

RESIDENTIAL LOT LEASE AND LEASEHOLD MORTGAGE PROGRAM ACT
Ordinance #06-700-06

Article I. Purpose; Findings

1.01. *Purpose.* The purpose of this Ordinance is to govern the lease of residential lots in Tribal trust land to individual Tribal members and to establish a Leasehold Mortgage Program to assist Tribal members in obtaining mortgage financing for the purchase of single family, owner-occupied principal residences on leasehold estates located upon Tribal trust lands.

1.02. *Findings.* The Tribal Council finds that -

a. It is delegated responsibility, in Article IV, Section 7a of the Constitution, “to exercise the inherent powers of the Little River Band by establishing ordinances through the enactment of ordinances and adoption of resolutions not inconsistent with this Constitution:

1. to govern the conduct of members of the Little River Band and other persons within its jurisdiction;
2. to promote, protect and provide for public health, peace, morals, education and general welfare of the Little River Band and its members;
3. to provide for the manner of making, holding and revoking assignments of the Little River Band’s land or interests therein;

b. It is further delegated responsibility, in Article IV, Section 7(d) of the Constitution, “to approve or veto any sale, disposition, lease or encumbrance of Little River Band land, interests in land, personal property or other assets.”

c. It is further delegated responsibility, in Article IV, Section 7(j) of the Constitution, “to take action not inconsistent with this Constitution or Federal law, which shall be necessary and proper to carry out the sovereign legislative powers of the Tribe.”

d. It is an essential element of providing for the health, peace, and general welfare of the Tribal members to offer affordable housing in a safe and healthy environment.

e. The Tribe has developed the *Aki maadiziwin* subdivision and is currently occupied below its capacity.

f. It is necessary to develop a program to encourage Tribal members to move into the subdivision.

g. There is no program that regulates how Tribal trust land should be assigned to Tribal members for residential purposes.

h. In order to provide assurances to lenders, borrowers and federal agencies it is necessary to enact the proper legal infrastructure that provides for recordation, foreclosure and evictions and priority of lien procedures in connection with leasehold mortgages given to secure loans, and

i. That to facilitate the purpose of the program as outlined, this ordinance authorizes a limited waiver of sovereign immunity by the Tribe with respect to all controversies or claims arising out of, or relating to, the leasehold mortgage agreements and the leases described herein.

Article II. Adoption; Amendment; Short Title; Severability

2.01. *Adoption.* This ordinance is adopted by Tribal Council through:

- a. Resolution #05-0427-165 which adopted the original ordinance;
- b. Resolution #06-1011-705 which adopted this ordinance on an emergency basis;
- c. Resolution #06-1220-____, which repealed ordinance #05-700-06 effective October

11, 2006 and replaced it with ordinance #06-700-06.

2.02. *Amendment.* This ordinance may be amended by Tribal Council in accordance with the Constitution, the Administrative Procedures Act, and any rules set forth governing amendment of laws of the Little River Band of Ottawa Indians.

2.03. *Short Title.* This Ordinance may be cited as the Residential Lot Lease Act.

2.04. *Severability Clause.* If any provision of this Ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable.

Article III. Definitions

3.01. *General Definitions.* For purposes of this Ordinance, certain terms are defined in this Article. The word "shall" is always mandatory and not merely advisory.

3.02. Applicant means an individual member of the Tribe who applies for and executes the Leasehold Mortgage Application and Lease documents.

3.03. *Tribe* means the Little River Band of Ottawa Indians.

3.04. *Tribal Council* means the Tribe's governing body.

3.05. *Tribal Land Records and Registry Office* means the Tribe's department in charge of recording land transactions and registering documents as established in Ordinance 05-150-03.

3.06. *Tribal Court* means the Tribal Judiciary of the Little River Band of Ottawa Indians.

3.07. *Tribal Lands* mean real property owned by the Tribe or the United States of America in trust for the Tribe including lands acquired in fee or set in trust after this ordinance is enacted.

3.08. Household Member includes all persons living in the same residence and any individual residing or domiciled in the residence for a period exceeding or expected to exceed three months.

3.09. "Jurisdiction's list of sexual offenders" shall mean any Tribal, federal, state or local registry of sexual offenders.

3.10. *Lot* means a parcel of real estate upon Tribal lands designated for use as a single family, townhouse, condominium or other single family ownership.

3.11. *Lease holder* means the individual Tribal member who has leased a specific lot upon Tribal lands.

3.12. *Lease* means a residential lease regarding a lot on Tribal lands entered into between the Tribe and an individual Tribal member issued in the form approved by the Bureau of Indian Affairs, United States Department of the Interior to implement the various federal programs available to insure or guaranty a mortgage loan. Provided that, the residential lease for low income elder and tribally owned rental homes executed as per Resolution 05-0119-23 does not fit within this definition.

3.13. *Lessor* means the Tribe.

3.14. *Lessee* means the individual Tribal member beneficiary of a lease.

3.15. *Leasehold estate* means an estate established pursuant to a Lease.

3.16. *Leasehold Mortgage* means the first-lien mortgage of a leasehold estate given to secure a mortgage loan made by a mortgage pursuant to HUD's Section 184 program or its equivalent program sponsored by other federal agencies.

3.17. Life Estate means an estate held only for the duration of the life of a Non-Tribal Member Spouse of a Lessee, and that person shall have no possessory rights in the leasehold property but shall comply with all relevant laws and regulations and all terms and provisions contained in the Lease.

3.18. Life Tenant means a Non-Tribal Member Spouse of a Lessee who, until his/her death, is

beneficially entitled to remain on the leased Lot. A Life Tenant shall comply with all laws and regulations relating to the Leasehold Estate and all terms and provisions contained in the Lease.

3.19. *Mortgagor* means any member of the Tribe who has executed a leasehold mortgage, including any co-mortgagor(s), heir(s), successor(s), executor(s), administrator(s) or assign(s) of such member.

3.20. *Mortgagee* means the approved lender under any leasehold mortgage made pursuant to the Leasehold Mortgage Program. This definition also includes, without any consent by the Tribe, any subsequent holder, whether by assignment, succession or otherwise, of the original mortgagee's right, title or interest in and to the leasehold mortgage and/or the leasehold estate.

3.21. Non-Tribal Member Spouse shall mean an individual legally married to the Tribal Member Lessee, who has resided with the Tribal Member Lessee for at least the previous two years and resides with the Tribal Member Lessee upon Lessee's death, who is not a member of the Little River Band of Ottawa Indians. A Non-Tribal Member Spouse shall be identified as a co-mortgagor on all original mortgage documents related to the residence in order to qualify for a life estate.

3.22. *Tribal member* means an individual enrolled as a member of the Little River Band of Ottawa Indians.

3.23. *Transfer* means legal assignment of leasehold interest from Lease holder to another Tribal member.

3.24. *Testamentary designation* means designation in a Lease holder's will or estate planning documents that his leasehold estate interest shall be inherited by another Tribal member. Testamentary designation may also mean designation of a life estate to a non-Tribal Member spouse in accordance with Article IX of this Ordinance.

3.25. *Sublease* means temporary authorization by a Lease holder to another Tribal member of the right to occupy the residential premises upon a leased lot.

3.26. *Nuisance* means a condition which:

- a. Unreasonably threatens the health or safety of the public or neighboring land users; or
- b. Unreasonably and substantially interferes with the ability of neighboring real property users to enjoy the reasonable use and occupancy of their property.

3.27. *Subsequent Lienholder* means the holder of any lien, including a mortgage, perfected subsequent to the recording of a leasehold mortgage under this ordinance; provided, however, such terms shall not include the Tribe with respect to a claim for a Tribal leasehold tax.

3.28. *Unlawful Detainer Action* means a suit brought before Tribal Court to terminate a Lease holder interest in a leasehold estate and/or to evict any person from occupancy of such leasehold estate or residence build upon.

3.29. *Waste* means to spoil or destroy land, buildings, gardens, trees or other improvements on the leasehold estate which results in substantial injury to the lessor's interest in the leasehold estate. Waste may include the failure to build on leasehold within the required time period thus depriving another member of the opportunity for affordable housing.

3.30. *Writ of Restitution* means an order of the Tribal Court: (A) Restoring an owner, lessor, mortgagee (or other successor in interest) to possession of a leasehold estate subject to a leasehold mortgage; and (B) Evicting a Lease holder or other occupant from such property.

Article IV. Eligibility for Leasing a Lot

4.01. *Policy principle*. It is the policy of the Tribe that all residential lot leases are intended for homestead purposes.

4.02. *Tribal member options*. Lots leased upon Tribal trust lands cannot be encumbered. Before entering into a lot lease the Tribal member shall determine whether or not he will utilize his own

financial resources to build on the lot or if he will seek private or public financing. Mortgage financing for construction on Tribal trust land or purchase of a house built in Tribal trust land is available through several federal programs that offer private lenders' mortgage insurance or guaranty. If the Tribal member chooses to seek private or public financing with federal mortgage insurance or guaranty, he must execute a lease issued in the form approved by the Bureau of Indian Affairs and/or the federal agency providing the insurance or guaranty.

4.03 *Criminal Background Screening.* Prior to posting an Applicant's lot choice, the Housing Department shall conduct a screening process of each applicant and adult household member regarding his criminal background to determine eligibility and/or suitability for admission. The screening process shall include a review of pertinent factors including criminal convictions, particularly focusing on drug-related activities, physically violent crimes, sexual crimes, or other criminal acts that may endanger the health, safety or right to peaceful enjoyment of other residents.

The Housing Department may wish to request information from law enforcement agencies and the National Crime Information Center and may have an outside agency perform the background investigation. The Housing Department shall not provide an option for the applicant to adjust the occupants listed in the application. The Housing Department shall apply the provisions listed in Section 4.03, and shall maintain files in accordance with the department's criminal record file maintenance procedures

4.04. *Eligibility.* Applicants requesting a lease must be Tribal members and declare the intent to use the lot to build a home as his primary residence.

4.05 *Automatic Exclusion.* An Applicant shall be automatically ineligible for admission if the Applicant or any household member has a criminal record of felonies related to sexual crimes or criminal sexual conduct where the perpetrator was an adult at the time the crime was committed, and/or is registered in any jurisdiction's list of sexual offenders.

4.06 *Discretionary Exclusion.* The Housing Department shall determine whether to deny an applicant admission to the Leasehold Program if he or any household member listed on the application has been convicted of or entered a plea of guilty or no contest to a misdemeanor or felony offense, including but not limited to, the following:

- a. Any offense related to sexual crimes or criminal sexual conduct where the perpetrator was an adult at the time the crime was committed, and/or is registered in any jurisdiction's list of sexual offenders;
- b. Any offense involving the sale of any controlled substance included on Schedules 1-5 of MCL333.7211-333.7220 or the equivalent within the past seven years;
- c. Any offense involving violent behavior, including murder, assault with intent to do bodily harm; home invasion; or felony stalking.

4.07. In making a decision to exclude, the Housing Department shall complete a report that takes into account the following factors and considerations:

- a. Whether the offense was a felony or misdemeanor.
- b. Dates of convictions.
- c. Number of similar convictions.
- d. Likelihood of recidivism that will take into account factors such as counseling and substance abuse programs.
- e. Convictions that impact the health, safety and right to peaceful enjoyment of other tenants.

4.08. *Determination of Ineligibility.* If one household member is determined to be ineligible or unsuitable, the application is rejected in its entirety. If an applicant or household member is determined ineligible under section 4.06, a written notice of the determination and the grounds for

the determination shall promptly be sent to the applicant. The notice shall advise the applicant(s) of the right to appeal to the Housing Commission. The request for appeal must be submitted within 15 calendar days of the date the notice was mailed. The Housing Commission shall hold a hearing within 14 days of the request. After the hearing, the Housing Commission shall provide a written decision within 10 days which shall include the findings of facts and decisions. The decision of the Housing Commission shall be final and may not be appealed.

4.09. *Application Procedure.* A Tribal member requesting a leasehold estate regarding a specific lot should submit a written application to the Housing Department in the form issued and approved by the Housing Commission. The written request should include the following information:

- a. Applicant's demonstrated ability to arrange necessary financing to build a residence meeting standards specified in the Aki Maadiziwin Subdivision Building Restrictions Ordinance, #05-550-02 or other standards which may apply.
- b. Applicant is not in default or delinquency of any debt to the Tribe or any of its enterprises.
- c. Applicant and household members have no criminal record of felonies related to sexual crimes or criminal sexual conduct where the perpetrator was an adult at the time the crime was committed, and/or are not registered in any jurisdiction's list of sexual offenders.

4.10. *Selection Criteria for lot adjudication.* The Housing Department shall rank applicants for a lot assignment by the following criteria to present for determination and approval by the Housing Commission.

- a. Applicant's request should specify the lot number requested and shall identify all household members. The Housing Department upon receiving such request shall post the request on the Tribal Council's internet site, and physically at the Tribe's Downtown Office Building by presenting such notice to the main receptionist or other person responsible for posting notices for the building. The posting shall include the applicant's name and the names of all household members. The notice should also be posted at the Housing Department bulletin board. The Housing Department is mandated to personally notify any subsequent applicant who, within the posting period files a request for the lot number covered in the Notice. The posting period shall be 20 days. Upon the expiration of the posting period, the Housing Department shall issue a certification that the posting period has expired and that no-additional applications regarding the same lot were received during such posting period. The Housing Department will not accept a request filed by an applicant who currently holds a lease on another lot upon Tribal trust lands.
- b. If no additional applicants request the same lot, the Housing Department will issue a recommendation to the Housing Commission to approve the requested lot and continue with the lease process.
- c. If during the posting period a new applicant requests the same lot, the Housing Department should submit a copy of the new applicant's request to the Housing Commission for a final decision as to who will be granted a lease for the lot in question.
- d. When adjudicating a disputed lot, the Housing Commission shall take into consideration the following factors:
 1. Readiness to complete the mortgage application. The applicant who is more prepared to successfully complete the mortgage or financing procedure in a shorter period of time should be awarded the lot over the applicant who is at the early stages of the process. An applicant who has obtained a mortgage or financing pre-approval from a lender will be considered to be more prepared than someone who has not yet obtained such pre-approval. This factor will be assigned 50% weight

overall.

2. When the lot in dispute is located at the *Aki maadiziwin* subdivision, compliance with the building restrictions should be taken into consideration. This factor will be assigned 15% weight overall.

3. The applicant, who at the time of the request does not own a house, will be given preference over the one who at such time owns a home. This factor will be assigned 15% weight overall.

4. The applicant's household that has the larger number of Tribal members would be given preference. This factor will be assigned 20% weight overall.

5. If, after applying the criteria above, there are still two or more applicants in equal eligibility standing, the Housing Commission will decide through a lottery system, to be established through Resolution by the Housing Commission, who will get the lot in question.

e. If any of the applicants involved in the dispute are related by blood or marriage to any Housing Commission member, that Commissioner should abstain from the discussion and vote on the adjudication. If no dispute regarding a lot request arises, a Commissioner who may be related by blood or marriage to the applicant is under the obligation to disclose the relationship and let the Housing Commission decide whether or not he can participate in the final decision or should abstain from any discussion.

Article V. Voidance of Lease

5.01. *Failure to start construction.* A lot lease shall be considered void if the Lease holder or any successor(s) in interest do not occupy the premises or begin construction of a residence within one year of the date of the lease. This period may be extended for one year by motion of the Housing Commission if the Lease holder submits information in writing demonstrating the likelihood that a residence will be constructed within the extended period of time. If the Housing Commission determines the lease to be void, the lot will be made available to the general membership for a new lease. The former lease holder is not eligible to re-apply.

5.02. *Failure to obtain mortgage financing.* A lot lease shall be considered void if the Lease holder or any successor(s) in interest fail to obtain mortgage financing to build a home on the lot within a year from the date of the lease, or his mortgage financing application has been rejected by a lender for reasons other than missing filing documents that may be the responsibility of the Tribe to generate. If the Housing Commission determines the lease to be void, the lot will be made available to the general membership for a new lease. There is no restriction for the former lease holder to re-apply provided that he can demonstrate changes in his financial status that may qualify him for a mortgage loan.

5.03. *Failure to execute compliance affidavit.* A lot lease shall be considered void if the Lease holder or any successor(s) in interest fail to execute an affidavit stating that the house proposed to construct on the lot leased will comply with the Tribal Building Restrictions or other applicable land use regulations and that all the required permits will be sought and requested. The affidavit shall be executed prior to the Tribe submitting the executed lease to the Bureau of Indian Affairs.

5.04. *Failure to execute Lease.* A lot lease shall be considered void if an Applicant whose request for a lot has been approved by Tribal Council fails to execute the Lease form within 30 days of the Tribal Council Resolution ordering the execution of the lease.

Article VI. Subleases; Transfer and Assignments

6.01. *Transfer and assignments.* The Lease holder may transfer or assign his leasehold only to

another Tribal member with prior approval of the Housing Commission and approval of the new lease by Tribal Council. Monetary consideration is not allowed in regards to transfers, except regarding the improvements or structures on the lot. Tribal Council will approve the transfer and/or assignment based on the same criteria used to select eligible applicants to the Leasehold Mortgage Program. Transfer and assignment of the leasehold interest is further restricted if the leaseholder has already obtained a mortgage within the Leasehold Mortgage Program established in this Ordinance. In this case, the leasehold interest can be only transferred or assigned with the consent of the Tribe, mortgagor and the guarantor as required by the governing lease document. This section shall not apply to a grant of a life estate to a non-Tribal Member spouse, which is not considered a transfer or assignment of the Lease.

6.02. *Sublease of residence.* The Lease holder who has built a residence subject to his leasehold may, on his own, lease or otherwise alienate the home without any other restriction than the transferee or assignee shall be a Tribal member. The transfer of the rights over the home does not automatically imply a transfer of the leasehold rights on the lot. In order for a transfer and/or assignment of the lot to be effective the Lease holder must comply with the provisions contained in section 6.01. Any transfer or alienation of the home as per this section shall be further restricted by the governing lease document entered into as per the Leasehold Mortgage Program.

Article VII. Approval of Lease

7.01. *Approval of lot request.* The approval of a lot request shall be made by Resolution of Tribal Council ordering the execution of a lease between the applicant and the Tribe. The applicant whose request for a lot has been approved by Tribal Council shall execute the Lease form within 30 days of the Tribal Council Resolution ordering the execution of the lease.

7.02. *Bureau of Indian Affairs Approval.* Upon execution of the lease between the Tribe and the Lease holder, the Tribe will submit the executed lease to the Bureau of Indian Affairs for approval and recording if required.

7.03. *Submission to Lender.* Once the Bureau of Indian Affairs completes the verification process and issues a preliminary Title Status Report with the lease recorded, the Tribe will submit applicant's package to the private lender of his choice from among the list of participating lenders. If the lender requires a federal mortgage guaranty, it is the lender's responsibility to submit the applicant's package to the proper federal agency for approval prior to closing on the mortgage loan.

Article VIII. Conditions applicable to lot leases

8.01. *Vacancy of lease.* If a residence upon a lot is vacated, without an approved sublease, for a period longer than one year, the Housing Commission shall have discretion either to declare the lot assignment void and designate a successor, or to request the Tribal Court to exercise equitable jurisdiction to designate a successor. Leases within the Leasehold Mortgage Program are not subject to cancellation by Housing Commission action.

8.02. *Homes at the end of the lease.* Any structure or other improvements capable of being removed from the lot shall be considered the property of the former leaseholder at the time of termination of the lease. However, if the structure or other improvement cannot be removed the Tribe must pay the former leaseholder the fair market value of the structure or other improvement. Such structure and improvements will become an asset of the Tribe. If the leasehold still remains encumbered at the end of the lot lease, the Tribe cannot release the leaseholder of any of his contractual obligations with lenders or the federal agency that may have provided a mortgage guaranty.

8.03. *Intestate transfers and testamentary designations.* The Lease holder may transfer or devise

his leasehold right in accordance with Article IX below, **or** as per the provisions contained in the Tribal Probate Code or the federal legislation that may apply in its default.

Article IX. Allowances to Spouse.

9.01. This Article applies to all Program Applicants, regardless of when they applied; provided however, that the Applicant meets all other qualifications contained in this Ordinance.

9.02. When a Lessee dies testate, or intestate.

a. If the Tribal Member Lessee of the Leasehold Estate shall die and leave a Non-Tribal Member surviving spouse, the surviving spouse, at the option of Tribal Council, shall be permitted to use and occupy the holding during his/her life time (a “life estate”), provided that he/she does not remarry, has lived with the Tribal Member Lessee for at least the previous two years and resides with the Tribal Member Lessee upon Lessee’s death. The Non-Tribal Member spouse shall not be recognized to have any possessory rights in the Leasehold Estate but shall comply with all laws and regulations related thereto and all terms and provisions contained within the Lease.

b. If the Tribal Member Lessee of the Leasehold Estate shall die and leave a Non-Tribal Member surviving spouse, together with surviving minors who are Tribal Members, the surviving spouse may use the possessory holding and improvements for the benefit of such minors during their period of minority, but upon member minor(s) reaching the age of majority, the Tribal Member adult must make application for the Leasehold Estate, and meet the eligibility requirements set forth in this Ordinance. The Non-Tribal Member Spouse shall have lived with the Tribal Member Lessee for at least the previous two years and reside with the Tribal Member Lessee upon Lessee’s death.

c. If the Tribal Member Lessee of the Leasehold Estate shall die and leave heirs, other than a Non-Tribal Member spouse, who are non-members of the Tribe, but under federal or state law would be entitled to inherit personal property from the holder of the possessory right in the Leasehold Estate, then:

1. If the heir is a resident of the home, s/he shall have sixty (60) days to vacate the property;
2. If the heir is not a resident of the home, s/he shall not be allowed to move into the home;
3. The Tribe shall purchase the improvements recognized to be the personal property of the holder of the possessory rights at fair appraised value.

9.03. The above rights of the holder of possessory rights are subject to any Tribal Laws of general application which may be enacted by the Tribal Council and which by reference are made a part thereof.

Article IX. Tribal Court Jurisdiction

9.01. *Exclusive jurisdiction.* The Tribal Court shall have exclusive jurisdiction to resolve disputes concerning lots leased for residential purposes upon tribal lands.

Article X. Leasehold Mortgage Priority of Lien Procedures, Recording

10.01. *Priority.* A leasehold mortgage recorded in accordance with the recording procedures set forth in this ordinance shall have priority over any lien not perfected at the time of such recording and any subsequent lien or claim, except a lien or claim arising from a Tribal tax assessed against a leasehold estate subject to the leasehold mortgage.

10.02. *Recording.*

- a. The Tribe recognizes that the appropriate offices for recording leases and leasehold mortgages is the Bureau of Indian Affairs Area Land Titles and Records Office in addition to the Tribal Recording Office, and the Tribe agrees that the lease agreement shall require that the leases and leasehold mortgages may also be recorded in the county recorder's office in the Michigan county in which the leasehold estates are located.
- b. The Tribal Recording Clerk shall maintain in the Tribal Recording Office a system for the recording of leasehold mortgages and such other documents as the Tribe may designate by law or resolution including, without limitation, the lease.
- c. The Tribal Recording Clerk shall endorse upon any lease and leasehold mortgage or other document received for recording the following:
 - 1. The date and time of receipt of the lease and the leasehold mortgage or other document;
 - 2. The filing number, to be assigned by the Tribal Recording Clerk, which shall be a unique number for each lease and leasehold mortgage or other document received; and
 - 3. The name of the Tribal Recording Clerk receiving the lease and leasehold mortgage or other document.

Upon completion of the above endorsements, the Tribal Recording Clerk shall make true and correct copies of the lease and leasehold mortgage or other security instrument and shall certify each copy as follows:

"Little River Band of Ottawa Indians: _____ ss.
 I certify that this is a true and correct copy of a document received for recording.
 Given under my hand and seal this _____ day of _____.

(SEAL)

 Signature

 Title"

The Tribal Recording Clerk shall maintain such copies in the records of the recording system and shall return the original lease and leasehold mortgage or other document to the person or entity that presented the same for recording.

- d. The Tribal Recording Clerk shall also maintain a log of each lease and leasehold mortgage or other document recorded in which there shall be entered the following:
 - 1. The name(s) of the mortgagor(s) of each leasehold mortgage, identified as such;
 - 2. The name(s) of the mortgagee(s) of each leasehold mortgage, identified as such;
 - 3. The name(s) of the grantor(s), grantee(s), or other designation of each party named in any other documents including the lease;
 - 4. The date and time of receipt;
 - 5. The filing numbers assigned by the Tribal Recording Clerk; and
 - 6. The name of the Tribal Recording Clerk receiving the lease, leasehold mortgage or other document.
- e. The certified copies of leases and leasehold mortgages and other documents and the log maintained by the Tribal Recording Clerk shall be made available for public inspection and copying.

Article XII. Leasehold Mortgage Foreclosure Procedures

12.01. *Foreclosure Procedures.* Upon the default of the mortgagor(s), and upon expiration of any

applicable cure periods under a leasehold mortgage, the mortgagee or its successors and assigns, may commence a leasehold mortgage foreclosure proceeding in the Tribal Court as follows:

- a. By filling a verified complaint:
 1. Citing authority for jurisdiction of the Tribal Court;
 2. Naming the mortgagor(s) and each record owner claiming through the mortgagor(s) subsequent to the recording of the leasehold mortgage, including each subordinate lienholder, except the Tribe with respect to a claim for a Tribal tax on the leasehold estate subject to the leasehold mortgage, as a defendant;
 3. Describing the leasehold estate subject to the leasehold mortgage;
 4. Stating the facts concerning:
 - A. The execution of the lease and the leasehold mortgage;
 - B. The recording of the leasehold mortgage;
 - C. The alleged default(s) of the mortgagor(s) and any other facts as may be necessary to constitute a cause of action;
 5. Having appended as exhibits true and correct copies of each promissory note, lease, leasehold mortgage, and, if applicable, assignment thereof relating to such leasehold estate;
 6. Including an allegation that all relevant requirements and conditions prescribed in the federal mortgage loan guarantee program and/or leasehold mortgage agreement and the lease have been complied with by the mortgagee or its successors or assigns; and
 7. Otherwise satisfying the requirements of the Tribal Court.
- b. By obtaining a summons, issued as in other cases, requiring the mortgagor(s) and each other person or entity claiming through the mortgagor, as defendants, to appear for a trial upon the complaint on a date and time specified in the summons, and filing a copy of such summons with the Tribal Court.

12.02. *Service of Process and Procedures.* The laws of the Tribe governing service of process and all other matters relating to the conduct of Tribal Court proceedings shall apply to any leasehold mortgage foreclosure proceeding pursuant to this ordinance.

12.03. *Cure of Default by Subordinate Lienholder.*

- a. Prior to the entry of a judgment of foreclosure of a leasehold mortgage pursuant to this ordinance, any mortgagor or any subordinate lien-holder may cure the default(s) under the leasehold mortgage.
- b. Any subordinate payments made by such subordinate lienholder to cure such default(s) must comply with the terms of the mortgage, plus interest on such amounts at the rate stated in the promissory note evidencing the subordinate lien.

12.04. *Power of the Tribal Court.* If the alleged default(s) have not been cured, and if the Tribal Court should find for the mortgagee or its successors or assigns, the Tribal Court shall enter judgment:

- a. Foreclosing the leasehold estate of the mortgagor(s) and each other defendant named in the complaint upon whom proper and timely service has been made, including each such subordinate lienholder; and
- b. Assigning such leasehold estate to the mortgagee or the mortgagee's assignee.

Article XIII Leasehold Mortgage Eviction Procedures

13.01. *Jurisdiction.* The provisions of this Article shall apply to all persons and property subject to the governing authority of the Tribe as established by the Constitution and other Tribal law,

excepted for the Low Income Elder and Tribally Owned Rental Homes, which eviction procedures are governed by Chapter 4 of the Housing Regulations.

13.02. A former lease holder or other occupier of a leasehold estate subject to a leasehold mortgage shall be guilty of unlawful detainer if such person shall continue in occupancy of such leasehold estate under any of the following situations:

- a. Without the requirement of any notice by the lessor:
 1. After the expiration of the term of the lease;
 2. If such person has entered onto or remains on the real property of another without the permission of the owner and without having any substantial claim under a lease or title to such property;
 3. After the lessor has terminated such person's leasehold rights pursuant to procedures providing such person a hearing before such lessor involved; or
 4. After such person's leasehold estate has been foreclosed in a leasehold mortgage foreclosure proceeding in the Tribal Court.
- b. After having received thirty (30) days notice, the former leaseholder or occupier shall remain in possession of such property contrary to the terms of the notice as follows:
 1. When such person has received notice:
 - A. That he or she is in default in the payment of ground rent; and
 - B. Requiring him or her to either pay such rent or surrender possession of the occupied property and such person has not either surrendered possession of such property or paid the rent within the thirty (30) day period provided in such notice.
 2. When such person shall continue to fail to keep or perform any condition or covenant of this Ordinance, the Aki Maadziwin Subdivision Building Restrictions Ordinance, the lease, or any other use agreement under which the property is held after he or she has been given notice to comply with such condition or covenant or else to surrender the property; or
 3. When such person continues to commit or to permit waste upon or maintain a nuisance upon the occupied property after having been given notice to either cease such waste or maintenance of nuisance or to surrender the property.

13.03. *Procedures for Services of Notice.*

- a. Notices required or authorized in the immediately preceding section shall be given in accordance with established Tribal Court rules and procedures. In the absence of such rules and procedures, notices shall be given in writing by either:
 1. Delivering a copy personally to the lease holder or occupier or to any adult members of his or her family residing on the leasehold estate; or
 2. Posting said notice in a conspicuous place near the entrance to said leasehold estate, and by sending an additional copy to the lease holder or occupier by certified mail, return receipt requested, properly addressed, postage prepaid.
- b. Proof of service by either of the above methods may be made by affidavit of any adult person stating that he or she has complied fully with the requirements of either of these two methods of service.

13.04. *Complaint and Summons.* The lessor or the mortgagee (including its successors or assigns) shall commence an action for unlawful detainer by filing with the Tribal Court, in writing, the following documents:

- a. A complaint, signed by the lessor, the mortgagee (or its successors or assigns), or an agent or attorney on their behalf including the following:

1. Citing authority for jurisdiction of the Tribal Court;
 2. Naming the mortgagor(s) and each record owner claiming through the mortgagor(s) subsequent to the recording of the leasehold mortgage, including each subordinate lienholder, except the Tribe with respect to a claim for a Tribal tax on the leasehold estate subject to the leasehold mortgage, as a defendant;
 3. Describing the leasehold estate subject to the leasehold mortgage;
 4. Stating the facts concerning
 - A. The execution of the lease and the leasehold mortgage;
 - B. The recording of the leasehold mortgage; and
 - C. The facts upon which he or she seeks to recover;
 5. Stating any claim for damages or compensation due from the persons to be evicted; and
 6. Otherwise satisfying the requirements of the Tribal Court.
- b. A copy of the summons, issued in accordance with established Tribal Court rules and procedures.
1. In the absence of such rules and procedures for the issuance of a summons, the summons shall require defendants to appear for trial upon the complaint on a date and time specified in the summons.
 2. The trial date specified in the summons shall be no less than six (6) nor more than thirty (30) days from the date of service of the summons and complaint.
 3. The summons must notify the defendants that judgment will be taken against them in accordance with the terms of the complaint unless they file with the Court an answer and appear for trial at the time, date and place specified in the summons.
- 13.05. *Service of Summons and Complaint.*
- a. A copy of the summons and complaint shall be served upon the defendants in the manner provided by the Tribal Court rules for service of process in civil matters.
 - b. In the absence of such Tribal Court rules, the summons and complaint shall be served by one of the two methods provided in section 13.03 (a) supra.
- 13.06. *Power of the Tribal Court.*
- a. The Tribal Court shall enter a writ of restitution if:
 1. Notice of suit and trial is given by service of summons and complaint in accordance with the procedures provided herein; and
 2. The Tribal Court shall find that the occupier of the leasehold estate subject to the leasehold mortgage is guilty of an act of unlawful detainer.
 - b. Upon issuance of a writ of restitution, the Tribal Court shall have the authority to enter against the defendants a judgment for the following:
 1. Back rent, unpaid utilities, and any charges due the Tribe or lessor under any lease or occupancy agreement;
 2. Any and all amounts secured by the leasehold mortgage that are due the mortgagee, or its successors or assigns; and
 3. Damages caused by the defendants to the property other than ordinary wear and tear. The Tribal Court shall have the authority to award costs and reasonable attorney's fees in bringing suit to the prevailing party.
- 13.07. *Enforcement.*
- a. Upon issuance of a writ of restitution by the Tribal Court, Tribal law enforcement officers shall enforce the writ of restitution by evicting the defendants and their property from the leasehold estate which is unlawfully occupied.

b. In all cases involving the mortgagee, or its successors or assigns, the writ of restitution shall be enforced no later than sixty (60) days after the date of service of the summons and complaint, subject to section 13.08 infra.

13.08. *Continuances in Cases Involving the Mortgagee.* Except by agreement of all parties, there shall be no continuances in cases involving the mortgagee, or its successors or assigns, which will interfere with the requirement that the writ of restitution be enforced not later than sixty (60) days from the date of service of the summons and complaint.

Article XIV Leasehold Mortgage Alternative Remedies

14.01. *Alternative Remedies.* In those cases in which the persons or property are subject to the jurisdiction of the courts of the State of Michigan or the United States, the remedies and procedures provided by this ordinance are in the alternative to the remedies and procedures provided by the laws of the State of Michigan or the United States.

Article XV Limited Waiver of Immunity

15.01. *Limited Waiver of Immunity.*

a. The Tribe hereby authorizes a limited waiver of immunity from suit that the Tribe may enjoy with respect to any and all controversies or claims arising out of or related to the obligations of the Tribe under the leasehold mortgage agreements and the leases described herein; and in connection with such waiver, the Tribe hereby consents to the personal jurisdiction of the Tribal Court with respect to any action to enforce any obligations owed by it to any other party or to enforce any of the other party's rights and/or remedies under such leasehold mortgage agreements or leases.

b. The authority provided herein is not intended to nor shall it be construed to waive the immunity of the Tribe for any other purpose or with respect to any claim or other matter not specifically mentioned herein, and is not intended to, nor shall it extend to the benefit of, any person other than the parties to such agreements or their successors or assigns.