

**Title XLII
(42)
LEASING ORDINANCE**

RESOLUTION NO. 379-20

Standing Rock Sioux Tribal Code of Justice



**Approved November 10, 2020
by
Standing Rock Sioux Tribal Council**

RESOLUTION NO. 379-20

WHEREAS, the Standing Rock Sioux Tribe is an unincorporated Tribe of Indians, having accepted the Indian Reorganization Act of June 18, 1934, with the exception of Section 16; and

WHEREAS, the Standing Rock Sioux Tribal Council is the governing body of the Standing Rock Sioux Tribe, pursuant to the Article III §1 of the Constitution of the Standing Rock Sioux Tribe; and

WHEREAS, the Standing Rock Sioux Tribal Council, pursuant to the amended Constitution of the Standing Rock Sioux Tribe, Article IV, Section 1[a], 1[c], 1[h], 1[j], is authorized to negotiate with Federal, State and local governments and others on behalf of the Tribe, is further authorized to promote and protect the health, education and general welfare of the members of the Tribe; and

WHEREAS, the Standing Rock Sioux Tribal Council, pursuant to Article IV § 1(m) of the amended Constitution the Standing Rock Sioux Tribal Council, has the authority to engage in business that will further the economic development of the Tribe and its members; and

WHEREAS, the Standing Rock Sioux Tribal Council believes it to be in the best interest of the Tribe to adopt a Leasing Ordinance for the leasing of Tribal lands as authorized by the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012 (HEARTH Act), Pub. L. No. 112-151, 126 Stat. 1150 (2012); and

WHEREAS, the Department of Interior has reviewed the Standing Rock Sioux Tribal Leasing Ordinance and proposed edits to ensure compliance with the HEARTH Act and the Department of Interior Regulations; and

WHEREAS, the Tribe has reviewed and accepted the Department of Interior proposed edits to the Standing Rock Sioux Tribal Leasing Ordinance as consistent Tribal law and policy; and

NOW THEREFORE BE IT RESOLVED, that the Tribe hereby adopts the Standing Rock Sioux Tribal Leasing Ordinance, which is attached as exhibit A to this Resolution; and

BE IT FURTHER RESOLVED, that the Tribal Council directs that the approved Leasing Ordinance, be submitted to the Department of the Interior for its final approval and publication in the Federal Register.

BE IT FURTHER RESOLVED, that the Tribal Council directs that the approved Ordinance, be submitted to the Department of the Interior for its review and approval.

BE IT FURTHER RESOLVED, that the Chairman and Secretary of the Tribal Council are hereby authorized and instructed to sign this resolution for and on behalf of the Standing Rock Sioux Tribe.

CERTIFICATION

We, the undersigned, Chairman and Secretary of the Standing Rock Sioux Tribe, hereby certify that the Tribal Council is composed of 17 members, of whom 11 constituting a quorum, were present at a meeting thereof duly and regularly called, noticed, convened and held on the 10th day of November, 2020,

and the foregoing resolution was duly adopted by the affirmative vote of 10 members, with 0 opposing, and with 1 not voting. **THE CHAIRMAN'S VOTE IS NOT REQUIRED EXCEPT IN CASE OF A TIE.**

DATED THIS 10TH DAY OF NOVEMBER, 2020.

ATTEST:



Susan Agard, Secretary
Standing Rock Sioux Tribe


Mike Faith, Chairman
Standing Rock Sioux Tribe

[OFFICIAL TRIBAL SEAL]

Meeting Date: 11-10-20
Motion No. 11

**TITLE XLII
LEASING ORDINANCE**

**CHAPTER 100
GENERAL PROVISIONS**

Chapter 1, Authority, Scope Purpose, Definitions and Applicable Law

101 – Authority

This Standing Rock Sioux Tribe Leasing Ordinance (“Leasing Ordinance”) is enacted by the Tribal Council pursuant to Article IV §§ 1(c), 1(i), and 1(m) of the Tribe’s Constitution, and is subject to, and will be effective upon the date of approval of this Leasing Ordinance by the U.S. Secretary of the Interior pursuant to the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012, P.L. 112-151 (codified at 25 U.S.C. § 415(h) (“HEARTH Act”).

102 – Scope

The scope of application of this Leasing Ordinance shall be limited to all Business, Residential and Wind and Solar Leases on Tribal Land, and to all actions and decisions taken in connection with those leases. Nothing herein shall be construed to affect the terms and conditions of existing leases that are in effect on the effective date of this Leasing Ordinance.

103 – Purpose

The purposes of this Leasing Ordinance are to:

- (a) Recognize and assert the authority of the Tribe to grant Leases, establish streamlined procedures for Environmental Review, and provide for the management and enforcement of Business, Residential, and Wind and Solar Leases with respect to Tribal Lands;
- (b) Promote self-determination, encourage economic development and self-sufficiency, facilitate and control the use of the Tribe’s, wind and solar resources, and increase business activity and employment on the Tribe’s Reservation; and
- (c) Implement the authority recognized by the HEARTH Act.

104 – Definitions

For purposes of this Leasing Ordinance:

- (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. This defined term does not mean or apply to a Tribal Land Assignment.

- (b) *Authorized Official* means the Chairman or other person authorized to execute Leases or Lease Documents by Tribal Law.
- (c) *BIA* means the Bureau of Indian Affairs of the U.S. Department of the Interior.
- (d) *Best Interest of the Tribe* means a determination by the Tribal Council that the inclusion or waiver of any Lease term, or the taking or refraining from taking any action with respect to a Lease by or on behalf of the Tribe, furthers the economic, social, environmental or other interests and objectives of the Tribe.
- (e) *Business Day* means Monday through Friday, excluding federally recognized holidays and other days that the offices of the Tribe are closed.
- (f) *Business Lease* means any Lease that is 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.
- (g) *Cancellation* means action by the parties, generally with mutual consent of the Tribe and the Lessee, to end a Lease pursuant to this Leasing Ordinance.
- (h) *Consent* or *consenting* means written authorization by the Tribe concerning a specified action.
- (i) *Contiguous* means being in actual contact or sharing a common boundary.
- (j) *Day* means a calendar day, unless otherwise specified.
- (k) *Department of Environmental Regulation/Environmental Protection Agency (DER/EPA)* shall mean the Agency established by the Standing Rock Sioux Tribe to ensure compliance and Enforcement of Tribal environmental laws pursuant to Title XXIX of this Code.
- (l) *Director of the Department of Environmental Regulation/Environmental Protection Agency* shall mean the person the Tribal Council has designated to conduct Environmental Reviews, and to perform duties and take the actions specified in Chapter 800.
- (m) *Equipment Installation Plan* means a plan that describes the type and location of any improvements to be installed by the Lessee to evaluate the wind resources and schedule showing the tentative commencement and completion dates for installation of those improvements.

- (n) *Fair Market Rental* means the amount of rental income that a leased tract of Tribal Land would most probably command in an open and competitive market, or as determined by competitive bidding.
- (o) *Holdover* means circumstances in which a Lessee remains in possession of the Leased Premises after the Lease term expires.
- (p) *Lease* means a written contract between the Tribe and a Lessee, under which the Lessee is granted a right to possess Tribal Land for a specified purpose and duration. The Lessee's right to possess will limit the Tribe'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).
- (q) *Lease Document* means a Lease, Amendment, Assignment, Sublease, or Leasehold Mortgage.
- (r) *Leased Premises* means the specifically identified parcel(s) or tracts(s) of Tribal Land that is subject to a particular Lease.
- (s) *Leasehold* means a tenant's possessory estate in land or premises.
- (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 official designated by the Tribal Council in accordance with Tribal Law to administer a Lease on behalf of the Tribe pursuant to this Leasing Ordinance.
- (v) *Leasehold Use* means any use, improvement, development, or activity contemplated to occur on Tribal Land pursuant to a Lease entered into pursuant to this Leasing Ordinance.
- (w) *Lessee* means a person or entity who has acquired a legal right to possess Tribal Land by a Lease granted under this Leasing Ordinance.
- (x) *LTRO* means the appropriate Regional Land Titles and Records Office of the BIA.
- (y) *Mortgagee* means the holder of a Leasehold Mortgage.
- (z) *NEPA* means the National Environmental Policy Act of 1969, 42 U.S.C. 4321 et seq.
- (aa) *Notice of Violation* means a letter notifying a Lessee of a violation of a Lease as provided for under Section 800 of this Leasing Ordinance.

- (bb) *Performance Bond* means security for the performance of certain lease obligations, as furnished by the Lessee, or a guaranty of such performance as furnished by a third-party surety.
- (cc) *Permanent Improvements* means buildings, other structures, 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 Tribe and the Permittee, under which the Permittee is granted a temporary, revocable privilege to use Tribal Land, for a specified purpose.
- (ee) *Permittee* means a person or entity who has acquired a privilege to use Tribal Land by a Permit.
- (ff) *Public* means, for purposes of an Environmental Review pursuant to Chapter 900, (a) all persons or entities residing on or owning a business on Tribal Land or contiguous to Tribal Land, which may reasonably be expected to experience a Significant Environmental Effect from the intended Leasehold Use.
- (gg) *Reservation* means the Standing Rock Sioux Reservation, as defined by the act of March 2, 1889, 25 Stat. 888, notwithstanding the issuance of any patent, including all rights-of-way, waterways, watercourses and streams running through any part of the Reservation, and to such lands as may be hereafter added to the Reservation under any law of the United States.
- (hh) *Residential Lease* means a lease for affordable housing purposes and other housing programs established by the Tribe or Housing Authority on Tribal Land, but shall not include any lease designated as a Business, WEEL, or WSR Lease by the Tribe.
- (ii) *Restoration and reclamation plan* means a plan that defines the reclamation, revegetation, restoration, and soil stabilization requirements for the project area, and requires the expeditious reclamation of construction areas and revegetation of disturbed areas to reduce invasive plant infestation and erosion.
- (jj) *Secretary* means the Secretary of the U.S. Department of the Interior.
- (kk) *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.
- (ll) *Sublease* means a written agreement by which a Lessee grants to an individual or entity a right to possession and use of Tribal Land no greater than that held by the Lessee under the Lease.
- (mm) *Supreme Court* means the Supreme Court of the Standing Rock Sioux Tribe.

- (nn) *Surety* means one who guarantees the performance of another.
- (oo) *Termination* means unilateral action by the Tribe to end a Lease due to a violation of the terms of the Lease.
- (pp) *Trespass* means any unauthorized occupancy, use of, or action on any Tribal Land.
- (qq) *Tribe* means the Standing Rock Sioux Tribe.
- (rr) *Tribal Council Authorization* means a duly adopted Tribal Council Resolution, tribal ordinance, or other appropriate tribal document authorizing the specified action.
- (ss) *Tribal Council* means the Tribal Council of the Standing Rock Sioux Tribe.
- (tt) *Tribal Council Resolution* means a resolution of the Tribal Council duly adopted in accordance with Tribal Law.
- (uu) *Tribal Court* means the Standing Rock Sioux Tribal Court.
- (vv) *Tribal Law* means the body of non-federal law that governs lands and activities under the jurisdiction of the Tribe, including ordinances or other enactments by Tribal Council, and Tribal Court rulings.
- (ww) *Tribal Land* means any tract, in which the surface estate is owned by the Tribe which is held in trust by the United States for the benefit of the Tribe.
- (xx) *Tribal member* means a member of the Standing Rock Sioux Tribe.
- (yy) *Trust Land* means land therein held in trust by the United States for the Tribe.
- (zz) *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.
- (aaa) *WEEL* means a Wind Energy Evaluation Lease authorizing short term possession of Tribal Land for the purpose of installing, operating and maintaining, instrumentation and associated infrastructure, such as meteorological towers, to evaluate wind resources for electrical generation.
- (bbb) *WSR Lease* means a Wind and Solar Resource Lease that authorizes possession of Tribal 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 (a) on a for-profit or not-for-profit basis; (b) to a utility serving the public generally; or (c) to users within the local community on or near the Reservation.

105 – Applicable Law

(a) In addition to this Leasing Ordinance itself, Leases approved under this Leasing Ordinance are subject to:

- (1) applicable federal laws; and
- (2) applicable Tribal laws.

CHAPTER 200 OBTAINING A LEASE

Chapter 2, Obtaining a Lease

201 – Leasing Information

Information concerning the leasing of Tribal Land, including the Lease negotiation and approval process established under this Leasing Ordinance, may be obtained from the Tribal Land Office or other sources designated by the Tribal Council.

202 – Leasing Proposals

- (a) The Tribe may invite proposals for Leases with respect to Tribal 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 in consultation with the Tribal Council.
- (b) All applicants for a Lease shall include:
 - (1) Legal description of the land to be Leased and/or a site survey
 - (2) Financial statement, and
 - (3) Other documents as may be required by the Leasing Officer, in consultation with the Tribal Council.
- (c) 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 Tribal Council.

203 – Negotiation of Leases and Notice to the Tribe’s Environmental Regulation/Environmental Protection Agency

- (a) Leases shall be negotiated by the person or persons authorized by the Tribal Council. 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 Ordinance, and any other requirements applicable to a specific form of Leases described at Chapters 400 through 600, as the case may be. If the person or persons, authorized by the Tribal Council, are satisfied with the terms and conditions

of a proposed Lease, and satisfied that the proposed Lease terms and conditions meet all applicable requirements of this Leasing Ordinance, they shall forward such proposed Lease to the applicable Committee of the Tribal Council for consideration and approval.

- (b) Upon receipt of a lease proposal, the Tribal Leasing Office shall provide notice to the Tribe's Environmental Regulation/Environmental Protection Agency of the proposed action to conduct the required environmental review pursuant to Chapter 900.

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.

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 700 of this Leasing Ordinance, and administered and enforced in accordance with Chapter 800.

208 – Permits

If an intended access or use of Tribal 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 Ordinance, and this Leasing Ordinance will not apply to such Permit.

CHAPTER 300 REQUIRED LEASE TERMS AND CONDITIONS

Chapter 3, Required Lease Terms and Conditions

301 – Required Lease Terms

(a) Except as otherwise expressly provided in this Chapter 300, or in Chapters 400, 500 or 600, 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 Leased Premises and the responsibility for constructing, operating, maintaining, and managing Permanent Improvements under and in accordance with this Leasing Ordinance;
- (6) rent and other payment requirements, including due dates, acceptable forms of payments, and penalty fees and late payment charges, including interest;
- (7) due diligence requirements under and in accordance with this Leasing Ordinance;
- (8) insurance requirements under and in accordance with this Leasing Ordinance; and
- (9) bonding requirements under and in accordance with this Leasing Ordinance, 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 Tribe which obligations shall also be enforceable by the United States, so long as the land remains Tribal 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 the Tribal Historic Preservation Office;
- (5) the Leasing Officer has the right, at any reasonable time during the term of the Lease and upon reasonable notice to enter the Leased Premises for inspection and to ensure compliance;
- (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 Officer's request to make appropriate records, reports, or information available for the Leasing Officer's inspection and duplication; and
- (7) if the Leased Premises are within an irrigation project or drainage district, the lessee must pay all operation and maintenance charges that accrue during the Lease term.

(d) The Lease must also contain the following provisions:

- (1) the Lessee holds the United States and the Tribe 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 Tribe against all liabilities or costs relating to the use, handling, treatment, removal, storage, transportation, or disposal of hazardous materials, or the release or discharge of any hazardous 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 Tribe for liability or cost arising from the Tribe's negligence or willful misconduct.

(e) Unless otherwise stated in the Lease, any violations of a Lease term may be deemed a violation of the Lease and may be subject to the provisions of Chapter 800.

302 – Permanent Improvements to Leased 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) 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 Tribe 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 Tribe, and become the property of the Tribe;
 - (2) be removed within a time period specified in the Lease, at the Lessee's expense, with the Leased Premises to be restored as closely as possible to their condition before construction of the Permanent Improvements or in compliance with a Restoration and Reclamation Plan; 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 Tribe 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) In consultation with Tribal Council, the Leasing Officer may take appropriate enforcement action to ensure removal of the Permanent Improvements and restoration of the Leased Premises at the Lessee's expense in accordance with the required Restoration and Reclamation Plan 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 Leased 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.

- (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 Tribe.

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.

305 – Compatible Retained Uses

A Lease may reserve the right of or Permit the Tribe 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 Tribe will not reduce or offset the monetary compensation for the Lease.

306 – Determination of Fair Market Rent of any Lease Approved under this Leasing Ordinance

- (a) Except as provided in Section 307, or in any other provisions of this Leasing Ordinance, 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 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 Tribe 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 Tribal policies regarding appraisals, including third-party appraisals.
- (d) The Tribe may use competitive bidding as a valuation method if approved by the Tribal Council.
- (e) A review of Fair Market Value 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;
 - (4) how to resolve disputes arising from the adjustments; and
 - (5) when a review results in the need for adjustment of compensation, the Tribe must consent to the adjustment, unless the Lease provides otherwise.

307 – Determination of Rental Amount or Other Compensation

- (a) A Lease of Tribal Land may provide for the payment of any amount of rent or other compensation negotiated by the Tribe 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 Tribe'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 306. 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 Tribal Council.
- (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 306.

308 – 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.
- (d) A Lease must specify that the Lessee will make payments directly to the Tribe in the manner directed by the Tribe.

309 – Alternative Form of Compensation

A Lease may provide for:

- (a) alternative forms of compensation, including but not limited to, in-kind consideration and payments based on percentage of gross or net 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 Tribe's Best Interest and approves the Lease providing for such form of compensation.

310 – 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.

311 – Payments Required in Addition to Rent

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

312 – Permitted Term

- (a) No Lease shall be approved under this Leasing Ordinance more than 12 months prior to the commencement of the term of such Lease.
- (b) The term of a Business Lease or WSR Lease may 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 a Residential Lease may not exceed 75 years.
- (d) The Term of a WEEL shall not exceed the period described in Section 604.

313 – 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 either or both of the States of North Dakota or South Dakota, depending on which State the land being leased is located, 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) an amount equal to one year's rental payment;
 - (2) the construction of any required Permanent Improvements;
 - (3) the performance of any additional lease obligations; and
 - (4) the operation and maintenance charges for any land located within an irrigation project;
 - (5) 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 Tribe, and may not be modified without the Tribe'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 Chairman 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.

314 – Insurance

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

315 – 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 the Tribe's 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 Tribe's Land Office and LTRO.

316 – 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 Chairman or other Authorized Official.

- (b) 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 Chairman or other Authorized Official.
- (c) 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 Tribe, 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 Chairman or other Authorized Official, provided that the assignee agrees in writing to be bound by all terms and conditions of the Lease.

317 – 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 Tribal and Federal statutory and regulatory requirements.

318 – 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 Tribe.

CHAPTER 400 BUSINESS LEASES

Chapter 4, Business Leases

401 – 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 318.

**CHAPTER 500
RESIDENTIAL LEASES
SPECIFIC PROVISIONS**

Chapter 5, Residential Leases

501 – Residential Lease Requirements

Except as provided for in this Chapter, certain generally required Terms and Conditions of a Residential Lease are set forth in Chapter 300; provided that particular requirements of Chapter 300 may be waived or modified with respect to a particular Residential Lease pursuant to Section 318.

502 – 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 Tribal Land. Residential Leases approved under this Leasing Ordinance 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 the Tribal Housing Authority for subleases (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 Tribal 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 the Tribal Council.

503 – Term

- (a) A Residential Lease may be month-to-month or shall be for a stated term.
- (b) As provided by Section 312 of this Leasing Ordinance, , the maximum term of a Residential Lease shall not exceed 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 Section 312 above. The terms upon which any option may be exercised shall be clearly stated in a Residential Lease.

504 – Insurance

Except as otherwise required by the Tribal Council, and/or lender requirements, and notwithstanding Section 314 of this Leasing Ordinance, a Lessee, assignee, or sublessee shall not be required to provide insurance for a Residential Lease.

505 – Assignment

Notwithstanding Section 316 of this Leasing Ordinance, 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.

506 – Coordination With Other Tribal Law and Practice

- (a) Nothing in this Leasing Ordinance shall supersede the Tribal Housing Code, or the policy guidance and procedures of the Standing Rock Housing Authority.
- (b) In accordance with existing Tribal practice, Tribal Land may be designated for use and administration of the Tribal Housing Authority for housing purposes without any formal Lease of such Lands to the Tribal Housing Authority; provided that any Lease from the Tribe to an individual Tribal Member of a portion of such Lands shall be subject to this Leasing Ordinance.

CHAPTER 600 WIND AND SOLAR LEASES (WEELs & WSR Leases) SPECIFIC PROVISIONS

Chapter 6, Wind and Solar Leases Specific Provisions

601 – Wind and Solar Leases Requirements

Except as provided for in this Chapter, certain generally required Terms and Conditions of a Wind and Solar Leases (WEELs & WSR) Lease are set forth in Chapter 300; provided that particular requirements of Chapter 300 may be waived or modified with respect to a particular Wind and Solar Leases (WEELs & WSR) pursuant to Section 318.

602 – WEELs and WSR Leases Covered

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 Ordinance 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 Ordinance.

603 – 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.

604 – 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 single 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 Tribe's Land Office.

605 – 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 Tribe must approve the revised plan:
- (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.

606 – 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 Leased 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 Tribe;
 - (2) may be conveyed to the Tribe 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 Tribe 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 Tribe's ability to recover against any bond.

607 – 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), 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 or termination of the WEEL under Sections 803 and 805; and
 - (2) application of the transfer of ownership requirement for any energy resource information collected under the WEEL to the Tribe pursuant to Section 608.

608 – Ownership of Energy Resource Information

The energy resource information that the Lessee obtains during the term of the WEEL shall be the property of the Tribe during the Lease term and at and after 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 607.

609- WEEL Compensation

- (a) A WEEL must state how much compensation will be paid and specify the date on which the compensation will be due.
- (b) The failure to make timely payments is a violation of the WEEL and may lead to cancellation of the WEEL.

610 – 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 Leased Premises or a performance bond for a WEEL.

611 – 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.

612 – WSR Lease Option

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

613 – 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 Ordinance.

614 – 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 Tribe and a Lessee may directly enter into a WSR Lease without having had a WEEL.

615 – 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.

616 – 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 Lessee shall submit to the Tribal Land Office 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 Leased Premises upon expiration, termination or cancellation of the WSR Lease.

617 – 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 616 (b)(1). All such facilities and infrastructure shall be considered Permanent Improvements.

618 – Ownership of Permanent Improvements Installed under a WSR Lease

- (a) A WSR Lease 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 Tribe during such WSR Lease term. In addition, the WSR Lease must provide whether each such specific Permanent Improvement will:
 - (1) remain on the Leased Premises upon expiration, termination, or cancellation of the WSR Lease in a condition satisfactory to the Tribe and become the property of the Tribe;
 - (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 Tribe 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 Tribe or recover such cost from Lessee.

618 – 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) 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

- (3) repair, place into service, or remove from the Leased Premises, within a time period specified in the WSR Lease, any idle, improperly functioning, or abandoned equipment or facilities that have been inoperative 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 or termination of the WSR Lease under Section 803 and 805.

620 – Compensation Reviews and Adjustments

The compensation to the Tribe 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.

621 – 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) an amount equal to one year's rental payment;
 - (2) the performance of any additional lease obligations;
 - (3) the operation and maintenance charges for any land located within an irrigation project;
 - (4) the cost of installing any required Permanent Improvements; and
 - (5) 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 Tribe 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 700 RECORDING AND MANAGEMENT

Chapter 7, Recording and Management

701 – 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 Ordinance, deliver such document to the BIA LTRO for filing and file such document with the Tribe's Land Office.

702 – Lease Management

The Leasing Officer shall manage and oversee all Leases granted under this Leasing Ordinance. 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 Chairman and Tribal Council a report on his or her Lease management activities not less often than every six months.

703 – 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 Tribe'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.
- (c) The Leasing Officer shall maintain and provide proof of payment of rents and other payments sufficient to allow the Secretary of the Interior to discharge his trust responsibility, which may include cancelled checks or documentation of electronic deposits of required payments.

704 – 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 Tribe 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 Tribal Council, may also provide notice to the BIA pursuant to 25 U.S.C. § 415 (h)(7)(B).

CHAPTER 800 ENFORCEMENT

Chapter 8, Enforcement

801 – Remedies

- (a) A Lease may provide either or both parties with specific 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) Specific remedies may apply in addition to, or instead of, the cancellation remedy available to the Leasing Officer, as specified in the Lease. At the request of the Tribe, and upon reasonable notice from the Tribe, the Secretary may enter the Leased Premises for inspection and enforce the provisions of, or cancel, any lease executed by the Tribe. Such assistance is at the Secretary's discretion.
- (d) Lease violations will be addressed as set out in this Section, unless the Lease provides otherwise.

802 – Response to Lease Violations

- (a) In the absence of actions or proceedings described in Section 801, or if the Tribe 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 Chairman 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 Chairman, 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.
 - (2) The Leasing Officer will send a copy of the notice of violation to the Tribe 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.

803 – 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 shall inform the Tribal Council, and the Tribal Council shall determine whether:
 - (1) The Tribe should cancel the Lease;
 - (2) The Tribe wishes to invoke any remedies available to it under the Lease;
 - (3) The Tribe should invoke other remedies available under the Lease or applicable law, including collection on any available performance bond; or
 - (4) The Lessee should be granted additional time in which to cure the violation.

- (b) Following consultation with the Leasing Officer, the Tribal Council may take action to recover unpaid compensation and any associated late payment charges.
 - (1) The Tribe does not have to cancel the Lease or give any further notice to the Lessee before taking action to recover unpaid compensation.
 - (2) The Tribe may still take action to recover any unpaid compensation if it cancels the Lease.
- (c) If the Tribe 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 Chairman 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 809,
 - (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 Tribe.
- (d) The Tribe may invoke any other remedies available to it under the Lease, including collecting on any available performance bond, and the Tribe may pursue any available remedies under Tribal Law or any other applicable law.

804 – 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 Tribe 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 Tribe under the Lease:

The Lessee will pay:	For:
(1) \$50.00	Any dishonored check
(2) \$15.00	Processing of each notice or demand letter

805 – Cancellation or Termination

- (a) A cancellation involving a Lease pursuant to this Leasing Ordinance 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. During the time a cancellation decision is ineffective, the Lessee must continue to pay compensation and comply with the other terms of the Lease.
- (c) Any expiration, cancellation or termination of any Lease pursuant to this Leasing Ordinance must be recorded with the BIA LTRO and the Tribe's Land Office.

806 – Recovery of Possession

- (a) If a Lessee remains in possession after the expiration, termination, or cancellation of a Lease, the Tribe may treat the unauthorized possession as a trespass under applicable law. The Tribe may take action to recover possession, and pursue any additional remedies available under applicable law, such as a forcible entry and detainer action.
- (b) The BIA may, upon reasonable notice and request from the Tribe and at BIA's discretion, enforce the provisions of, or cancel, a Lease.

807 – Harmful or Illegal Activities

In addition to the rights and remedies provided in a Lease or this Chapter 800, the Tribe may seek immediate mandatory and injunctive relief to prevent the occurrence or continuation of any harmful or illegal activities on the Leased Premises.

808 – Abandonment

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

809 – Right to Appeal of Final Determination

- (a) A Party to a Lease may appeal a Final Determination, regarding the interpretation, enforcement or cancellation of a Lease, within thirty (30) days of notification of the Final Determination. Appeals may be filed with the Standing Rock Sioux 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.

- (b) An appeal of a Tribal Court order or decision may be filed with the Supreme Court of the Standing Rock Sioux Tribe, which shall be subject to review pursuant to Title I, Chapter 2, as amended, of this Code.
- (c) The decision of the Supreme Court, or the decision of the Tribal Court if an appeal is not validly and timely filed with the Supreme Court, or if the Supreme Court denies review, shall be conclusive and binding on all parties.

810 – Scope of Review

The Tribal Court’s scope of review, and any appeal of the Tribal Court’s decision to the Supreme Court, shall be limited to whether the Final Determination of the Tribe regarding the interpretation, enforcement or cancellation of a Lease was arbitrary, capricious, or an abuse of discretion; not supported by substantial evidence in the record; or otherwise not in accordance with applicable law.

811 – No Appeal of Leasing Determinations

- (a) This Leasing Ordinance is not intended to, and does not, create an individual right to appeal Tribal decisions resulting in the Tribe declining to enter into a Lease with individuals or entities seeking the possession and use of Tribal Lands, which decisions are within the sole discretion of the Tribe.
- (b) Notwithstanding any other provision of law, the Standing Rock Sioux Tribal Court shall have no jurisdiction over any such matter.

**CHAPTER 900
ENVIRONMENTAL REVIEW**

Chapter 9, Environmental Review

901 – Purpose of Environmental Review

The purpose of this Chapter is to ensure that prior to approval of any Lease pursuant to this Leasing Ordinance, 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 Significant Effects on the Environment of the proposed Leasehold Use identified by the Tribe; and
- (c) the Tribe provides responses to relevant and substantive public comments on any such impacts before the Tribe approves the Lease.

902 – Environmental Review Required; Exceptions and Associated Lease Reviews

- (a) The Director of the Department of Environmental Regulation/Environmental Protection Agency 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 Tribal Land;
 - (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) Residential leases of existing homes, unless required by Council.
- (b) The Director of the Department of Environmental Regulation/Environmental Protection Agency may, subject to Council approval, assess such reasonable fees as deemed necessary to undertake the required Environmental Review.

903– Environmental Review Statement Contents

- (a) The Director of the Department of Environmental Regulation/Environmental Protection Agency shall prepare a Draft Environmental Review statement for any Lease in which he/she:
- (1) identifies any Significant Effects on the Environment of the proposed Leasehold Use,
 - (2) considers whether there are any reasonable actions that may be taken to mitigate such Significant Effects on the Environment as part of the proposed Lease, and
 - (3) determines whether any such actions should be recommended to the Tribal Council as a condition of approval of a Lease.
- (b) In addition to the matters described in Section 903(a), the Draft Environmental Review Statement shall include a brief discussion of:
- (1) The proposed Leasehold Use,
 - (2) The need for the proposed Lease.

904 -Public Notice and Comment

The Director of the Department of Environmental Regulation/Environmental Protection Agency shall provide the notice of availability of the Draft Environmental Review statement, opportunity to comment and the response to any such comments, in such a manner as may reasonably be expected to provide notice of such availability to the Public as designated by the Tribal Council, including publication of such notice on the Tribe's website, posting of the notice in all of the Tribal office buildings, and any paper of general circulation on the Standing Rock Sioux Reservation.

- (a) The Draft Environmental Review notice of availability shall notify the Public that
 - (i) a Lease is under consideration for approval pursuant to this Leasing Ordinance,
 - (ii) a copy of the Draft Environmental Review statement is available to any member of the Public requesting it without charge, and
 - (iii) the Public is being provided with a reasonable opportunity to comment on any Significant Effects on the Environment a proposed Lease may have.
- (b) The Notice shall invite comments on the Draft Environmental Review Statement for not less than thirty (30) days.
- (c) The Director of the Department of Environmental Regulation/Environmental Protection Agency shall consider all comments received from the Public, and shall provide a response to all relevant and substantive Public comments within thirty (30) days of closure of the comment period, which shall be made available to the Public.

905 – Final Environmental Review

- (a) Within 30 days of completion of the response to Public comments, the Director of the Department of Environmental Regulation/Environmental Protection Agency shall provide to Council a Final Environmental Review, which shall include recommendations concerning the approval, disapproval or imposition of conditions on a Lease prior to approval.
- (b) The Final Environmental Review shall be available to the Public at a place designated by the Tribal Council.
- (c) 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.

906 – Federal Environmental Review

If a proposed Lease is the subject of an environmental review prepared in accordance with NEPA by a federal agency, the Tribe may rely on such completed federal environmental review in lieu of conducting an independent Tribal Environmental Review process under this Leasing Ordinance.

CHAPTER 1000
EFFECTIVE DATE, AMENDMENTS; SEVERABILITY

Chapter 10, Effective Date, Amendments, Immunity, Severability

1001 – Effective Date

This Leasing Ordinance shall go into effect and apply from and after the date of its approval by the Secretary.

1002 – Amendments

The Tribal Council may amend this Leasing Ordinance 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 Ordinance must be submitted to and approved by or on behalf of the Secretary.

1003—Immunity

Nothing in this Leasing Ordinance shall be considered a waiver of the Tribe's sovereign immunity.

1004 – Severability

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