanent Improvements, which the WSR Lease requires to be removed, and to restore and reclaim the leased Premises, as and if required by the WSR Lease.
- (b) The WSR lease must specify the conditions upon which any adjustment in the amount of the bond may be made to reflect changing conditions.
- (c) The Lessee shall cause its Surety to provide any supporting documentation needed to show the bond is enforceable and the Surety is bound to perform under it.
- (d) The performance bond shall require the Surety to provide notice to the Lessee and the Pueblo at least 60 days before any cancellation of the bond in order for the Lessee to provide an acceptable substitute performance bond. Lessee's failure to timely provide a satisfactory performance bond is a violation of the WSR Lease.

CHAPTER 800 RECORDING AND MANAGEMENT

801 – Recording

The Leasing Officer shall promptly, following receipt of a Lease, Amendment, Assignment, Sublease or Leasehold Mortgage duly approved and executed pursuant to this Leasing Law, deliver such document to the BIA LTRO for filing and file such document with the Pueblo's LRO.

802 – Delivery of Documentation of Direct Lease Payment to the BIA

With respect to any rental or other payments made directly to the Pueblo under the terms of a Lease, the Leasing Officer shall deliver to the BIA documentation of such Lease payments sufficient to enable the Secretary to discharge the trust responsibility of the United States in accordance with the Act.

803 – Lease Management

The Leasing Officer shall manage and oversee all Leases granted under this Leasing Law. The Leasing Officer shall institute a Lease management plan that employs recognized real estate

management practices, and addresses accounting, collections, monitoring, enforcement, relief and remedies with respect to all active Leases. The Leasing Officer shall provide to the Governor and Tribal Council a report on his or her Lease management activities not less often than every six months.

804 – Accounting

- (a) The Leasing Officer shall establish and maintain an accounting system for Leases that generates invoices in advance of due dates, accounts for and confirms the proper computation of payments, and monitors any rental adjustments to be made under the terms and conditions of Leases and ensures that adjustments are made as due.
- (b) The Pueblo's Lease accounting system shall include the following information: the name of the Lessee, Lease identification number, Premises leased, due dates for rent and other payments, payments made, late charges, collection and cancellation activity, balance outstanding and due, and cumulative payments made.

805 – Monitoring and Investigation of Compliance

- (a) The Leasing Officer may enter the leased Premises at any reasonable time, upon reasonable notice, and consistent with any notice requirements under applicable Tribal Law and applicable Lease documents, to protect the interests of the Pueblo and to determine if the Lessee is in compliance with the requirements of the Lease.
- (b) If the Leasing Officer becomes aware that a specific Lease violation has occurred, the Leasing Officer will promptly initiate an appropriate investigation. The Leasing Officer, upon notice to and authorization from the Governor and Tribal Council, may also provide notice to the BIA pursuant to 25 U.S.C. § 415 (h)(7)(B)

CHAPTER 900 ENFORCEMENT

901 – Negotiated Remedies

- (a) A Lease may provide either or both parties with negotiated remedies in the event of a Lease violation, including, but not limited to, the power to terminate the Lease.
- (b) The parties must notify any Surety or Mortgagee of any violation that may result in termination or cancellation of a Lease.

- (c) Negotiated remedies may apply in addition to, or instead of, the cancellation remedy available to the Leasing Officer, as specified in the Lease. The Pueblo may request BIA's assistance in enforcing negotiated remedies.
- (d) A Lease may provide that Lease violations will be addressed by a process established by the Pueblo, and that Lease disputes will be resolved by the Tribal Court, any other court of competent jurisdiction if approved by the Tribal Council, by the Tribal Council, or through an alternative dispute resolution method. The Pueblo shall be bound to any dispute resolution process to which it agrees in the Lease or by separate agreement, but BIA may not be bound by decisions made in such forums.

902 – Response to Lease Violations

- (a) In the absence of actions or proceedings described in Section 901, or if the Pueblo has not agreed to any such actions or proceedings, the Leasing Officer will follow the procedures in paragraphs (b) and (c) of this section.
- (b) If the Leasing Officer determines there has been a violation of the terms and conditions of a Lease, other than a violation of payment provisions covered by paragraph (c) of this section, he or she will promptly send the Lessee and any Surety and Mortgagee a notice of violation by certified mail, return receipt requested.
 - (1) The Leasing Officer will send a copy of the notice of violation to the Governor and Tribal Council.
 - (2) The notice of violation will advise the Lessee that, within 10 business days of the receipt of a notice of violation, the Lessee must:
 - (i) Cure the violation and notify the Leasing Officer, the Governor, and the Tribal Council in writing that the violation has been cured; or
 - (ii) Dispute the Leasing Officer's determination that a violation has occurred;
or
 - (iii) Request additional time to cure the violation.
 - (3) The notice of violation may order the Lessee to cease operations under the Lease.
- (c) A Lessee's failure to pay compensation in the time and manner required by a Lease is a violation of the Lease, and the Leasing Officer will issue a notice of violation in accordance with this paragraph.

- (1) The Leasing Officer will send the Lessees and any Surety and Mortgagee a notice of violation by certified mail, return receipt requested:
 - (i) Promptly following the date on which the payment was due, if the Lease requires that payments be made to the Pueblo; or
 - (ii) Promptly following the date on which the Pueblo receives actual notice of non-payment from the Secretary, if the Lease provides for payment to the Secretary.
- (2) The Leasing Officer will send a copy of the notice of violation to the Governor and Tribal Council.
- (3) The notice of violation will require the Lessee to provide adequate proof of payment.
- (d) The Lessee and its Sureties will continue to be responsible for the obligations in the Lease until the Lease expires, or is terminated or cancelled.

903 – Failure to Cure

- (a) If the Lessee does not cure a violation of a Lease within the required time period, or provide adequate proof of payment as required in the notice of violation, the Leasing Officer will consult with the Governor and Tribal Council, and determine whether:
 - (1) The Pueblo should cancel the Lease;
 - (2) The Pueblo wishes to invoke any remedies available to it under the Lease;
 - (3) The Pueblo should invoke other remedies available under the Lease or applicable law, including collection on any available performance bond or, for failure to pay compensation, referral of the debt to BIA with a request for further referral to the U.S. Department of the Treasury for collection; or
 - (4) The Lessee should be granted additional time in which to cure the violation.
- (b) Following consultation with the Governor and Tribal Council, the Leasing Officer may take action to recover unpaid compensation and any associated late payment charges.
 - (1) The Pueblo does not have to cancel the Lease or give any further notice to the Lessee before taking action to recover unpaid compensation.
 - (2) The Pueblo may still take action to recover any unpaid compensation if it cancels the Lease.

- (c) If the Pueblo decides to cancel the Lease, the Leasing Officer will send the Lessee and any Surety and Mortgagee a cancellation letter by certified mail, return receipt requested, within 5 business days of the decision. The Leasing Officer will send a copy of the cancellation letter to the Governor and Tribal Council. The cancellation letter will:
- (1) Explain the grounds for cancellation;
 - (2) If applicable, notify the Lessee of the amount of any unpaid compensation or late payment charges due under the Lease;
 - (3) Notify the Lessee of the Lessee's right to appeal under Chapter 1000 of this chapter, including the possibility that the Tribal Court may require the Lessee to post an appeal bond;
 - (4) Order the Lessee to vacate the property within 31 days of the date of receipt of the cancellation letter, if an appeal is not filed by that time; and
 - (5) Order the Lessee to take any other action the Leasing Officer deems necessary to protect the Pueblo.
- (d) The Pueblo may invoke any other remedies available to it under the Lease, including collecting on any available performance bond, and the Pueblo may pursue any available remedies under Tribal Law.

904 – Late Payment Charges and Special Fees

- (a) Late payment charges will apply as specified in the Lease. The failure to pay these amounts will be treated as a Lease violation.
- (b) The Leasing Officer may assess the following special fees to cover administrative costs incurred by the Pueblo or the United States in the collection of the debt, if compensation is not paid in the time and manner required, in addition to the late payment charges that must be paid to the Pueblo under the Lease:

The Lessee will pay:	For:
(1) \$50.00	Any dishonored check
(2) \$15.00	Processing of each notice or demand letter
(3) 18 percent of balance due	Treasury processing charge following referral for collection of delinquent debt that is accepted by the BIA and Treasury

905 – Cancellation

- (a) A cancellation involving a Lease pursuant to this Leasing Law will not be effective until 31 days after the Lessee receives a cancellation letter from the

Leasing Officer, or 41 days from the date he or she mailed the letter, whichever is earlier.

- (b) If an appeal is filed, the cancellation decision will not be effective until such time as a ruling is made on appeal, unless the cancellation is made immediately effective under Chapter 1000 of this Leasing Law. During the time a cancellation decision is ineffective, the Lessee must continue to pay compensation and comply with the other terms of the Lease.

906 – Recovery of Possession

If a Lessee remains in possession after the expiration, termination, or cancellation of a Lease, the Pueblo may treat the unauthorized possession as a trespass under applicable law. Unless the Pueblo and Lessee are engaged in good faith negotiations with the holdover Lessee to obtain a new Lease, the Pueblo may take action to recover possession, and pursue any additional remedies available under applicable law, such as a forcible entry and detainer action.

907 – Harmful or Illegal Activities

In addition to the rights and remedies provided in a Lease or this Chapter 900, the Pueblo may seek immediate mandatory and injunctive relief to prevent the occurrence or continuation of any harmful or illegal activities on the Premises.

908 – Abandonment

If a Lessee abandons the leased Premises, the Pueblo will treat the abandonment as a violation of the Lease. The Lease may specify a period of non-use after which the Lease Premises will be considered abandoned.

909 – Consistency with Mortgage Code

The Pueblo's enforcement actions pursuant to this Chapter 900 shall be taken in a manner consistent with any Mortgage Code of the Pueblo in force from time to time and any agreement that the Pueblo may enter into with any Mortgagee or class of Mortgagees.

CHAPTER 1000 APPEALS

1001 – Appeals

- (a) Prior to appealing any determination of the Leasing Officer regarding the interpretation enforcement or cancellation of a Lease, the Lessee or other interested party shall provide written notice of such person's intent to appeal to the Governor and Tribal Council within ten (10) days of the Leasing Officer's determination that is in dispute. The notice of intent to appeal shall state the basis/reason for appeal and the remedy being sought. The Governor and Tribal

Council shall have an opportunity to informally resolve such dispute to the mutual satisfaction of such person and the Pueblo for a period of fifteen (15) days following the Governor's and Tribal Council's receipt of such notice.

- (b) If the dispute is not informally resolved within the fifteen day period provided by Subsection (a), the Lessee or other interested party may appeal a determination of the Leasing Officer, regarding the interpretation, enforcement or cancellation of a Lease, within thirty (30) days of notification the original determination by the Leasing Officer. Appeals may be filed with the Tribal Court. Such appeals shall be initiated by a written petition 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.
- (c) An appeal of a Tribal Court order or decision may be filed with the Isleta Appellate Court subject to and in accordance with the Pueblo's Rules of Appellate Procedure.
- (d) The decision of the Isleta Appellate Court, or the decision of the Tribal Court if an appeal is not validly and timely filed with the Isleta Appellate Court, shall be conclusive and binding on all parties.

1002 – Scope of Review

The Tribal Court's scope of review, and any appeal of the Tribal Court's decision to the Isleta Appellate Court, shall be limited to whether the determination of the Leasing Officer was arbitrary, capricious, or an abuse of discretion; not supported by substantial evidence in the record; or otherwise, not in accordance with applicable law.

1003 – No Appeal of Leasing Determinations

This Leasing Law is not intended to, and does not, create an individual right to appeal tribal decisions resulting in the Pueblo declining to enter into a Lease with individuals or entities seeking the possession and use of Pueblo Trust or Restricted Lands, which decisions are within the sole discretion of the Pueblo.

1004 – Appeal Bond

- (a) Except as provided in paragraph (b) of this section or Section 604 of this Leasing Law, an appeal bond may be required by the Tribal Court, at its discretion, to appeal from Lease cancellation decisions; provided that the amount of any such bond shall reasonably estimate any damage to the Pueblo from deferring any action pending appeal.
- (b) The Lessee may not appeal the appeal bond decision to the Isleta Appellate Court. The Lessee may, however, request that the Tribal Court reconsider the appeal bond decision, based on extraordinary circumstances. Any reconsideration

decision by the Tribal Court on the requirement for and amount of the appeal bond is final and conclusive.

CHAPTER 1100 ENVIRONMENTAL REVIEW

1101 – Purpose of Environmental Review

The purpose of this Chapter is to ensure that prior to approval of any Lease pursuant to this Leasing Law, a process is followed that:

- (a) identifies and evaluates any Significant Effects on the Environment of a proposed Leasehold Use;
- (b) ensures that the Public is informed of, and has a reasonable opportunity to comment on, any the environmental impact of the proposed Leasehold Use identified by the Pueblo; and
- (c) the Pueblo provides responses to relevant and substantive public comments on any such impacts before the Pueblo approves the Lease.

1102 – Environmental Review Required; Exceptions and Associated Lease Reviews

- (a) The Responsible Official must ensure that an Environmental Review statement is prepared for all proposed Leases, except those:
 - (1) That will not result in any significant change in use of the leased Pueblo Trust or Restricted Lands;
 - (2) That are covered by an earlier Environmental Review statement prepared not more than twenty-four months earlier for a substantially identical Leasehold Use on the same parcel as determined and documented by the Responsible Official;
 - (3) That are covered by an environmental review conducted by IPHA (the Isleta Pueblo Housing Authority) or another Responsible Entity as defined under 24 C.F.R. Part 58 with respect to Residential Leases; or
 - (4) Exempted under Section 1105.
- (b) A single Environmental Review may be conducted for all Leases contemplated to be granted on an identified parcel or tract of Pueblo Trust or Restricted Land (e.g. development of a shopping center with separate direct Leases with each tenant, a housing development, or the leasing of certain Agricultural Lands subject to several different Tribal Land assignments under separate Leases). In the event

that the environmental conditions materially change after the original Environmental Review is completed and before all contemplated Leases are granted, the Environmental Review shall be reopened and updated to address such material change in accordance with the procedures described in Chapter 1100.

1103– Public Notice and Comment

- (a) The Responsible Official shall prepare an Environmental Review statement for any Leasehold Use not exempted by Section 1103 in which such Responsible Official:
 - (1) identifies any Significant Effects on the Environment of the proposed Leasehold Use on the environment,
 - (2) considers whether there are any commercially reasonable actions that may be taken to mitigate such significant effects on the environment as part of the proposed Leasehold Use, and
 - (3) determines whether any such actions should be recommended to the Tribal Council as a condition of approval of a Lease.
- (b) A notice of availability of the completed Environmental Review statement shall be (a) published in a newspaper of general circulation to the identified Public, or (2) disseminated in such other manner or by such other means as may reasonably be expected to provide notice of such availability to the Public.
- (c) The Environmental Review notice shall notify the Public that (A) a Lease is under consideration for approval pursuant to this Leasing Law, (B) a copy of the Environmental Review statement is available to any member of the Public requesting it without charge, and (C) the Public is being provided with a reasonable opportunity to comment on any Significant Effects on the Environment a proposed Leasehold Use may have prior to approval or disapproval of such Lease under this Leasing Law.
- (d) The notice shall invite comments on the Environmental Review statement during a period not less than thirty (30) days following such publication or dissemination. The Responsible Official shall consider all comments received from the Public, shall provide a response to all relevant and substantive Public comments within thirty (30) days of closure of the comment period and prior to approving the Lease.

1104 – Federal Environmental Review

- (a) A Responsible Official may rely upon an environmental review in accordance with NEPA by a federal agency, or, with respect to a Residential Lease, a tribal entity in accordance with 24 C.F.R. Part 58, involved in a Leasehold Use in lieu

of conducting an independent tribal Environmental Review process under this Leasing Law for such Leasehold Use.

1105 – Conclusion and Recommendations

Upon review of the environmental effects of a Leasehold Use by the Responsible Official, publication of the Environmental Review statement, acceptance of Public comments and delivery of the Pueblo's response to such comments, the Environmental Review statement process shall conclude and the Responsible Official shall make such recommendation that the Responsible Official determines appropriate concerning the approval, disapproval or conditioning of a Lease, to the Tribal Council for its consideration. The determination of the Tribal Council with respect to any such recommendation, as reflected in its approval or disapproval of a proposed Lease shall be final and non-appealable.

**CHAPTER 1200
AMENDMENTS; SEVERABILITY**

1201 – Amendments

The Tribal Council may amend this Leasing Law without the Secretary's approval, so long as the amendment is for clarification, administrative convenience, or similar technical purposes, and is consistent with federal and tribal law. Any substantive amendment to the terms of this Leasing Law must be submitted to and approved by or on behalf of the Secretary.

1202 – Severability

If a court of competent jurisdiction determines a provision in this Leasing Law is invalid, void or unenforceable, the remainder shall remain in full force and effect without regard to the stricken portion.

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Part 52

Real Estate Services

Chapter 13

Approval of Tribal Leasing Regulations under the HEARTH Act

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- 1.1 Purpose.** This chapter establishes Indian Affairs (IA) policy for a consistent and objective review and approval process for Tribal leasing regulations under the Helping Expedite and Advance Responsible Tribal Homeownership Act of 2012 (HEARTH Act or Act).
- 1.2 Scope.** This policy applies to all employees of the Bureau of Indian Affairs (BIA) involved in the review and approval process for Tribal leasing regulations submitted under the Act. After a Tribe's leasing regulations have been approved by the Secretary of the Interior (Secretary), or the Secretary's designee, this policy and its criteria must also apply to any substantive amendments to those regulations.
- 1.3 Policy.** It is the policy of Indian Affairs (IA) to effectively provide consistent and objective review/approval of Tribal leasing regulations in compliance with all applicable Federal laws, regulations and Departmental policies and procedures. In support of Tribal sovereignty and self-determination, Secretarial approval of Tribal leasing regulations under the HEARTH Act empowers Tribal decision-making authority and management of long-term leasing on Tribal lands which, in turn, can facilitate related economic development, expansion of housing, and other services. The HEARTH Act is only applicable to the surface estate of Tribal trust and restricted land and does not apply to lands held in trust for individual Indian landowners.
- 1.4 Authority.**
- A. Statutes and Regulations.**
- 1) 25 U.S.C. § 415, Leases of Restricted Lands
 - 2) 25 U.S.C. § 415(h), Tribal approval of leases; Public Law 112-151, "Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012" or the "HEARTH Act of 2012"
 - 3) 25 CFR 162, Leases and Permits, Subparts B-Agriculture; C-Residential; D-Business; and E-Wind and Solar Resource Leases
- B. Guidance.**
- 1) 209 Department Manuals (DM), Chapter 8: Assistant Secretary-Indian Affairs
 - 2) BIA HEARTH Act Checklist is utilized in its review of Tribal leasing regulations or the condensed version prepared with Tribes in mind.
- 1.5 Responsibilities.**

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- A. **Secretary, Department the Interior (DOI)** is responsible for the final round of review and approval or disapproval of any Tribal leasing regulations submitted to BIA under the HEARTH Act within 120 calendar days after the date on which the final Tribal regulations are submitted to the Secretary; Providing a written response to the Tribe on the final decisions of approval or disapproval. If the leasing regulation is determined to be disapproved the written notification must identify the basis for disapproval; Pursuant to 209 DM 8, the Secretary may delegate the responsibility to the Assistant Secretary-Indian Affairs.
- B. **Assistant Secretary – Indian Affairs (AS-IA)** is responsible for the final review and approval or disapproval of any Tribal leasing regulations submitted to BIA under the HEARTH Act within 120 days of the date on which the final tribal regulations are submitted.
- C. **Director, BIA (DBIA)** is responsible for developing national policy affecting Indian trust resources and ensuring a consistent and objective review process for (and the subsequent Secretarial approval of) Tribal leasing regulations submitted to the BIA under the HEARTH Act.
- D. **Deputy Bureau Director (DBD), Field Operations** is responsible for executive leadership, oversight, direction, and monitoring of the Regional Directors to include periodic program reviews of field operations and provide policy and technical assistance to field offices and Tribes.
- E. **Deputy Bureau Director - Office of Trust Services (DBD-TS)** is responsible for activities associated with management and protection of trust and restricted lands including providing oversight of the activities associated with Tribal leasing regulations submitted under the HEARTH Act and the receipt and acknowledgment of Tribal leasing regulations received for review under the HEARTH Act.
- F. **Chief, Division of Real Estate Services (DRES)** is responsible for the protection and sound management of the resources held in trust by the United States for Indian Tribes, including the implementation of a consistent and objective review and approval process for Tribal leasing regulations submitted under the HEARTH Act.
- G. **Central Office – DRES (CO-DRES)** is responsible for the review of Tribes' proposed leasing regulations to ensure procedural accuracy and sound realty principles, and for the coordination of all HEARTH Act regulations from receipt, distribution to the regions, and CO-SOL reporting, providing technical support to regions, and records management.

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- H. **Regional Directors** are responsible for the protection and sound management of the resources held in trust by the United States for Indian Tribes and carrying out policy as directed, and ensuring the implementation of policy either directly or via Agency Superintendents.
- I. **HEARTH Act Coordinator (HAC)** is responsible for the review of Tribes' proposed leasing regulations to ensure procedural accuracy and sound realty principles, and for the coordination of all HEARTH Act regulations from receipt, distribution to the regions, and CO-SOL reporting, providing technical support to regions, and records management.
- J. **Central Office – Office of the Solicitor (CO-SOL)** is responsible for the review of proposed leasing regulations to ensure legal sufficiency in accordance with and pursuant to the Act.
- K. **Regional Realty Officer (RRO)** are responsible for the review of a Tribe's proposed leasing regulations to ensure procedural accuracy and sound realty principles.
- L. **BIA Personnel** are responsible for following this and any related policy.

1.6 Definitions.

Many terms in this manual have specific definitions. For those terms not listed herein, within Sections 1.8A(1) and 1.8A(2), additional definitions may be found at 25 CFR 162.003 and 162.101.

- A. **“Applicant”** means the Tribe seeking review and approval of Tribal leasing regulations under the HEARTH Act.
- B. **“Decision”** means a Tribe's proposed leasing regulations that have been submitted, received, reviewed, then is determined to be approved, disapproved, or incomplete.
- C. **“External (Tribal) Conference Call”** means a call with the Tribal Point of Contact that includes the HAC, CO-SOL and RRO, to discuss any requirements and recommendations of the Tribe's proposed leasing regulations.
- D. **“Executed (Final) Form”** means the Final Tribal leasing regulations package submitted for Decision as discussed in Section 1.7.E.
- E. **“Internal Conference Call”** means an internal call with the HAC, CO-SOL, and RRO, after the HAC, CO-SOL, and the RRO or Region have completed the initial

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review to reach consensus upon any required or suggested modifications to the Tribe's proposed leasing regulations.

- F. **"Incomplete"** means a Tribe's proposed leasing regulations submitted to Central Office *does not* include one or more of the following: a leasing regulation certified by the appropriate tribal authority, a cover letter, and a fully executed Tribal Resolution which is dated on or after the date of the regulations.
- G. **"120-Day Review Period"** means the 120-day review period of a Tribe's leasing regulation(s) to be conducted by the HAC, CO-SOL and RRO and begins when the proposed Regulations are received in the BIA's Central Office in Washington, D.C. and date stamped by the DBD-TS.
- H. **"Submission"** means a Tribe's proposed Tribal Leasing Regulations submitted to the BIA's Central Office in Washington, DC, for review and approval under the HEARTH Act.
- I. **"Record"** means each lease document will be encoded into the Trust Asset and Accounting Management System (TAAMS) and forwarded to the LTRO to record.
- J. **"Required Comments"** means changes made to the Tribe's proposed leasing regulations, either deleted or modified, which are required in order to be in compliance with statutory provisions of the HEARTH Act.
- K. **"Review Process"** means the DBD-TS notifies the HAC that a Tribe has submitted proposed leasing regulations to establish its own regulations as provided by the HEARTH Act.
- L. **"Recommended Comments"** means changes recommended by Reviewers to be made to the tribe's proposed leasing regulations which are recommended for reasons of clarity and consistence with other provisions in the regulations.
- M. **"Tribe's Point of Contact"** means an individual designated by the Tribe as their principle point of contact in the exchange of information between the BIA, Solicitors Office and the HAC in the review and processing of a Tribe's proposed leasing regulations.
- N. **"Unofficial"** means the initial submission of the leasing regulations are in the form of a copy or unsigned.

1.7 Process of Approving and Denying Tribal Leasing Regulations.

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A. Submission

- 1) The Tribe must submit a complete HEARTH Act Leasing Regulation package to the BIA Central Office, Office of Trust Services, DBD-TS. If determined to be a complete package, then CO-DRES will proceed with Steps 1.7 A. through 1.7 E. of the HEARTH Act Process in this manual. The Tribe should not submit to the Agency or Region.
 - a. An original cover letter that includes: 1) A request for review and approval of the regulations under the HEARTH Act; 2) Contact information for parties, with decision-making authority regarding the regulations, i.e., Tribal officers, legal counsel; and 3) Any special circumstances regarding submission of the regulations (an urgent need for approval; a unique provision included in the regulations, etc.).
 - b. Two originals of the regulations, approved by the Tribe and signed by the authorized Tribal parties, and a Tribal Resolution authorizing the regulation must be an original and not a copy. If the Tribe submits a copy or the submission is incomplete, it will be considered as unofficial and not be reviewed or forwarded for Decision until an original fully executed regulation and Tribal Resolution is received.
 - c. Mailed to: Department of the Interior, Bureau of Indian Affairs, Office of Trust Services, Deputy Bureau Director—Trust Services, Attention: Division of Real Estate Services, 1849 C Street, NW, MS 4620-MIB, Washington, D.C. 20240.
 - d. Concurrently, the HAC will request the Tribe to email a PDF and Word version of the submission to the HAC.
- 2) The Initial Submission should not be emailed, mailed, or hand delivered to the Bureau's Regional Office or Agency. If this should occur, the Region or Agency must immediately advise the Tribe to resubmit to DBD-TS. This is critical as the 120-Day Review Period begins only when the Central Office-Office of Trust Services is in receipt.
- 3) Upon receipt of a Tribe's Initial Submission, the DBD-TS will date stamp the original hard copy of the tribal leasing regulations and provide to the HAC which begins the official 120-Day Review Period to approve.
 - a. DBD-TS will immediately mail the Tribal submission via FedEx to the HAC in Albuquerque.

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- b. DBD-TS will create a Data Tracking System (DTS) case for the submission and assign the case to DRES. A scanned copy of the Tribal leasing regulations will be uploaded to DTS.
- c. If the leasing regulations are in final form, the HAC will do the following:
 - i. Scan and upload the initial regulations to the Central Office Realty network drive;
 - ii. Create an electronic folder (e-folder) and place originals in a physical file labeled with the record series, description, and opening date (date received);
 - iii. Notify the Tribe of receipt of its Initial Submission and the 120-day Review Period. If the Tribe's Initial Submission is not in an acceptable form for review or does not contain the required documents in the Initial Submission, the HAC will request the Tribe to resubmit a complete, approved document;
 - iv. Place the Tribe's submission on the HEARTH Tracking Log;
 - v. Send an email notification to the BIA Region and CO-SOL with the Tribe's initial leasing regulations package with instructions to begin their initial 30-day review; and
 - vi. Draft and formally acknowledge written receipt of the Tribe's Initial Submission to the applicant within three (3) calendar days. The acknowledgement must include the date DBD-TS received the Tribe's initial leasing regulations, the initial due date of the 120-Day Review Period, and the next steps. The acknowledgement letter will be uploaded to the already created DTS record and will be signed by the DBD-TS and provided to HAC for date stamp. Letter will be mailed to the Tribe's Point of Contact, with a copy to the Regional Director, an email copy to the RRO, and a copy filed in the Region's designated file folder in the network shared drive HEARTH Act folder.

B. Central Office Initial Review

- 1) The HAC, CO-SOL, and RRO's review and comments should be conducted in Word and saved in the designated network shared drive folder. A number of draft versions can be expected and, to avoid confusion, the HAC, CO-SOL, and RRO must indicate in the footer of the leasing regulations document the reviewer's initials, date the review is completed, Region, Name of Tribe, Lease Type, and draft version.

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- 2) The HAC, in conjunction with the CO-SOL, will complete the initial review **within 30 days after the date stamped receipt by DBD-TS**. The BIA Regional Office having jurisdiction over the applicant Tribe will be invited (by email) to provide comments directly to the HAC for consideration in the review process. However, if the comments are not provided by the date specified by the HAC, the process will not be delayed.
- 3) If there are documents required from DOI staff, the HAC will contact the responsible office **in writing** within seven (7) calendar days to request that the responsive information be provided within 21 days.
- 4) After the HAC, CO-SOL, and RRO have completed their initial review, the HAC will schedule an internal conference call **within 15 days**. The joint discussion is in preparation of consolidating comments on any requirements and/or recommended modifications to the Tribe's proposed leasing regulations. If all parties are in agreement, the required and/or recommended comments will be consolidated by the HAC. A redline version will then be provided to the Tribal Point of Contact **within five (5) days** of the internal conference call, in advance of a joint conference call with HAC, CO-SOL, RRO and the Tribal Point of Contact. If the HAC, CO-SOL, and the RRO determine that no further changes are required, or the leasing regulations do not require any modification, the leasing regulations will be forwarded and accompanied by a recommendation for surnaming and approval. If it is determined that the leasing regulations require modifications, the Tribe will be advised to address the required changes and consider the recommended changes.
- 5) The HAC will schedule the external (Tribal) conference call **within 10 days** of providing the consolidated comments to discuss the required and recommended modifications with the Tribe. A calendar invitation will be sent by the HAC to CO-SOL, RRO, and the Tribal Point of Contact. The HAC will lead the working session and all participants are encouraged to an open discussion on the required and/or recommended modifications. At the conclusion of the external conference call, the Tribe will be advised to address the required changes and consider the recommended changes.

The HAC will provide the Tribal Point of Contact with a summary of the conclusions of the external conference call. The Tribe will be advised they have 30 days to modify and resubmit to the HAC or to withdraw their submission. The HAC should follow up with the Tribal Point of Contact, if the Tribe does not resubmit leasing regulations **within 30 days**. At the end of the 30 days, the HAC will provide a recommendation to AS-IA, via DTS, to approve or disapprove the Tribe's submission. If the Tribe re-submits their regulations within the 30 days, the Tribe

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must add the reviewer's initials, date of review, description of the leasing regulations, and draft number.

C. Modified Submission of Leasing Regulations

- 1) The Tribe's modified leasing regulations must be submitted in electronic format (redlined version) word document and a clean version to the HAC.
- 2) Upon receipt, the HAC must date stamp the modified Tribal leasing regulations and upload the modified submission into designated network shared drive HEARTH Act folder.
- 3) The HAC will notify CO-SOL by email of the modified submission of the Tribe's leasing regulations.
- 4) The HAC will begin the review of the modifications to verify that the required changes are incorporated and that no new additions are included in the Tribe's leasing regulations. When completed, the HAC will prepare the regulations and supporting documents for upload to DTS for the AS-IA's decision.

D. Failure to Resubmit Modified Leasing Regulations

- 1) If there are expired or missing documents in applications received after the date of this policy that are required from the applicant, HAC will contact the applicant in writing. This written correspondence is the "original notice," and will also advise the applicant that the requested responsive information should be received within 30 calendar days.
- 2) If the requested information is not received within 30 calendar days after the original notice, BIA staff will send the applicant a "final notice" that their application will be returned to them after 45 days of the date of the original notice and removed from the active caseload unless the responsive information is received from them. The HAC is responsible for returning the application to the applicant and for updating the system of record to reflect that the application has been returned within five (5) days of that action
- 3) If the submission is not legally sufficient, the Tribe will be given an opportunity to formally withdraw their submission. Withdrawal must be made in writing. If a Tribe has not withdrawn its submission by the 90th day, CO-DRES and CO-SOL will move forward with a recommendation to the AS-IA to approve or disapprove the submission. Withdrawn submissions will be subject to the full 120-day review period when they are resubmitted by the tribe.

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E. Final Submission

- 1) If the regulations are modified, the HAC will request the Tribe to submit two (2) originals of Final Regulations and Tribal Resolution to the HAC. Leasing regulations submitted for review and approval should be in final form and approved by the appropriate Tribal authority.
- 2) Upon receipt, the HAC will prepare the modified regulations for final submission to AS-IA.
- 3) A decision (approve or disapprove) must be made no later than 120 days after the Tribal leasing regulations were initially received and date-stamped by DBD-TS. Therefore, the HAC must promptly and timely prepare the documents for DTS.
- 4) An extension may be granted after consultation with the Tribe.

F. Approval

- 1) HAC will review final regulations for completion and prepare the Approval Page for AS-IA, HEARTH Act Checklist, Cover Sheet, Federal Register Briefing and Communication Plan, Federal Register Notice, and D-BIA Recommendation Memo to ASIA and save in the network shared drive HEARTH Act Tribal folder.
- 2) HAC loads final documents in DTS for Surname and Approval.
- 3) DBD-TS provides original Federal Register Notice (three (3) copies) and Approval Page (two (2) copies) to Executive Secretariat upon request.

All decisions will be made in writing. Approval determinations will be published in the Federal Register. Disapproval determinations must identify the basis for the disapproval. An incomplete determination must identify the required documents not included in Tribal submission.

Once the Tribe's leasing regulations are approved, the Tribe is no longer required to obtain Secretarial approval for leases executed under the HEARTH Act. However, the Tribe must provide their servicing BIA Agency or Regional Office with a copy of each lease document (leases, assignments, leasehold mortgages, etc.). Each lease document will be encoded into the Trust Asset and Accounting Management System (TAAMS) and forwarded to the Land Titles and Records Office (LTRO) for recording and issuance of a certified Title Status Report (TSR) to the BIA. The lease must not be reviewed for quality assurance or defect by the LTRO. When the certified TSR is provided to the BIA, the BIA must forward it to the Tribe.

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1.8 Guidance for Determining Consistency of Tribal Regulations with BIA Regulations.

The clear intent of the Act is to provide Tribes with the opportunity to exercise their inherent sovereignty in drafting regulations to meet their particular needs and to expedite the leasing process. In determining whether Tribal regulations are “consistent with” BIA leasing regulations (at 25 CFR 162), “consistency” is to be interpreted in a manner that maximizes the deference given to the Tribe. Congress expressly rejected a “meets and exceeds” standard during its final deliberations regarding the HEARTH Act.

Although Tribal regulations should generally address the same issues as BIA’s regulations, Tribes have the flexibility to establish their own policies on issues to meet their unique needs. For example, to be consistent with BIA leasing regulations, Tribal leasing regulations must address whether bonding and insurance are required.

In general, to ensure consistency with the BIA’s leasing regulations, Tribal regulations must: 1) define key terms, 2) establish the process for review and approval of Tribal land lease documents, 3) include an Environmental Review Process that provides the affected public an opportunity to comment and receive a response from the Tribe, 4) identify required lease elements, 5) address rental requirements, and 6) provide mechanisms for addressing lease violations (enforcement and cancellation).

Sections 1.8 A through 1.8 D of this manual provide a detailed list of items to be used as guidance by the BIA to determine whether the regulations are consistent with BIA’s leasing regulations at 25 CFR Part 162 and the environmental review process required by the Act. Section A provides elements that are required to be addressed and are applicable to all Tribal leasing regulations submitted for review and approval under the Act. Section B contains provisions that must be included within individual leases for all lease types. Section C includes required and suggested provisions specific to the required environmental review process. Section D contains elements that are strongly recommended to support basic leasing functions the Tribe will be responsible for upon approval of its regulations. However, it is anticipated that each Tribe will draft regulations in accordance with their individual circumstances and needs. Therefore, in applying this guidance, as much deference and flexibility will be given to Tribes as possible.

A. Required – All Tribal Leasing Regulations Must:

- 1) **Define Key Terms:** If any of the following **key terms** are used, they must be defined *substantially the same* as 25 CFR 162, Subpart A. A Tribe must also provide definitions for all other specific terms used within its regulations (i.e., bond, surety), but the definitions for those terms may differ from those in 25 CFR 162.

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(See Section 1.8A(2) for additional Key Terms applicable only to agricultural regulations)

- a. **Assignment** - means an agreement between a lessee and an assignee, whereby the assignee acquires all or some of the lessee's rights, and assumes all or some of the lessee's obligations, under a lease.
 - b. **Lease** – means a written contract between a Tribe and a lessee, whereby the lessee is granted a right to possess Indian land, for a specified purpose and duration. The lessee's right to possess will limit the Tribes' right to possess the leased premises only to the extent provided in the lease.
 - c. **Leasehold Mortgage** - means a mortgage, deed of trust, or other instrument that pledges a lessee's leasehold interest as security for a debt or other obligation owed by the lessee to a lender or other mortgagee.
 - d. **LTRO** – means the BIA Land Titles and Records Office.
 - e. **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 the lease.
 - f. **Tribal Land** – any tract in which the surface estate is owned by the Tribe 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).
 - g. **Trust or Restricted Land** – any tract held in trust or restricted status.
 - h. **Trust or Restricted Status** – means 1) That the United States holds title to the tract in trust for the benefit of a Tribe, or 2) that a Tribe holds title to the tract but can alienate or encumber it only with the approval of the United States because of limitations in the conveyance instrument under Federal law or limitations in Federal law.
- 2) **Additional Key Terms for Agricultural Regulations:** For those regulations governing agricultural land, in addition to those terms listed within Section 1.8 A. 1), if any of the following key terms are used, they must be defined substantially the same as 25 CFR 162, Subpart B (provided below for reference). A Tribe must also provide definitions for all other specific terms used within its regulations (i.e., bond, surety), but the definitions for those terms may differ from those in 25 CFR 162.

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- a. **Agricultural Land** – means Indian land or Government land suited or used for the production of crops, livestock, or other agricultural products, or Indian land suited or used for a business that supports the surrounding agricultural community.
- b. **Agricultural Lease** – means a lease of agricultural land for farming and/or grazing purposes.
- c. **Assignment** - means an agreement between a tenant and an assignee, whereby the assignee acquires all or some of the tenant's rights, and assumes all of the tenant's obligations, under a lease.
- d. **Leasehold Mortgage** - means a mortgage, deed of trust, or other instrument that pledges a tenant's leasehold interest as security for a debt or other obligation owed by the tenant to a lender or other mortgagee.
- e. **Sublease** – a written agreement by which the tenant grants to an individual or entity a right to possession no greater than that held by the tenant under the lease.

B. All lease types must include the following provisions:

- 1) Identify to what land the Tribe's leasing regulations applies.
 - a. Regulations may only address leases of Tribal land (held in trust or restricted status for the Tribe by the United States).
 - b. Regulations cannot apply to individually owned land, fee simple title, and allotted lands.
 - c. Regulations cannot apply to land that is fractionated and undivided interests in the land are owned by the Tribe and individual Indians.
- 2) Definitions for the type(s) of lease(s) covered by the regulations (i.e., agricultural, grazing, crop, business, residential, wind resource, solar resource, public, religious, etc.).
 - a. Regulations may allow for permits (i.e., a non-possessory right of access for hunting privileges, cultural and spiritual use access and easements).
 - b. Regulations may allow for mortgages of the leasehold interest.
 - c. Regulations may **not** allow for mortgages of Tribal land.

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- d. Regulations may **not** address leases for the exploration, development, or extraction of any mineral resource.
 - e. Regulations may **not** allow easements and rights-of-way.
- 3) State effective date of the regulations (date approved by the Secretary).
 - 4) State what laws, in addition to Federal law, may apply to leases.
 - 5) State that substantive changes to the regulations require BIA review and Secretarial approval. Minor technical amendments may be made without BIA review or Secretarial approval.
 - 6) Identify lease terms allowed, including any option(s) to renew (a Tribe may choose to shorten the following allowable lease terms, but a Tribe may not exceed those terms):
 - a. Agricultural and business leases - up to 25 years with an option to renew for up to two additional terms (each of which may not exceed 25 years), 25 U.S.C. § 415 (h)(1)(A).
 - b. Wind Resource and Solar Resource leases - WEEL's can only be for a term of 3 years with one 3 year option to renew. (See 25 CFR 162.512(a); 162.513(a)(4).) WSR's can only be for a term of 25 years with one 25 year option to renew. (See 25 CFR 162.540(a); 162.542(a)(4).)
 - c. Public, religious educational, recreational, or residential leases - up to 75 years, 25 U.S.C. § 415 (h)(1)(B).
 - 7) Include a statement that the Tribe will provide the BIA office having jurisdiction of the Tribe's leasing activities, with copies of all leases and lease documents, except permits and residential subleases, for encoding into TAAMS and recording in the LTRO.

Under the HEARTH Act, Tribes must provide a copy of each lease document to the BIA. These should be provided directly to the Tribe's servicing BIA Region or Agency for encoding into TAAMS by the BIA's Realty staff. The BIA will then submit the document to LTRO for recording and request a TSR to ensure that title accurately reflects the current land transactions. After BIA reviews the TSR, to verify the transaction has been recorded, the BIA will forward the TSR to the Tribe.

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If the Tribe has contracted or compacted the Realty or LTRO function, then the Tribe should encode the lease documents and submit them to their servicing BIA Region or Agency for scanning, imaging and recording.

- 8) Identify the steps and procedures within the leasing process for obtaining a lease or lease document (amendment, assignment, renewals, sublease, leasehold mortgage) including:
 - a. Whether Tribal approval of a lease is required separate from Tribal execution of a lease, for example, if a different entity/person executes a lease than approves a lease.
 - b. The identity of Tribal officials/entities authorized to approve and/or execute a lease.
 - c. If any lease documents (amendment, assignment, renewals, sublease, leasehold mortgage) require further Tribal action (execution and/or approval) and the officials/entities authorized to approve and/or execute the lease documents.
 - d. If any lease documents (amendment, assignment, renewals, sublease, leasehold mortgage) may be completed without further Tribal action (execution and/or approval).
 - e. Identify which Tribal department/agency must be contacted to initiate a lease.
 - f. State the supporting documentation required for a lease.
 - g. Specify if there is a timeline for lease approval or other actions.
- 9) Require each lease (or lease document, as applicable) to identify and or address:
 - a. parties to the lease;
 - b. term of the lease;
 - c. effective date of the document;
 - d. purpose of the lease;
 - e. authorized use(s) of the leased premises;

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- f. description of the land being leased that is of sufficient detail to meet recording requirements for BIA's LTRO (see 25 CFR 150, Land Records and Title Documents);
- g. amount of rent/compensation due;
- h. date rent/compensation due;
- i. who receives rent/compensation;
- j. what form(s) of payment is/are acceptable;
- k. whether charges and/or fees will be assessed for late payments and, if so, what are the charges and/or fees;
- l. whether there will be rental adjustments; if so, the following must be provided:
 - i. when rental adjustments will be completed;
 - ii. when rental adjustments become effective;
 - iii. how rental adjustments will be calculated; and
 - iv. how disputes about rental adjustments will be resolved
- m. state whether a performance bond is required; if so, performance bond requirements must be included;
- n. state any insurance requirements;
- o. the lessee must hold the U.S. and the tribe harmless from any loss, liability or damages resulting from the lessee's use or occupation of the leased premises; the obligations of the lessee and its sureties to the tribe will be enforceable by the U.S. so long as the land remains in trust or restricted status;
- p. whether permanent improvements may be constructed, if so, the following must be provided:
 - i. a general description of the type and location of any improvements;
 - ii. a statement indicating ownership of the improvements;
 - iii. the party responsible for constructing, operating, maintaining, and managing improvements;

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- iv. the party responsible for removal of improvements, if applicable; and
- v. plans of development or construction schedules required by the Tribe;
- q. reports, surveys, and/or site assessments needed to facilitate compliance with applicable Tribal environmental, cultural resource, and land use requirements as appropriate;
- r. Lessee will cease all activity in the immediate vicinity of the leased premises and notify the Tribe if historic properties, archeological resources, human remains, or other cultural items not previously reported are encountered;
- s. a restoration and reclamation plan, if required by the Tribe;
- t. if leasehold mortgages are permitted, the lease must include language to ensure that a copy of any notice of default, issued by the Tribe to the lessee, is also provided to the approved mortgagee and any surety by certified mail, return receipt requested; the lessee must obtain the consent of the surety for any legal instrument that directly affects their obligations and liabilities, if required by Tribe;
- u. if an agricultural lease, require lessees to manage land in accordance with any agricultural resource management plan developed by the Tribe;
- v. if an agricultural lease, require appropriate stipulations or conservation plans to be developed and incorporated into the lease;
- w. if an agricultural lease, require the tenant corporation, partnership or other legal entity, to provide organizational and financial documents as needed to show the lease will be enforceable against the tenant and the tenant will be able to perform the lease obligations, if required by the Tribe;
- x. 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 CFR 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."
- y. the process for enforcing trespass and lease violations, including:

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- i. stating that BIA, may, upon reasonable notice from the Tribe and at BIA's discretion, enter the leased premises for inspection and to enforce the provisions of, or cancel a lease document;
- ii. there must not be any unlawful conduct, creation of a nuisance, illegal activity, or negligent use or waste of the leased premises. The lessee must comply with all applicable laws, ordinances, rules, regulations and other legal requirements;
- iii. stating whether negotiated remedies are allowed; and
- iv. identifying a process for any cancellation or termination and establishing when they become effective.

C. All Tribal Leasing Regulations Must Include An Environmental Review Process That:

- 1) Provides for identification and evaluation of any significant effects of the proposed action on the environment (it is strongly recommended that the term "significant effects on the environment" is defined by the Tribe);
- 2) Ensures the public is provided notice and reasonable opportunity to comment relating to any significant environmental impacts of the proposed action as identified by the Tribe (it is strongly recommended that the term "Public for Purposes of the Environmental Process" is defined by the Tribe as broadly or narrowly as will serve the best interests of the Tribe and assure a meaningful environmental review process);
- 3) Provides the process the Tribe will use to respond to relevant and substantive public comments on any such impacts, prior to approving a lease.
- 4) Although not required, it is strongly recommended that the Tribe support the environmental review process by:
 - a. identifying the Tribal program that administers environmental review;
 - b. defining elements to be evaluated (i.e., air, water, cultural resources, socio-economics, etc.);
 - c. including a time frame for public comments;
 - d. describing how the review, public comments, and the Tribe's responses will be documented (memo, report, etc.);

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- e. ensuring key terms are defined (i.e. public & significant effect);
- f. identifying a time frame for the review; and
- g. describing any applicable appeal process.

D. Recommended - Provisions Within All Regulations or Within Each Lease:

- 1) State whether any due diligence requirements apply.
- 2) Describe any appeal processes.
- 3) State whether a specific type or types of valuation will be required to determine rent (i.e., appraisal, bidding, market survey, etc.).
- 4) If Tribal regulations allow for lease payments to be made directly to the Indian tribe, state that documentation of the lease payments must be sufficient to enable the Secretary to fulfill the trust obligation of the United States to the Tribe under Federal law.

1.9 Secretarial Authority.

25 U.S.C. § 415(h). Pursuant to the authority of the Secretary to fulfill the trust obligation of the United States to the applicable Indian Tribe under Federal law (including regulations), the Secretary may, upon reasonable notice from the applicable Indian Tribe and at the discretion of the Secretary, enforce the provisions of, or cancel, any lease executed by the Indian Tribe. The United States will not be liable for losses sustained by any party to a lease executed pursuant to tribal regulations.

Approval

Darryl LaCounte

Digitally signed by Darryl
LaCounte
Date: 2020.07.08 09:32:13 -04'00'

7/08/20

Darryl LaCounte
Director, Bureau of Indian Affairs

Date

SAMPLE CHECKLIST FOR REGULATIONS SUBMITTED UNDER THE HEARTH ACT
AGRICULTURAL, BUSINESS, RESIDENTIAL, WIND AND SOLAR RESOURCE, AND OTHER TYPES OF LEASING
(EDUCATIONAL, RECREATIONAL, PUBLIC, AND RELIGIOUS)

✓	DESCRIPTION	COMMENTS:
	Tribal Name: Federally Recognized Tribal Name, If Differs From Above: Federal Register Confirming Recognized Tribal Name:	_____ _____ January 14, 2015, 80 FR 19__ (or most recent)
	Tribal Resolution included, if required by tribe:	
	Scope: Business, Ag., Residential, Recreational, Religious, Etc.:	
	INITIAL REVIEW OF TRIBAL REGULATIONS If Tribal regulations are consistent with 25 CFR Part 162 and provide for an environmental review process that meets requirements set forth in the HEARTH Act (25 U.S.C. § 415(h), no additional requirements (also see NPM and Mandatory Provisions 25 CFR 162.413).	
	DEFINITIONS: Tribal regulations must provide definitions for all specific terms used. However, if any of the following <u>key terms</u> are used, they must be defined <i>substantially the same</i> as 25 CFR 162, Subpart A, or in the case of Agricultural Regulations, Subpart B. Definitions for <u>key terms</u> are provided for reference):	
	Agricultural Land – “means Indian land or Government land suited or used for the production of crops, livestock or other agricultural products, or Indian land suited or used for a business that supports the surrounding agricultural community” (25 CFR § 162.101).	Art./Sec. ____.
	Assignment - “means an agreement between a lessee and an assignee, whereby the assignee acquires all or some of the lessee's rights, and assumes all or some of the lessee's obligations, under a lease.” <i>Note: Agricultural regulations at 25 CFR. § 162.101 use “tenant” in place of “lessee.” The term “lessee” is acceptable for both.</i>	Art./Sec. ____.
	Lease – “means a written contract between Indian landowners and a lessee, whereby the lessee is granted a right to possess Indian land, for a specified purpose and duration. <i>The lessee's right to possess will limit the Indian landowners' right to possess the leased premises only to the extent provided in the lease.</i> ” <i>Note: It is not required to include the italicized sentence above to meet the criteria of “substantially the same” as 25 CFR 162, Subpart A.</i> <i>Note: Agricultural regulations at 25 CFR. § 162.101 use “tenant” in place of “lessee.” The term “lessee” acceptable for both.</i>	Art./Sec. ____.
	Leasehold Mortgage - means a mortgage, deed of trust, or other instrument that pledges a lessee's leasehold interest as security for a debt or other obligation owed by the lessee to a lender or other mortgagee.”	Art./Sec. ____.
	LTRO – “means the Land Titles and Records Office of the BIA.”	Art./Sec. ____.
	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 the lease.” <i>Note: Agricultural regulations at 25 CFR. § 162.101 use “tenant” in place of “lessee.” The term “lessee” acceptable for both.</i>	Art./Sec. ____.
	Tribal Land – “any tract, or interest therein, in which the surface estate is owned by one or more tribes 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. 477).” <i>Note: Unless the Tribe intends to include tribal land held in trust with other tribes, recommend deleting references to interests with other tribes and replacing with “the Tribe”.</i> <i>Note: Recommend replacing “an Indian corporation” with “the Tribe.”</i>	Art./Sec. ____.
	Trust or Restricted Land – “any tract, or interest therein, held in trust or restricted status.”	Art./Sec. ____.

SAMPLE CHECKLIST FOR REGULATIONS SUBMITTED UNDER THE HEARTH ACT, CONTINUED.

✓	DESCRIPTION	COMMENTS:
	<p>Trust or Restricted Status – “means (1) That the United States holds title to the tract or interest in trust for the benefit of one or more tribes or individual Indians; or</p> <p>(2) That one or more tribes or individual Indians holds title to the tract or interest, 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.”</p> <p><i>Note: Unless the Tribe intends to include tribal land held in trust with other tribes, recommend deleting references to interests with other tribes and replacing with “the Tribe”.</i></p>	Art./Sec. ____.
REQUIRED GENERAL PROVISIONS:		
	Identifies to what lands the regulations apply (cannot apply to unrestricted fee or individually owned land).	Art./Sec. ____. Type: ____.
	Defines what types of leases are covered by the regulations (May allow for permits and mortgages of leasehold interest. May not allow for mortgages of tribal land or address mineral leases.)	Art./Sec. ____.
	States effective date of regulations (date approved by SOI).	Art./Sec. ____.
	States what laws, in addition to federal, may apply to leases.	Art./Sec. ____.
	Identifies allowed lease terms, including any option(s) to renew: <u>Business, agricultural wind resource, or solar resource leases</u> - up to 25 years with an option to renew for up to two additional terms (each of which may not exceed 25 years), 25 U.S.C. 415 (h)(1)(A). <u>Public, religious educational, recreational, or residential leases</u> - up to 75 years, 25 U.S.C. 415 (h)(1)(B).	Art./Sec. ____. Type: ____. Term: ____. Art./Sec. ____. Type: ____. Term: ____.
REQUIRED REGULATIONS ESTABLISH PROCESS TO OBTAIN A LEASE OR LEASE DOCUMENTS		
	Is tribal approval required separate from tribal execution of lease? - Identifies officials/entities authorized to approve leases. - Identifies officials/entities authorized to execute leases.	Art./Sec. ____. Art./Sec. ____. Art./Sec. ____.
	Identifies whether lease documents (amendment, assignment, sublease, leasehold mortgage) may be completed without further tribal action (execution and/or approval).	Art./Sec. ____.
	State any timeline(s) for approval.	Art./Sec. ____.
REQUIRED LEASE PROVISIONS		
	State the parties to the lease.	Art./Sec. ____.
	State the term of the lease.	Art./Sec. ____.
	State effective date of the lease (all leases or lease documents).	Art./Sec. ____.
	State purpose of the lease and authorized uses of the leased premises.	Art./Sec. ____.
	Describe the land being leased. Descriptions must be of sufficient detail to meet recording requirements for BIA’s Land Title and Records Office (LTRO). See 25 CFR 150, Land Records and Title Documents.	Art./Sec. ____.
	State how much rent/compensation is due.	Art./Sec. ____.
	State when rent/compensation is due.	Art./Sec. ____.
	State who receives rent/compensation.	Art./Sec. ____.
	State what form of payment is acceptable.	Art./Sec. ____.
	State whether any late payment charges or special fees apply.	Art./Sec. ____.
	State whether any due diligence requirements apply.	Art./Sec. ____.
	State whether a performance bond is required.	Art./Sec. ____.
	State any insurance requirements.	Art./Sec. ____.
	State if plans of development or construction schedules are required.	Art./Sec. ____.
	State what reports, surveys, site assessments, etc., are needed to facilitate compliance with applicable tribal environmental, cultural resource, and land use requirements as appropriate.	Art./Sec. ____.

SAMPLE CHECKLIST FOR REGULATIONS SUBMITTED UNDER THE HEARTH ACT, CONTINUED.

✓	DESCRIPTION	COMMENTS:
	If the leased premises are within an Indian irrigation project or drainage district, lease must state the following: <i>"If the leased premises are within an Indian irrigation project or drainage district, except as provided by 25 CFR 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."</i>	Art./Sec. ____.
	If an agricultural lease: Lessees must be required to manage land in accordance with any agricultural resource management plan developed by the tribe.	
	If an agricultural lease: Appropriate stipulations or conservation plans to be developed and incorporated into all agricultural leases.	
	Tribal Regulations Address, or Require Leases to Address:	
	<u>If</u> permanent improvements may be constructed: - ownership; - responsibility for constructing; - responsibility for operating, maintaining, and managing; - responsibility for removal .	Art./Sec. ____. Art./Sec. ____. Art./Sec. ____. Art./Sec. ____.
	<u>If</u> rental reviews or adjustments are permitted: - how and when will they be done - when do adjustments become effective; - how are disputes regarding adjustments resolved	Art./Sec. ____. Art./Sec. ____. Art./Sec. ____.
	Parties are required to provide BIA with all leases and lease documents, except residential subleases, for recording in the LTRO.	Art./Sec. ____.
	A process for enforcing trespass and lease violations to include: - Statement that BIA may, upon reasonable notice from the tribe and at BIA's discretion, enforce the provisions of, or cancel, a lease document. - Statement whether or not negotiated remedies are allowed. - A process for any cancellation or termination and establishing when they become effective.	Art./Sec. ____. Art./Sec. ____. Art./Sec. ____.
	Tribal regulations may not allow tribes to make major substantive changes to the regulations without BIA approval. Minor technical amendments may be made without BIA approval.	Addressed in regulation? Yes: Art./Sec. ____ or No.
	REQUIRED ENVIRONMENTAL REVIEW PROCESS (25 U.S.C. § 415 (h)(3)(ii); NPM, Par. 6):	
	Identifies Tribal program that administers environmental review.	Art./Sec. ____.
	Identifies Tribal positions that administer environmental review.	Art./Sec. ____.
	<i>Suggested:</i> Identifies a time frame for review.	Art./Sec. ____.
	Identifies and evaluates any significant effects of proposed action on the environment.	Art./Sec. ____.
	<i>Suggested:</i> Identifies elements to be evaluated, i.e., air, water, cultural resources, socio-economics, etc.)	Art./Sec. ____.
	Includes a process to ensure public informed on significant environmental impacts identified by the tribe.	Art./Sec. ____.
	<i>Suggested:</i> Describes how public will be notified.	Art./Sec. ____.
	Provides a reasonable opportunity for public comment on any significant environmental impacts identified by the tribe.	Art./Sec. ____.
	<i>Suggested:</i> Identifies a time frame for comments.	Art./Sec. ____.
	Ensures tribe provides responses to relevant and substantive public comments on environmental impacts prior to Tribal approval of lease.	Art./Sec. ____.
	<i>Suggested:</i> Identifies a process for addressing comments.	Art./Sec. ____.
	<i>Suggested:</i> Describes how documented (memo, report, etc.).	Art./Sec. ____.
	<i>Suggested:</i> Defines key term <i>public</i> .	Art./Sec. ____.
	<i>Suggested:</i> Defines key term <i>significant effect</i> .	Art./Sec. ____.
	<i>Suggested:</i> Describes any appeal process.	Art./Sec. ____.
	Includes a restoration and reclamation plan, if required by tribe.	Art./Sec. ____.

Real Estate Services

Sent via email to:

Name
Title
Tribe or Firm
Address
City, ST, Zip

Dear Mr., Mrs., Ms., Honorable, LName:

The insert name of Tribe and title of regulation(s)/ordinance(s) submitted to the Bureau of Indian Affairs under the HEARTH Act, was/were approved by the Secretary of the Interior on insert date. A copy of the Regulation(s)/Ordinance(s), and the signed approval page, is/are enclosed with this letter.

The Regulation(s)/Ordinance(s) establishes the name of Tribe's authority to control business/residential/agricultural, etc. leasing upon its reservation/tribal lands.

Thank you for enabling us to share in this process with the goal of promoting tribal self-determination and economic development.

If you have any questions regarding these/this newly approved Regulation(s)/Ordinance(s), please contact Sharlene M. Round Face, Division of Real Estate Services, at (505) 563-3132 or by email at Sharlene.roundface@bia.gov.

Sincerely,

Johnna Blackhair
Acting Deputy Bureau Director, Trust Services