Waganakising Odawak

Little Traverse Bay Bands of Odawa Indians

Office of Tribal Chairman

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LEASES OF LTBB TRUST LANDS REGULATIONS
REG-WOS 2014-017 051916-004

I. PURPOSE

The purpose of these Regulations is to provide standards and procedures for leasing of trust and restricted Indian lands subject only to approval of the Little Traverse Bay Bands of Odawa Indians in accordance with the HEARTH Act. These Regulations do not apply to or in any way diminish LTBB authority over its fee lands, or impact jurisdiction within its Reservation boundaries. These Regulations apply only to LTBB land, as defined in Section II.Z of these Regulations.

These Regulations take effect upon approval of the Secretary under the provisions of HEARTH Act.

II. DEFINITIONS

A. **"Adult"** means a person who is 18 years of age or older.

B. **"Agricultural land"** means LTBB land suited or used for the production of crops, livestock or other agricultural products, or LTBB land suited or used for a business that supports the surrounding agricultural community.

C. **"Agricultural lease"** means a lease of agricultural land for farming or grazing purposes.

D. **"AIARMA"** means the American Indian Agricultural Resources Management Act of December 3, 1993 (107 Stat. 2011, 25 U.S.C. 3701 et seq.), as amended on November 2, 1994 (108 Stat. 4572).

E. **"Appeal bond"** means a bond posted upon filing of an appeal.

F. **"Approval"** means official authorization through writing or recorded minutes by a Tribal Department, the Tribal Chairman or Tribal Council, as may be required under these Regulations, or for approval of these regulations by the Secretary of the Interior or delegated official in accordance with the HEARTH Act.

G. **"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.

H. **"BIA"** means the Bureau of Indian Affairs within the Department of the Interior or the Secretary of the Interior.

I. **"Business day"** means Monday through Friday, excluding LTBB recognized holidays, and federally recognized holidays and other days that the applicable office of the LTBB or Federal Government is closed to the public.

J. **"Cancellation"** means LTBB action to end a lease.

K. **"Consent or consenting"** means written authorization by the Tribe to a specified action.

L. **"Constructive notice"** means notice:

1. Posted at the LTBB government office, Tribal community building, or the United States Post Office; and

2. Published in the local newspaper nearest to the affected land or announced on a local radio station.

M. **"Court of competent jurisdiction"** means a LTBB or Federal court with jurisdiction.

N. **"Day"** means a calendar day, unless otherwise specified.

O. **"Emancipated minor"** means a person less than 18 years of age who is married or who is determined by a court of competent jurisdiction to be legally able to care for him or herself.

P. **"Equipment installation plan"** means a plan that describes the type and location of any improvements the lessee intends to install including a schedule showing the tentative commencement and completion dates for installation of those improvements.

Q. **"Executive"** means the Tribal Chairperson of LTBB under the LTBB Constitution and any Executive Department charged by LTBB law or by designation of the Chairperson to carry out administrative duties under these Regulations.

R. **"Fair market rental"** means the amount of rental income that a leased tract of LTBB land would most probably command in an open and competitive market, or as determined by competitive bidding.

S. **"Fee interest"** means an interest in land that is held in unrestricted fee status, and is thus freely alienable by the fee owner.

T. **"HEARTH Act"** means Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012, being Public Law 112-151 of July 20, 2012, codified into 25 U.S.C. §415.

U. **"Holdover"** means circumstances in which a lessee remains in possession of the leased premises after the lease term expires.

V. **"Housing for public purposes"** means multi-family developments, single-family residential developments, and single-family residences:

1. Administered by LTBB or by a tribally designated housing entity (TDHE); or

2. Substantially financed using a Tribal, Federal, or State housing assistance program or TDHE.

W. **"Immediate family"** means wife, husband, son, daughter, mother, father, brother, sister, step-mother, step-father, step-brother, step-sister, father-in-law, mother-in-law, child and step-child, grandmother, grandfather, brother-in-law and sister-in-law. (Article III, Section E of the LTBB Constitution).

X. **"Indian"** means:

1. Any person who is a member of any Indian tribe, is eligible to become a member of any Indian tribe, or is an owner as of October 27, 2004, of a trust or restricted interest in land; or

2. Any person meeting the definition of Indian under the Indian Reorganization Act (25 U.S.C. §479) and the regulations promulgated thereunder.

Y. **"LTBB or Tribe"** means the Little Traverse Bay Bands of Odawa Indians, a federally recognized Indian tribe as reaffirmed through Public Law 103-324 of September 21, 1994, as amended, codified as 25 U.S.C. §1300k. Depending on the context, LTBB or Tribe includes the Tribe's elected or appointed officials, employees and agents.

Z. **"LTBB land"** solely for purposes of these Regulations means any tract in which any interest in the surface estate is held in trust or restricted status for LTBB by the United States of America.

AA. **"Interest,"** when used with respect to LTBB land, means an ownership right to the surface estate of LTBB land.

BB. **"Lease"** means a written contract between LTBB and a lessee, whereby the lessee has a right to possess LTBB land, for a specified purpose and duration. The

lessee's right to possess will limit LTBB's right to possess the leased premises only to the extent provided in the lease.

CC. **"Lease document"** means a written lease, amendment, assignment, sublease, or leasehold mortgage.

DD. **"Leasehold mortgage"** means a mortgage, deed of trust, or other instrument that pledges a lessee's leasehold interest as security for a debt or other obligation owed by the lessee to a lender or other mortgagee.

EE. **"Lessee"** means a person or entity that has acquired a legal right to possess LTBB land by a lease under these Regulations.

FF. **"Life estate"** means an interest in property held only for the duration of a designated person's life. A life estate can be created by a conveyance document or by operation of law.

GG. **"LTRO"** means the Land Titles and Records Office of the BIA.

HH. **"Mail"** means to send something by U.S. Postal Service or commercial delivery service.

II. **"Minor"** means an individual who is less than 18 years of age.

JJ. **"Mortgagee"** means the holder of a leasehold mortgage.

KK. **"NEPA"** means the National Environmental Policy Act of 1969, 42 U.S.C. § 4321 et seq.

LL. **"Nominal rental or nominal compensation"** means a rental amount that is so insignificant that it bears no relationship to the value of the property leased.

MM. **"Non compos mentis"** means that the person to whom the term is applied has been legally determined by a court of competent jurisdiction to be of unsound mind or incapable of managing his or her own affairs.

NN. **"Notice of violation"** means a letter notifying the lessee of a violation of the lease and providing the lessee with a specified time to show cause why the lease should not be cancelled for the violation.

OO. **"Orphaned minor"** means a minor whose parents are deceased.

PP. **"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.

QQ. **"Permanent improvements"** means buildings, other structures, and associated infrastructure attached to the leased premises.

RR. **"Permit"** means a written, non-assignable agreement between LTBB and the permittee, whereby the permittee has a temporary, revocable privilege to use LTBB land for a specified purpose.

SS. **"Permittee"** means a person or entity that has acquired a privilege to use LTBB land by a permit.

TT. **"Power of attorney"** means an authority by which one person enables another to act for him or her as attorney-in-fact.

UU. **"Public"** means enrolled citizens of LTBB and other persons who are authorized by LTBB Statute or regulations to attend meetings of the Executive or Legislative Branches or their subordinate entities.

VV. **"Remainder interest"** means an interest in LTBB land that is created at the same time as a life estate, for the use and enjoyment of its owner after the life estate terminates.

WW. **"Restoration and reclamation plan"** means a plan that defines the reclamation, revegetation, restoration, and soil stabilization requirements for a project area, and requires the expeditious reclamation of construction areas and revegetation of disturbed areas to reduce invasive plant infestation and erosion.

XX. **"Secretary"** means the Secretary of the Interior.

YY. **"Significant Effect on the Environment"** mean a substantial or potentially substantial, change in the environment, including land, air water, minerals, flora, fauna, ambient noise, cultural areas and object of historic, cultural or aesthetic significance.

ZZ. **"Single-family residence"** means a building with one to four dwelling units on a tract of land under a single residential lease, or as defined by LTBB law or other LTBB authorization.

AAA. **"Single-family residential development"** means two or more single-family residences owned, managed, or developed by a single entity.

BBB. **"Sublease"** means a written agreement by which the lessee grants to an individual or entity a right to possession no greater than that held by the lessee under the lease.

CCC. **"Surety"** means one who guarantees the performance of another.

DDD. **"TDHE"** means a tribally designated housing entity under 25 U.S.C. 4103(22), a tribally-sponsored or tribally sanctioned not-for-profit entity, or any limited partnership or other entity organized for the purpose of developing or improving low-income housing utilizing tax credits, including the LTBB Housing Department.

EEE. **"Termination"** means action by LTBB to end a lease.

FFF. **"Trespass"** means any unauthorized occupancy, use of, entry, or action on any LTBB land.

GGG. **"Tribal authorization"** means a duly adopted LTBB resolution, statute, or other appropriate Tribal document authorizing the specified action.

HHH. **"Tribal Council"** means the Tribal Council of LTBB under the LTBB Constitution.

III. **"Tribal land assignment"** means a contract or agreement that conveys to one or more LTBB citizens or wholly owned LTBB corporations any rights for the use of LTBB lands, assigned by LTBB in accordance with Tribal laws or customs.

JJJ. **"Tribal or LTBB law"** means the body of non-Federal law that governs lands and activities under the jurisdiction of LTBB, including the LTBB Constitution, statutes or other enactments by the Tribe, and Tribal Court rulings.

KKK. **"Trust or restricted land"** means any tract held in trust or restricted status

LLL. **"Trust or restricted status"** means:

1. That the United States holds title to the tract or interest in trust for the benefit of LTBB; or

2. That LTBB holds title to the tract or interest, but can alienate or encumber it only with the approval of the United States because of limitations in the conveyance instrument or limitations in Federal law

MMM. **"USPAP"** means the Uniform Standards of Professional Appraisal Practice promulgated by the Appraisal Standards Board of the Appraisal Foundation to establish requirements and procedures for professional real property appraisal practice.

NNN. **"Violation"** means a failure to take an action, including payment of compensation, when required by the lease, or otherwise not comply with a term of the lease. This definition applies for purposes of LTBB enforcement of a lease under this part no matter how a particular lease defines "violation" or "default."

III. APPLICABILITY

A. These Regulations apply to leases of LTBB land entered into under the HEARTH Act. These Regulations do not apply to land use agreements entered into under other statutory authority, such as: contracts or agreements that encumber tribal land under 25 CFR part 84; traders' licenses under 25 CFR part 140; timber contracts under 25 CFR part 163; grazing permits under 25 CFR part 166; rights-of-way under 25 CFR part 169; and mineral leases, prospecting permits, or mineral development agreements under 25 CFR parts 211, 212, 213, 225, 226, 227; and leases that would not require Secretarial approval under 25 CFR §§ 162.343, 162.443, and 162.568.§ 162.007. These Regulations shall not affect leases entered into and approved by the Secretary prior to the effective date of these Regulations.

B. LTBB may approve Permits for the use of LTBB land without following all the standards and procedures set out in these Regulations as long as permitted activities comply with all applicable environmental and cultural resource laws.

IV. PROCESS, CONTENT

Prospective lessees must directly negotiate with LTBB for a lease. Prospective lessees and LTBB must:

A. Prepare the required information and analyses, including information to facilitate LTBB's analysis under applicable environmental and cultural resource requirements;

B. Ensure the lease complies with the requirements in §VI for agricultural leases, §VII for residential leases, § VIII for business leases, or § IX for wind energy evaluation, wind resource, or solar resource leases;

C. Under LTBB Constitution Article VII, Section D.12, the Tribal Council must approve all leases of LTBB land. Whether to grant approval is solely within Tribal Council's discretion even if all requirements of these Regulations and applicable laws are met. Prospective lessees must submit the lease, required information and analyses, to Tribal Council. If Tribal Council, by majority vote, decides to consider the lease, it will transmit the lease and supporting documentation to the Tribal Chairman's office for review by the Environmental Services division of the LTBB Natural Resources Department for environmental law compliance and for conducting the environmental review under Section X, the Planning department for zoning compliance, the Archives and Records Department for archeological and historic protection law compliance, and the office of the General Counsel for legal compliance.

D. Upon completion of the reviews under subsection C, the Tribal Chairman will

transmit the proposed lease back to Tribal Council along with the results of the reviews. If the reviews indicate that entering into the lease will not result in any violation of applicable law or regulations, Tribal Council may vote on the question of whether to approve the lease based on its determination of whether entering into the lease is in LTBB's best interest.

E. The Planning Department, General Counsel, and any other Department directly involved in the administration of a particular lease must maintain copies of all approved leases.

F. In addition to these Regulations, leases approved are subject to all applicable LTBB and Federal laws.

G. A lease does not waive LTBB's sovereign immunity unless the Tribe expressly states its intention to waive sovereign immunity in the lease.

H. Leases and subleases of LTBB land may include provisions, consistent with LTBB law, requiring the lessee to give a preference to qualified tribal members, based on their political affiliation with LTBB.

I. Leasehold or possessory interests may be subject to taxation by LTBB in accordance with LTBB law.

J. A lease may address access to the leased premises by roads or other infrastructure, as long as the access complies with applicable statutory and regulatory requirements.

V. TRESPASS

If an individual or entity takes possession of, or uses, LTBB land without a lease and a lease is required, the unauthorized possession or use is a trespass, and LTBB may pursue any available remedies under applicable law.

VI. AGRICULTURAL LEASES

A. The Regulations in this Section apply to agricultural leases and may apply to business leases on agricultural land, where appropriate.

B. Agricultural leases granted or approved under these Regulations are subject to applicable federal and LTBB law.

C. LTBB will preserve records involving agricultural leases in accordance with applicable LTBB law, regulation or policy.

D. LTBB agricultural land must be managed in accordance with the goals and objectives of any agricultural resource management plan developed by the Tribe. A ten-year agricultural resource management and monitoring plan must be developed through public meetings before entering into an agricultural lease. Such a plan must be based on the public meeting records and existing survey documents, reports, and other research from federal agencies, LTBB entities and educational institutions, such as Michigan State University. When completed, the plan must:

1. Determine available agricultural resources;

2. Identify specific tribal agricultural resource goals and objectives;

3. Establish management objectives for the resources;

4. Define critical values of the Indian tribe and its members and identify holistic management objectives; and

5. Identify actions needed to reach established objectives.

E. LTBB will determine the fair annual rental value of the land prior to approval of the lease, as determined by competitive bidding, appraisal, or any other appropriate valuation method. Where an appraisal or other valuation is needed to determine the fair annual rental, the appraisal or valuation must be prepared in accordance with USPAP. The Tribal Council may approve an agricultural lease for an amount less than the fair annual rental value of the land if it determines it is in the Tribe's best interest to do so.

F. LTBB may advertise LTBB land for agricultural leasing. Advertisements will provide prospective lessees with notice of any LTBB laws and leasing policies along with standard terms and conditions to be included in the lease. Advertisements will prohibit lessee preferences, and bidders at lease sales will not be afforded any preference, except to the extent that LTBB or Indian preference is required by LTBB law or leasing policy. Advertisements will require sealed bids, and may provide for further competitive bidding among the prospective lessees at the conclusion of the bid opening. Competitive bidding must be supported, at a minimum, by a market study or rent survey that is consistent with USPAP.

G. If the prospective lessee is a corporation, partnership or other legal entity, it must provide organizational and financial documents, sufficient to demonstrate that the lease will be enforceable against the lessee and that the lessee will be able to perform all lease obligations.

H. Bonds and Insurance.

1. Unless waived by official Tribal Council action, the prospective lessee

must provide a bond before Tribal Council approval of an agricultural lease to secure:

a. The payment of one year's rental;

b. The construction of any required improvements;

c. The performance of any additional lease obligations, including the payment of operation and maintenance charges; and

d. The restoration and reclamation of the leased premises to their condition at the commencement of the lease term or some other specified condition.

2. A bond must be deposited with the Tribe and made payable only to LTBB. The bond may not be modified or withdrawn without the approval of LTBB. The bond must be the form of cash or Negotiable Treasury securities that:

a. Have a market value at least equal to the bond amount, and are accompanied by a statement granting full authority to LTBB to sell such securities in case of a violation of the terms of the lease;

b. Certificates of deposit that indicate on their face that LTBB approval is required before redemption by any party;

c. Irrevocable letters of credit issued by federally insured financial institutions authorized to do business in the United States. A letter of credit must:

i. Contain a clause that grants LTBB the authority to demand immediate payment if the lessee violates the lease or fails to replace the letter of credit at least 30 days prior to its expiration date,

ii. Be payable to LTBB, be irrevocable during its term and have an initial expiration date of not less than one year following the date of issuance, and

iii. Be automatically renewable for a period of not less than one year, unless the issuing financial institution provides LTBB with written notice that it will not be renewed, at least 90 calendar days before the letter of credit's expiration date;

d. Surety bonds issued by a company approved by the U.S. Department of the Treasury; or

e. Any other form of liquid, non-volatile security that is easily convertible to cash and for which LTBB approval is required before redemption by any party.

3. If a cash bond is submitted, LTBB will retain the funds in an account established in the name of the lessee. LTBB will not pay interest on a cash performance bond. If the bond is not forfeited, LTBB will refund the bond to the lessee upon the expiration or termination of the lease.

4. When necessary to protect the interests of the Tribe, an agricultural lease must require that a lessee provide insurance. Such insurance may include property, crop, liability and/or casualty insurance. If insurance is required, it must identify both the Tribe and the United States as insured parties, and be sufficient to protect all insurable improvements on the leased premises.

5. An agricultural lease must require that the lessee indemnify and hold LTBB and the United States harmless from any loss, liability, or damages resulting from the lessee's use or occupation of the leased premises, unless the lessee would be prohibited by law from making such an agreement or the interests of the Tribe are adequately protected by insurance.

I. Unless otherwise provided in an agricultural lease, LTBB will be entitled to receive any settlement funds or other payments arising from certain actions that diminish the value of the land or the improvements thereon. Such payments may include, but are not limited to, insurance proceeds, trespass damages, and condemnation awards.

J. An agricultural lease may provide for the lessee to assume certain cost-share or other payment obligations that have attached to the land through previous farming and grazing operations, so long as those obligations are specified in the lease and considered in any determination of fair annual rental made under this subpart.

K. The lessee must provide environmental and archaeological reports, surveys, and site assessments, as needed to document compliance with NEPA and other applicable federal and LTBB land use and environmental requirements, and laws.

L. **Approval.** Before Tribal Council approves an agricultural lease, it must determine in writing that the lease is in the best interests of LTBB. In making that determination, Tribal Council will:

1. Review the lease and supporting documents;

2. Identify potential environmental impacts and ensure compliance with all applicable environmental laws, land use laws, and ordinances (including preparation of the appropriate review documents under Section X);

3. Assure that adequate consideration has been given, as appropriate, to the relationship between the use of the leased premises and the use of neighboring lands, the height, quality, and safety of any structures or other facilities to be constructed on the leased premises, the availability of police and fire protection, utilities, and other essential community services; and

4. The effect on the environment of the proposed land use.

5. Prior to approval, the Tribal Council will require any lease modifications or mitigation measures that are needed to satisfy any requirements of these Regulations, or any other LTBB or federal land use requirements.

M. **Effective Date.** An agricultural lease will be effective on the date on which Tribal Council approves the lease. An agricultural lease may be made effective on future date by agreement, but such a lease may not be approved more than one year before the date on which the lease term is to commence.

N. **Recording.** In addition to the Tribe's filing under § IV(E), the original or certified copy of an agricultural lease or permit must be sent to the appropriate BIA office for recording in its LTRO or for processing as required by applicable BIA regulations or policy.

O. **Lease Requirements.** Agricultural leases must include the following provisions and requirements:

1. The parties to the lease;

2. Purpose of the lease and authorized uses of the leased premises;

3. The obligations of the lessee and its sureties to LTBB will also be enforceable by the United States, so long as the land remains in trust or restricted status;

4. There must not be any unlawful conduct, creation of a nuisance, illegal activity, or negligent use or waste of the leased premises; and

5. The lessee must comply with all applicable laws, ordinances, rules, regulations, and other legal requirements, including LTBB laws and leasing policies.

6. Individuals with the capacity and authority to bind the lessee under applicable law must execute the lease.

7. An agricultural lease must include a citation of the provisions in these

Regulations and the HEARTH Act that authorize LTBB approval, along with a citation of the formal documents or Tribal Council meeting minutes by which such authority has been delegated to the official taking such action.

8. **Description of Land.** An agricultural lease should describe the leased premises by reference to a public or private survey, if possible. If the land cannot be so described, the lease must include a legal description or other description that is sufficient to identify the leased premises. The legal description will be of sufficient detail to meet recording requirements for the LTRO.

9. **Payments.** An agricultural lease must provide for the payment of a fair annual rental at the beginning of the lease term, unless Tribal Council determines that a lesser amount is in the best interests of LTBB due to other considerations. The lessee's rent payments may be in fixed amounts, or based on a share of the agricultural products generated by the lease, or a percentage of the income to be derived from the sale of such agricultural products. If the lease term runs more than five years, it must provide for one or more rental adjustments, unless the lease provides for the payment of less than a fair annual rental or a payment based primarily on a share of the agricultural products generated by the lease, or a percentage of the income derived from the sale of agricultural products.

   a. Payments must be paid to LTBB at the address set out in the lease. The Tribe will not accept cash or foreign currency and will accept third-party checks only from financial institutions or Federal agencies. Acceptable forms of payment are:

      i. Electronic funds transfer payments;

      ii. Money orders;

      iii. Personal checks;

      iv. Certified checks; or

      v. Cashier's checks.

   b. If rental adjustments are required, the lease must specify how adjustments are made, who makes the adjustments, when the adjustments are effective, and how disputes about the adjustments are resolved.

   c. An agricultural lease must specify the dates on which all rent payments are due. Unless otherwise provided in the lease, rent

payments may not be made or accepted more than one year in advance of the due date. Rent 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. An agricultural lease must specify the rate at which interest will accrue on any rent payment not made by the due date or any other date specified in the lease. A lease may also identify additional late payment penalties that will apply if a rent payment is not made by a specified date. Unless otherwise provided in the lease, such interest charges and late payment penalties will apply in the absence of any specific notice to the lessee from the Tribe, and the failure to pay such amounts will be treated as a lease violation under § VI(S) of this subpart.

e. An agricultural lease must specify whether rent payments must be made directly to LTBB or to a named sub-entity of the Tribe. Payment must be in the form of either personal or business checks drawn on the account of the lessee, money orders, cashier's checks, certified checks, or electronic funds transfer payments.

f. Except as otherwise provided in these Regulations, if the leased premises are within an Indian irrigation project or drainage district, the lessee must pay all operation and maintenance charges that accrue during the lease term. The lessee must pay these amounts to the appropriate official in charge of the irrigation project or drainage district. Failure to make such payments will constitute a violation of the lease.

9. **Term.** An agricultural lease must provide for a definite lease term, specifying the commencement date. The commencement date of the lease may not be more than one year after the date on which the lease is approved. The lease term must be reasonable, given the purpose of the lease and the level of investment required. The lease term shall not exceed 25 years, except that any such lease may include an option to renew for up to 2 additional terms, each of which may not exceed 25 years.

10. **Assignments, Amendments, Subleases, and Mortgages.** An agricultural lease may authorize amendments, assignments, subleases, or mortgages of the leasehold interest, but only with the written consent of the Tribe by Tribal Council approval. An attempt by the lessee to mortgage the leasehold interest, to assign or sublet the lease, or to authorize possession by another party, without the necessary consent and approval, will be treated as a lease violation.

a. It is within LTBB's discretion, through Tribal Council action, to

approve an assignment or sublease under an agricultural lease, but approval will not be granted if the lessee is in violation of the lease, if a surety objects, or if the assignee does not agree to be bound by, or the sub lessee does not agree to be subordinated to, the terms of the lease.

b. It is within LTBB's discretion, through Tribal Council action, to approve a leasehold mortgage under an agricultural lease. The Tribe will not grant approval unless the following minimum requirements are met:

i. The lessee's sureties, if any, do not object;

ii. The mortgage covers only the lessee's interest in the leased premises, and not unrelated collateral;

iii. The loan secured by the mortgage will be used only in connection with the development or use of the leased premises, and the mortgage does not secure any unrelated debts owed by the mortgagee.

c. In deciding whether to grant approval of a leasehold mortgage under an agricultural lease, the Tribe will consider whether:

i. The lessee's ability to comply with the lease would be adversely affected by any new loan obligations;

ii. Any lease provisions would be modified by the mortgage;

iii. The remedies available to LTBB would be limited (beyond any additional notice and cure rights to be afforded to the mortgagee), in the event of a lease violation; and

iv. Any rights of LTBB would be subordinated or adversely affected in the event of a loan default by the lessee.

11. An agricultural lease must describe the authorized uses of the leased premises. Any use of the leased premises for an unauthorized purpose, or a failure by the lessee to maintain continuous operations throughout the lease term, will be treated as a lease violation.

12. An agricultural lease must require that farming and grazing operations be conducted in accordance with recognized principles of sustained yield management, integrated resource management planning, sound conservation practices, and other community goals as expressed in applicable LTBB laws, leasing policies, or agricultural resource

management plans. Appropriate stipulations or conservation plans must be developed and incorporated in all agricultural leases.

13. **Permanent Improvements.** An agricultural lease must generally describe the type and location of any improvements to be constructed by the lessee.

    a. An agricultural lease may specify who will own any improvements constructed by the lessee during the lease term. The lease must indicate whether any improvements constructed by the lessee will remain on the leased premises upon the expiration or termination of the lease, providing for the improvements to either remain on the leased premises, in a condition satisfactory to the Tribe; or be removed within a time period specified in the lease, at the lessee's expense, with the leased premises to be restored as close as possible to their condition prior to construction of such improvements.

    b. If the lease allows the lessee to remove the improvements, it must also provide LTBB with an option to waive the removal requirement and take possession of the improvements if they are not removed within the specified time period. If LTBB chooses not to exercise this option, it will take appropriate enforcement action to ensure removal at the lessee's expense.

14. A lease of tribal agricultural land may provide the tribe with certain negotiated remedies in the event of a lease violation, including the power to terminate the lease.

15. An agricultural lease may provide for lease disputes to be resolved in LTBB Tribal Court or through arbitration or some other alternative dispute resolution method.

16. Unless the lessee would be prohibited by law from doing so, the lessee holds the Tribe and the United States harmless from any loss, liability, or damages resulting from the lessee's use or occupation of the leased premises;

17. The lessee indemnifies the Tribe and the United States against all liabilities or costs relating to use, handling, treatment, removal, storage, transportation, or disposal of hazardous materials, or 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, including its officials, employees, and agents, negligence or willful misconduct.

P. An amendment, assignment, sublease, or mortgage under an agricultural lease will be effective immediately upon approval, filed by LTBB in accordance with these Regulations and an original certified copy of such document sent to the BIA for recording in its LTRO or taking whatever steps are called for under applicable BIA regulations or policy.

Q. LTBB may issue bills or invoices to a lessee in advance of the dates on which rent payments are due under an agricultural lease, but the lessee's obligation to make such payments in a timely manner will not be excused if such bills or invoices are not delivered or received.

1. A lessee's failure to pay rent in the time and manner required by an agricultural lease will be a violation of the lease, and a notice of violation will be issued under § VI(S) of these Regulations.

2. Partial payments may be accepted by the Tribe, but acceptance will not operate as a waiver with respect to any amounts remaining unpaid or any other existing lease violations. Unless otherwise provided in the lease, overpayments may be credited as an advance against future rent payments, or refunded.

3. If a personal or business check is dishonored, and a rent payment is therefore not made by the due date, the failure to make the payment in a timely manner will be a violation of the lease, and a notice of violation will be issued under § VI(S) of these Regulations. Any payment made to cure such a violation, and any future payments by the same lessee, must be made by one of the alternative payment methods listed in § VI(O)(7)(a) unless the Executive determines that circumstances warrant allowing the continued use of personal or business checks.

4. LTBB may charge lessee a fee of:

i. $50.00 administrative fee for dishonored checks; and

ii. $15.00 administrative fee for processing of each notice or demand letter.

R. Unless an agricultural lease provides otherwise, LTBB may enter the leased premises at any reasonable time, without prior notice, to protect the interests of the Tribe and ensure that the lessee complies with the operating requirements of the lease.

S. Violations.

1. If the Executive determines that an agricultural lease has been violated, it will send the lessee and its sureties a notice of violation within five

business days of that determination. The notice of violation must be provided by certified mail, return receipt requested, or personal delivery.

2. Within ten business days of the receipt of a notice of violation, the lessee must:

   a. Cure the violation and notify LTBB in writing that the violation has been cured;

   b. Dispute the determination that a violation has occurred and/or explain why LTBB should not cancel the lease; or

   c. Request additional time to cure the violation.

3. If the lessee does not cure a violation of an agricultural lease within the requisite time period, the Executive will determine whether:

   a. The lease should be canceled by LTBB;

   b. LTBB should invoke any other remedies available to it under the lease, including collecting on any available bond; or

   c. The lessee should be granted additional time in which to cure the violation.

4. If the Executive decides to grant a lessee additional time in which to cure a violation, the lessee must proceed diligently to complete the necessary corrective actions within a reasonable or specified time period from the date on which the extension is granted, notify Tribal Council, and the extension only takes effect upon Tribal Council approval.

5. The Executive will request approval from Tribal Council prior to cancelling an agricultural lease. If Council approves cancellation of a lease, the Executive will send the lessee and its sureties a cancellation letter within five business days of that decision. The cancellation letter must be sent to the lessee by certified mail, return receipt requested, or personal delivery. The cancellation letter will explain the grounds for cancellation, notify the lessee of the amount of any unpaid rent, interest charges, or late payment penalties due under the lease, notify the lessee of its right to appeal to Tribal Court under applicable law and/or Court Rules including the amount of any appeal bond that must be posted with an appeal of the cancellation decision, and order the lessee to vacate the property within 30 days of the date of receipt of the cancellation letter.

T. If a lessee or any other party causes or threatens to cause immediate and significant harm to the leased premises during the term of an agricultural lease,

the Executive will take appropriate emergency action. Emergency action may include trespass proceedings under LTBB criminal statutes, or judicial action seeking immediate cessation of the activity resulting in or threatening the harm.

U. **Holdover.** If a lessee remains in possession after the expiration or cancellation of an agricultural lease, LTBB will treat the unauthorized use as a trespass. The Executive will take action to recover possession on behalf of LTBB, and pursue any additional remedies available under applicable law.

VII. RESIDENTIAL LEASES

A. This Section covers both ground leases of undeveloped land and leases of developed land including any permanent improvements on LTBB land for housing purposes. Leases covered by this Section authorize the construction or use of:

1. A single-family residence; and

2. Housing for public purposes, which may include office space necessary to administer programs for housing for public purposes.

3. Leases for other residential development (e.g., single-family residential developments and multi-family developments that are not housing for public purposes) are covered under § VIII of these Regulations.

B. Lease Requirements.

1. A residential lease must provide for a definite lease term, state if there is an option to renew, and if so, provide for a definite term for the renewal period.

2. The maximum term of a lease approved under these Regulations and the HEARTH Act may not exceed 75 years. The lease may provide for an initial term of less than 75 years with a provision for one or more renewals, so long as the maximum term, including all renewals, does not exceed 75 years. Unless the lease provides otherwise, a holdover does not extend a residential lease.

3. If the lease provides for an option to renew, the lease must specify:

a. The time and manner in which the option must be exercised or is automatically effective;

b. That the lessee must provide notice of the renewal to the Tribe and any mortgagees;

c. 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

d. Any other conditions for renewal (e.g., that the lessee not be in violation of the lease at the time of renewal).

e. Any renewal will be filed by the Tribe and sent to the BIA in accordance with these Regulations.

4. Mandatory Lease Provisions.

a. All residential leases must identify:

i. The tract or parcel of land being leased;

ii. The purpose of the lease and authorized uses of the leased premises;

iii. The parties to the lease;

iv. The term of the lease;

v. The ownership of permanent improvements and the responsibility for constructing, operating, maintaining, and managing permanent improvements; and

vi. Payment requirements and late payment charges, including interest.

b. All residential leases must include the following provisions:

i. The obligations of the lessee to the Tribe are also enforceable by the United States, so long as the land remains in trust or restricted status;

ii. There must not be any unlawful conduct, creation of a nuisance, illegal activity, or negligent use or waste of the leased premises;

iii. The lessee must comply with all applicable laws, ordinances, rules, regulations, and other legal requirements;

iv. 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 LTBB to determine how to proceed and appropriate disposition;

v. LTBB 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;

vi. LTBB may treat as a lease violation any failure by the lessee to cooperate with a LTBB request to make appropriate records, reports, or information relating to the lease or leased premises available for LTBB inspection and duplication;

vii. Unless the lessee would be prohibited by law from doing so, the lessee holds the Tribe and the United States harmless from any loss, liability, or damages resulting from the lessee's use or occupation of the leased premises;

viii. The lessee indemnifies the Tribe and the United States against all liabilities or costs relating to use, handling, treatment, removal, storage, transportation, or disposal of hazardous materials, or 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, including its officials, employees, and agents, negligence or willful misconduct;

ix. A provision prohibiting assignment, or allowing assignment only with the Tribe's approval;

x. A provision that prohibits or allows subleasing only with the Tribe's approval. A sublease does not relieve the lessee or sublessor of any liability; and

xi. A provision identifying remedies in the event of violation, including LTBB termination rights.

C. Permanent Improvements.

1. The lessee may construct permanent improvements under a residential lease if the residential lease authorizes the construction and generally describes the type and location of the permanent improvements to be constructed during the lease term.

2. The lessee must provide reasonable notice to the Tribe for the construction of any permanent improvements not generally described in the lease.

3. A residential lease must specify who will own any permanent improvements the lessee constructs during the lease term. In addition, the lease must indicate whether each specific permanent improvement the lessee constructs will:

   a. Remain on the leased premises upon expiration, termination, or cancellation of the lease, in a condition satisfactory to the Tribe and become the property of the Tribe;

   b. 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 its condition before construction of the permanent improvements; or

   c. Be disposed of by other specified means.

4. 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. **Description of Land.** A residential lease must describe the leased premises by reference to a public or private survey, if possible. If the land cannot be so described, the lease must include one or more of the following and will be of sufficient detail to meet recording requirements for the LTRO:

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.

E. **Payments.**

1. A residential lease of tribal land may allow for any payment amount negotiated by the Tribe, which may or may not be based on fair market valuation.

2. A residential lease must specify the dates on which payments are due.

3. Unless the lease provides otherwise, payments may not be made or accepted more than one year in advance of the due date.

4. 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.

5. Payments will be paid to LTBB at the address set out in the lease. The Tribe will not accept cash or foreign currency, and will accept third-party checks only from financial institutions or Federal agencies. Acceptable forms of payment are:

   a. Electronic funds transfer payments;

   b. Money orders;

   c. Personal checks;

   d. Certified checks; or

   e. Cashier's checks.

6. A residential lease may provide for alternative forms of payment, including, but not limited to in-kind consideration, or varying types of compensation at specific stages during the life of the lease.

7. A residential lease may provide for rental reviews or adjustments.

8. The lessee may be required to pay additional fees, taxes, and assessments associated with the use of the land, as determined by the Executive in implementing applicable law and regulations. The lessee must pay these amounts to the appropriate office.

9. If the leased premises are within an Indian irrigation project or drainage district, the lessee must pay all operation and maintenance charges that accrue during the lease term. The lessee must pay these amounts to the appropriate office in charge of the irrigation project or drainage district. Failure to make these payments is a violation of the lease.

F. **Bonding and Insurance.** Unless a residential lease states otherwise, a lessee need not provide a performance bond or alternative form of security, or insurance for a residential lease document.

G. **Approval.** Before Tribal Council takes action to approve a residential lease, the Executive will submit the following to Tribal Council:

1. A proposed lease that meets the requirements of these Regulations;

2. A statement that the proposed use is in conformance with applicable LTBB law, and an approved site plan;

3. Reports, surveys, and site assessments as needed to facilitate compliance with applicable Federal and tribal environmental and land use requirements;

4. If the lessee is a corporation, limited liability company, partnership, joint venture, or other legal entity, except an LTBB entity, information such as organizational documents, certificates, filing records, and resolutions, that demonstrates that the representative has authority to execute a lease, the lease will be enforceable against the lessee, and the legal entity is in good standing and authorized to conduct business on LTBB land.

5. **Delegation to TDHE.** Tribal Council approval is not required for rentals by Tribal Citizens of LTBB owned rental units for rental agreements of five years or less. Approval of such rental agreements is delegated to the LTBB Housing Department or other TDHE in accordance with applicable LTBB law, regulations and policy.

H. **Effective Date.** A residential lease will be effective upon approval of Tribal Council and execution by the lessee, and Executive and Tribal Council Treasurer, on behalf of the Tribe. The lease may specify a date on which the obligations between the parties to a residential lease begin. Such date may be before or after the effective date.

I. **Recording.** Any residential lease, amendment, assignment, or leasehold mortgage, or premature termination, must be filed by LTBB in accordance with these Regulations and an original or certified copy of such document sent to the BIA for recording in its LTRO or processing as required under applicable BIA regulations or policy.

J. **Leasehold Mortgages.** A lessee may mortgage a residential lease only with Tribal Council approval, which must be obtained in advance.

K. **Late Payments.**

1. LTBB may issue bills or invoices to a lessee in advance of the dates on which rent payments are due under a residential lease, but the lessee's obligation to make such payments in a timely manner will not be excused if such bills or invoices are not delivered or received.

2. A lessee's failure to pay rent in the time and manner required by a residential lease will be a violation of the lease, and a notice of violation will be issued under § VII(L) of these Regulations.

3. The Tribe may accept partial payments, but acceptance will not operate as a waiver with respect to any amounts remaining unpaid or any other existing lease violations. Unless otherwise provided in the lease, overpayments may be credited as an advance against future rent payments, or refunded.

4. If a personal or business check is dishonored, and a rent payment is therefore not made by the due date, the failure to make the payment in a timely manner will be a violation of the lease, and a notice of violation will be issued under § VII(L) of these Regulations. Any payment made to cure such a violation, and any future payments by the same lessee, must be made by one of the alternative payment methods listed in § VII(E)(5) unless the Executive determines that circumstances warrant allowing the continued use of personal or business checks.

5. LTBB may charge lessee a fee of:

   a. $50.00 administrative fee for dishonored checks; and

   b. $15.00 administrative fee for processing of each notice or demand letter.

L. Violations and Cancellation.

1. Cancellation of any rental agreement where the approval of such agreement is delegated to the Housing Department or other THDE will be handled by the THDE in accordance with applicable law, regulations and policy, including the Eviction Statute.

2. If the Executive determines that a residential lease has been violated, it will send the lessee a notice of violation within five business days of that determination. The notice of violation must be provided by certified mail, return receipt requested, or personal delivery.

3. Within ten business days of the receipt of a notice of violation, the lessee must:

   a. Cure the violation and notify LTBB in writing that the violation has been cured;

   b. Dispute the determination that a violation has occurred or explain why LTBB should not cancel the lease; or

   c. Request additional time to cure the violation.

4. If the lessee does not cure a violation of a residential lease within the

requisite time period, the Executive will determine whether:

a. The lease should be canceled by LTBB under this Section;

b. LTBB should invoke any other remedies available to it under the lease, including collecting on any available bond; or

c. The lessee should be granted additional time in which to cure the violation.

5. If the Executive decides to grant a lessee additional time in which to cure a violation, the lessee must proceed diligently to complete the necessary corrective actions within a reasonable or specified time period from the date on which the extension is granted, notify Tribal Council, and the extension only takes effect upon Tribal Council approval.

6. The Executive will request approval from Tribal Council prior to cancelling a residential lease. If Council approves cancellation of a lease, the Executive will send the lessee a cancellation letter that complies with all requirements of this Section. The cancellation letter must explain the grounds for cancellation, notify the lessee of the amount of any unpaid rent, interest charges, or late payment penalties due under the lease, notify the lessee of its right to appeal to Tribal Court under applicable law and/or Court Rules, including the amount of any appeal bond that must be posted with an appeal of the cancellation decision, and order the lessee to vacate the property within 30 days of the date of receipt of the cancellation letter.

7. If a lessee or any other party causes or threatens to cause immediate and significant harm to the leased premises during the term of a residential lease, the Executive will take appropriate emergency action. Emergency action may include trespass proceedings under LTBB criminal statutes, or judicial action seeking immediate cessation of the activity resulting in or threatening the harm.

8. If a lessee remains in possession after the expiration or cancellation of a residential lease, LTBB will treat the unauthorized use as a trespass. The Executive will take action to recover possession on behalf of LTBB, and pursue any additional remedies available under applicable law.

VIII. BUSINESS LEASES

A. This Section covers both ground leases of undeveloped land and leases of developed land including all permanent improvements on LTBB land that are not covered in another Section of these Regulations, including:

1. Leases for residential purposes not covered in Section VII.

2. Leases for business purposes that are not covered in Section VI;

3. Leases for religious, educational, recreational, cultural, or other public purposes; and

4. Commercial or industrial leases for retail, office, manufacturing, storage, biomass, waste-to-energy, or other business purposes.

B. Leases covered by this Section may authorize the construction of single-purpose or mixed-use projects designed for use by any number of lessees or occupants.

C. **Term.** A business lease must provide for a definite term, state if there is an option to renew, and if so, provide for a definite term for the renewal period. The maximum term of a business lease is 25 years, except that any such lease may include an option to renew for up to 2 additional terms, each of which may not exceed 25 years.

D. **Renewal.** 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. Whether LTBB consent to the renewal is required;

3. That the lessee must provide notice of the renewal to the Tribe and any sureties and mortgagees;

4. 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

5. Any other conditions for renewal (e.g., that the lessee not be in violation of the lease at the time of renewal).

6. Any renewal will be filed by LTBB and sent to the BIA in accordance with § VIII(T) of these Regulations.

E. **Mandatory Lease Provisions.**

1. All business leases must identify:

   a. The tract or parcel of land being leased;

   b. The purpose of the lease and authorized uses of the leased premises;

   c. The parties to the lease;

d. The term of the lease;

e. The ownership of permanent improvements and the responsibility for constructing, operating, maintaining, removing and managing permanent improvements under § VIII(F) and (G);

f. Payment requirements and late payment charges, including interest;

g. Due diligence requirements under § VIII(H) (unless the lease is for religious, educational, recreational, cultural, or other public purposes);

h. Insurance requirements under § VIII(Q); and

i. Bonding requirements under § VIII(Q). 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 the surety's obligations and liabilities.

j. Where a representative executes a lease on behalf of LTBB or a lessee, the lease must identify the Tribe or lessee being represented and the authority under which the action is taken.

2. All business leases must include the following provisions:

a. The obligations of the lessee and its sureties to the Tribe are also enforceable by the United States, so long as the land remains in trust or restricted status;

b. There must not be any unlawful conduct, creation of a nuisance, illegal activity, or negligent use or waste of the leased premises;

c. The lessee must comply with all applicable laws, ordinances, rules, regulations, and other legal requirements;

d. If historic properties, archeological resources, human remains, or other cultural items not previously reported are encountered during the course of any activity associated with the lease, all activity in the immediate vicinity of the properties, resources, remains, or items will cease and the lessee will contact the Tribe to determine how to proceed and appropriate disposition;

e. LTBB 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; and

f. LTBB may treat as a lease violation any failure by the lessee to cooperate with a LTBB request to make appropriate records, reports, or information available for LTBB inspection and duplication.

3. Unless the lessee would be prohibited by law from doing so, the lease must also contain the following provisions:

a. 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

b. 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' negligence or willful misconduct.

F. Construction of Permanent Improvements. The lessee may construct permanent improvements under a business lease if the business lease specifies, 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.

G. Ownership of Permanent Improvements.

1. A business 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:

a. 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;

b. 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

c. Be disposed of by other specified means.

2. 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.

3. The Tribe may take appropriate enforcement action to ensure removal of the permanent improvements and restoration of the premises at the lessee's expense. The Tribe may collect and hold the performance bond or alternative form of security until removal and restoration are completed.

H. Due Diligence Provisions.

1. If permanent improvements are to be constructed, the business lease must include due diligence requirements that require the lessee to complete 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 Tribe with an explanation of good cause as to the nature of any delay, the anticipated date of construction of facilities, and evidence of progress toward commencement of construction.

2. Failure of the lessee to comply with the due diligence requirements of the lease is a violation of the lease and may lead to cancellation of the lease under § VIII (W).

3. LTBB may waive the requirements of this section for leases for religious, educational, recreational, cultural, or other public purposes or if such waiver is in the best interest of the Tribe.

I. Description of the Land.

1. A business lease must describe the leased premises by reference to an official or certified survey, if possible. If the land cannot be so described, the lease must include one or more of the following, and the legal description will be of sufficient detail to meet recording requirements for the LTRO:

a. A legal description;

b. A survey-grade global positioning system description; or

c. Another description prepared by a registered land surveyor that is sufficient to identify the leased premises.

J. **Compatible Uses.** A business lease may provide for the Tribe to use, or authorize others to use, the leased premises for other uses compatible with the purpose of and consistent with the terms of the business lease. Any such use or authorization by the Tribe will not reduce or offset the monetary compensation for the business lease.

K. **Monetary Compensation Requirements.** A business lease of LTBB land may allow for any payment amount negotiated by the Tribe, which may be based on fair market rental, percentage of profits, a combination, or such other factors as determined by LTBB.

L. **Payments.**

1. A business lease must specify the dates on which all payments are due.

2. Payments may not be made or accepted more than one year in advance of the due date, unless otherwise provided in the lease.

3. 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.

4. Payments must be paid to LTBB at the address set out in the lease. The Tribe will not accept cash or foreign currency, and will accept third-party checks only from financial institutions or Federal agencies. Acceptable forms of payment are:

a. Electronic funds transfer payments;

b. Money orders;

c. Personal checks;

d. Certified checks; or

e. Cashier's checks.

M. Non-monetary or Varying Types of Compensation. A lease may provide for the following:

1. Alternative forms of compensation, including but not limited to, in-kind consideration and payments based on percentage of income; or

2. Varying types of compensation at specific stages during the term of the lease, including but not limited to fixed annual payments during construction, payments based on income during an operational period, and bonuses.

N. **Notice of Payment Due.** The Tribe may issue invoices to a lessee in advance of the dates on which payments are due under a business lease. The lessee's obligation to make these payments in a timely manner will not be excused if invoices are not issued, delivered, or received.

O. **Compensation Reviews or Adjustments.** The Tribe may negotiate a provision for periodic review and adjustment of compensation.

P. **Applicability of Other Fees.**

1. The lessee may be required to pay additional fees, taxes, and assessments associated with the use of the land, as determined by LTBB law and regulation.

2. If the leased premises are within an Indian irrigation project or drainage district, the lessee must pay all operation and maintenance charges that accrue during the lease term. The lessee must pay these amounts to the appropriate office in charge of the irrigation project or drainage district. LTBB will treat failure to make these payments as a violation of the lease. Where the property is subject to at least one other lease for another compatible use, the lessees may agree among themselves how to allocate payment of the Indian irrigation operation and maintenance charges.

Q. **Bonding and Insurance.** The lessee must provide a performance bond or alternative form of security, except as provided in paragraph (3) of this section.

1. The performance bond or alternative form of security must be in an amount sufficient to secure the contractual obligations including:

a. No less than:

i. The highest annual rental specified in the lease, if compensation is paid annually; or

ii. If the compensation is not paid annually, another amount established by the Tribe;

iii. The construction of any required permanent improvements;

iv. The operation and maintenance charges for any land located within an irrigation project; and

v. The restoration and reclamation of the leased premises, to their condition at the start of the lease term or some other specified condition.

2. The performance bond or other security:

a. Must be deposited with LTBB and made payable only to the Tribe, and may not be modified without LTBB's approval; and

b. The lease must specify the conditions under which LTBB may adjust security or performance bond requirements to reflect changing conditions.

c. LTBB may require that the surety provide any supporting documents needed to show that the performance bond or alternative forms of security will be enforceable, and that the surety will be able to perform the guaranteed obligations.

d. The performance bond or other security instrument must require the surety to provide notice to LTBB at least 60 days before canceling a performance bond or other security. This will allow LTBB to notify the lessee of its obligation to provide a substitute performance bond or other security and require collection of the bond or security before the cancellation date. Failure to provide a substitute performance bond or security is a violation of the lease.

3. LTBB may waive the requirement for a performance bond or alternative form of security if either:

a. The lease is for religious, educational, recreational, cultural, or other public purposes; or

b. The Executive and Tribal Council determine that waiver is in the Tribe's best interest.

4. **Acceptable Forms of Security.**

a. LTBB will accept a performance bond only in one of the following forms:

i. Certificates of deposit issued by a federally insured financial institution authorized to do business in the United

States;

ii. Irrevocable letters of credit issued by a federally insured financial institution authorized to do business in the United States;

iii. Negotiable Treasury securities; or

iv. Surety bonds issued by a company approved by the U.S. Department of the Treasury.

b. LTBB may accept an alternative form of security that provides adequate protection for the Tribe, including but not limited to an escrow agreement and assigned savings account.

c. All forms of performance bonds or alternative security must, if applicable:

i. Indicate on their face that LTBB approval is required for redemption;

ii. Be accompanied by a statement granting full authority to LTBB to make an immediate claim upon or sell them if the lessee violates the lease;

iii. Be irrevocable during the term of the performance bond or alternative security; and

iv. Be automatically renewable during the term of the lease.

d. LTBB will not accept cash bonds.

5. **Release of Security.** Upon expiration, termination, or cancellation of the lease, the lessee may ask LTBB in writing to release the performance bond or alternative form of security. If the lessee has complied with all lease obligations, LTBB will release the performance bond or alternative form of security to the lessee.

6. **Insurance.** Except as provided in paragraph (3) of this section, a lessee must provide insurance necessary to protect the interests of the Tribe and in the amount sufficient to protect all insurable permanent improvements on the premises. The insurance may include property, crop, liability, and casualty insurance, depending on the Tribe' interests to be protected. Both the Tribe and the United States must be identified as additional insured parties.

R. **Approval.** Before Tribal Council takes action to approve a business lease, the Executive will submit the following to Tribal Council:

1. A proposed lease that meets the requirements of these Regulations;

2. A statement that the proposed use is in conformance with applicable LTBB law, and an approved site plan;

3. Reports, surveys, and site assessments as needed to facilitate compliance with applicable Federal and tribal environmental and land use requirements;

4. If needed, a restoration and reclamation plan;

5. If the lessee is not an entity owned and operated by LTBB, documents that demonstrate the technical and financial capability of the lessee to construct, operate, maintain, and terminate the proposed project and the lessee's ability to successfully design, construct, or obtain the funding for the project;

6. A plan of development that describes the type and location of any permanent improvements, if any, the lessee plans to construct and a schedule showing the tentative commencement and completion dates;

7. If the lessee is a corporation, limited liability company, partnership, joint venture, or other legal entity, except an LTBB entity, information such as organizational documents, certificates, filing records, and resolutions, that demonstrate that the representative has authority to execute a lease; the lease will be enforceable against the lessee, and the legal entity is in good standing and authorized to conduct business on LTBB land.

S. **Effective Date.** A business lease will be effective upon approval of Tribal Council and execution by the lessee, and Executive and Tribal Council Treasurer, on behalf of the Tribe. The lease may specify a date on which the obligations between the parties to a business lease begin. Such date may be before or after the effective date.

T. **Recording.** Any business lease, amendment, assignment, or leasehold mortgage, or premature terminations, must be filed by LTBB in accordance with these Regulations and an original or certified copy of such documents sent to the BIA for recording in its LTRO or processing as required under applicable BIA regulations or policy.

U. **Leasehold Mortgages.** A lessee may mortgage a business lease only with Tribal Council approval, which must be obtained in advance.

V. **Late Payments.**

1. LTBB may issue bills or invoices to a lessee in advance of the dates on which rent payments are due under a business lease, but the lessee's obligation to make such payments in a timely manner will not be excused if such bills or invoices are not delivered or received.

2. A lessee's failure to pay rent in the time and manner required by a business lease will be a violation of the lease, and a notice of violation will be issued under § VIII(W) of these Regulations.

3. The Tribe may accept partial payments, but acceptance will not operate as a waiver with respect to any amounts remaining unpaid or any other existing lease violations. Unless otherwise provided in the lease, overpayments may be credited as an advance against future rent payments, or refunded.

4. If a personal or business check is dishonored, and a rent payment is therefore not made by the due date, the failure to make the payment in a timely manner will be a violation of the lease, and a notice of violation will be issued under § VIII(W) of these Regulations. Any payment made to cure such a violation, and any future payments by the same lessee, must be made by one of the alternative payment methods listed in § VIII(L) of this unless the Executive determines that circumstances warrant allowing the continued use of personal or business checks.

5. LTBB may charge lessee a fee of:

   a. $50.00 administrative fee for dishonored checks; and

   b. $15.00 administrative fee for processing of each notice or demand letter.

W. Violations and Cancellation.

1. If the Executive determines that a business lease has been violated, it will send the lessee a notice of violation with five business days of that determination. The notice of violation must be provided by certified mail, return receipt requested, or personal delivery.

2. Within ten business days of the receipt of a notice of violation, the lessee must:

   a. Cure the violation and notify LTBB in writing that the violation has been cured;

   b. Dispute the determination that a violation has occurred or explain why LTBB should not cancel the lease; or

c. Request additional time to cure the violation.

3. If the lessee does not cure a violation of a business lease within the requisite time, the Executive will determine whether:

   a. The lease should be cancelled by LTBB under this Section;

   b. LTBB should invoke any other remedies available to it under the lease, including collecting on any available bond; or

   c. The lessee should be granted additional time in which to cure the violation.

4. If the Executive decides to grant a lessee additional time in which to cure a violation, the lessee must proceed diligently to complete the necessary corrective actions within a reasonable or specified time period from the date on which the extension is granted, notify Tribal Council, and the extension only takes effect upon Tribal Council approval.

5. The Executive will request approval from Tribal Council prior to cancelling a business lease. If Council approves cancellation of a lease, the Executive will send the lessee a cancellation letter as required under this Section. The cancellation letter will explain the grounds for cancellation, notify the lessee of the amount of any unpaid rent, interest charges, or late payment penalties due under the lease, notify the lessee of its right to appeal to Tribal Court under applicable law and Court Rules, including the amount of any appeal bond that must be posted within an appeal of the cancellation decision, and order the lessee to vacate the property within 30 days of the date of receipt of the cancellation letter.

6. If a lessee or any other party causes or threatens to cause immediate and significant harm to the leased premises during the term of a business lease, the Executive will take appropriate emergency action. Emergency action may include trespass proceedings under LTBB criminal statutes, or judicial action seeking immediate cessation of the activity resulting in or threatening the harm.

7. If a lessee remains in possession after the expiration or cancellation of a business lease, LTBB will treat the unauthorized use as a trespass. The Executive will take action to recover possession on behalf of LTBB, and pursue any additional remedies available under applicable law.

IX. WIND AND SOLAR RESOURCE LEASES

A. This Section covers:

1. Wind energy evaluation leases (WEELS), which are short-term leases that authorize possession of LTBB land for the purpose of installing, operating, and maintaining instrumentation, and associated infrastructure, such as meteorological towers, to evaluate wind resources for electricity generation; and

2. Wind and solar resource (WSR) leases, which are leases that authorize possession of LTBB land for the purpose of installing, operating, and maintaining instrumentation, facilities, and associated infrastructure, such as wind turbines and solar panels to harness wind or solar energy to generate and supply electricity for resale on a for-profit or non-profit basis to a utility grid serving the public generally, or to users within the local community.

3. If the generation of electricity is solely to support a use approved under Section VI (Agricultural Leases), Section VII (Residential Leases), or Section VIII (Business Leases), for the same parcel of land, then the installation, operation, and maintenance of instrumentation, facilities, and associated infrastructure are governed under those Sections respectively.

B. WEEL Lease Requirements.

1. **Term.** A WEEL must provide for a definite term, state if there is an option to renew, and if so, provide for a definite term for the renewal period. WEELs are for project evaluation purposes, and therefore may have an initial term that is no longer than three years, along with one renewal period not to exceed three years.

2. **Renewal.** If the WEEL lease provides for an option to renew, the lease must specify:
   - **a.** The time and manner in which the option must be exercised or is automatically effective;
   - **b.** Whether LTBB consent to the renewal is required;
   - **c.** That the lessee must provide notice of the renewal to LTBB and any mortgagees;
   - **d.** The additional consideration, if any, that will be due upon the exercise of the option to renew or the start of the renewal term;
   - **e.** Any other conditions for renewal (e.g., that the lessee not be in violation of the lease at the time of renewal); and

f. Any renewal will be filed by LTBB and sent to the BIA in accordance with § IX(O) of these Regulations.

3. Mandatory Lease Provisions.

a. All WEELs must identify:

i. The tract or parcel of land being leased;

ii. The purpose of the WEEL and authorized uses of the leased premises;

iii. The parties to the WEEL;

iv. The term of the WEEL;

v. The ownership of permanent improvements, and the responsibility for constructing, operating, maintaining, and managing permanent improvements, under § IX(D) and (E);

vi. Payment requirements and late payment charges, including interest;

vii. Due diligence requirements under § IX(F); and

viii. Insurance requirements under § IX(M).

b. All WEELs must include the following provisions:

i. The obligations of the lessee and its sureties to the Tribe are also enforceable by the United States, so long as the land remains in trust or restricted status;

ii. There must not be any unlawful conduct, creation of a nuisance, illegal activity, or negligent use or waste of leased premises;

iii. The lessee must comply with all applicable law, ordinances, rules, regulations, and any other legal requirements;

iv. If historic properties, archeological resources, human remains, or other cultural items, not previously reported are encountered during the course of any activity associated with the lease, all activity in the immediate vicinity of the properties, resources, remains, or items will cease, and the

lessee will contact the Tribe to determine how to proceed and appropriate disposition;

v. LTBB 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

vi. LTBB may treat as a lease violation any failure by the lessee to cooperate with a LTBB request to make appropriate records, reports, or information available for LTBB inspection and duplication.

c. Unless the lessee would be prohibited by law from doing so, the lease must also contain the following provisions:

i. 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

ii. 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 or 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.

D. Construction of Permanent Improvements under a WEEL lease.

1. 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 development. These facilities and associated infrastructure are considered permanent improvements. An equipment installation plan must be submitted with the lease.

2. Any changes in the location or type of improvements and delays in any phase of development must be documented in amendments or revisions to the equipment installation plan and Tribal Council must approve the revised plan. A copy of the revised plan must be provided to LTBB.

E. Ownership of Permanent Improvements under a WEEL lease.

1. A WEEL must specify who will own any permanent improvements the lessee installs during the lease term. In addition, the WEEL must indicate

whether any permanent improvements the lessee installs:

a. Will remain on the premises upon expiration, termination, or cancellation of the lease, whether or not the WEEL is followed by a WSR lease, in a condition satisfactory to the Tribe;

b. May be conveyed to the Tribe during the WEEL term and under what conditions the permanent improvements may be conveyed;

c. Will be removed within a time period specified in the 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

d. Will be disposed of by other specified means.

2. 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 the improvements are not removed within the specified time period.

3. The Tribe may take appropriate enforcement action to ensure removal of the permanent improvements and restoration of the premises at the lessee's expense. The Tribe may collect and hold the performance bond or alternative form of security until removal and restoration are completed.

F. Due Diligence Provisions under a WEEL Lease.

1. A WEEL must include due diligence requirements that require the lessee to:

a. Install testing and monitoring facilities within 12 months after the effective date of the WEEL or other period designated in the WEEL and consistent with the plan of development; and

b. If installation does not occur, or is not expected to be completed, within the time period specified in paragraph (1)(a) of this Section, provide LTBB with an explanation of any delay, the anticipated date of installation of facilities, and evidence of progress toward installing or completing testing and monitoring facilities.

2. Failure of the lessee to comply with the due diligence requirements of the WEEL is a violation of the WEEL and may lead to:

a. Cancellation of the WEEL under § IX(JJ); and

b. Application of the requirement that the lessee transfer ownership of energy resource information collected under the WEEL to the Tribe under § IX(I).

G. Description of the Land under a WEEL Lease. A WEEL must describe the leased premises by reference to an official or certified survey, if possible. If the land cannot be so described, the lease must include one or more of the following, and the legal description will be of sufficient detail to meet recording requirements for the LTRO:

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.

H. Compatible Uses under a WEEL Lease. The WEEL may provide for the Tribe to use, or authorize others to use, the leased premises for other noncompeting uses compatible with the purpose of the WEEL. This may include the right to lease the premises for other compatible purposes. Any such use or authorization by the Tribe will not reduce or offset the monetary compensation for the WEEL.

I. Ownership of the Energy Resource Information.

1. The WEEL must specify the ownership and confidentiality of any energy resource information the lessee obtains during the WEEL term.

2. Unless otherwise specified in the WEEL, the energy resource information the lessee obtains through the leased activity becomes the property of the Tribe at the expiration, termination, or cancellation of the WEEL or upon failure by the lessee to diligently install testing and monitoring facilities on the leased premises in accordance with § IX(F).

3. LTBB and the BIA will keep confidential any information provided to either that is marked confidential or proprietary and that is exempt from public release, to the extent allowed by law.

J. Incorporation of WSR Lease Analysis into a WEEL. Any analysis a lessee uses to bring a WEEL activity into compliance with applicable laws, ordinances, rules, regulations, and any other legal requirements may be incorporated by reference, as appropriate, into the analyses of a proposed WSR lease.

K. Option for Lessee to Enter into a WSR Lease.

1. A WEEL may provide for an option period either during the term of or

following the expiration of the WEEL term during which the lessee and the Tribe may enter into a WSR lease.

2. The approval by Tribal Council of a WEEL that contains an option to enter into a WSR lease does not guarantee Tribal Council's approval of any WSR lease.

L. Monetary Compensation Requirements. A WEEL must state how much compensation will be paid and the date on which it is due. Failure to make timely payments is a violation of the WEEL and may lead to cancellation of the WEEL. The lease compensation requirements of §§ IX(Y) through (DD) also apply to WEELs.

M. Bonding and Insurance under a WEEL Lease.

1. LTBB will not require the lessee to provide a performance bond or alternative form of security for a WEEL.

2. Except as provided in paragraph (d) of this Section, a lessee must provide insurance necessary to protect the interests of the Tribe and in an amount sufficient to protect all insurable permanent improvements on the leased premises.

   a. The insurance may include property, crop, liability, and casualty insurance, depending on the Tribe's interests to be protected.

   b. Both the Tribe and the United States must be identified as additional insured parties.

   c. Lease insurance may be increased and extended for use as the required WSR lease insurance.

   d. LTBB may waive the requirement for insurance if a waiver is in the best interest of the Tribe.

N. Approval of a WEEL Lease. A lessee must submit the following documents to Tribal Council to obtain approval of a WEEL:

1. An executed WEEL that meets the requirements of this Statute;

2. Proof of insurance as required by § IX(M);

3. Proof or statement that the proposed use is in conformance with applicable tribal law;

4. Environmental and archeological reports, surveys, and site assessments as

needed to facilitate compliance with applicable Federal and tribal environmental and land use requirements;

5. An equipment installation plan;

6. A restoration and reclamation plan, including any subsequent modifications;

7. Where the lessee is not an entity owned and operated by the Tribe, documents that demonstrate the technical and financial capability of the lessee to construct, operate, maintain, and terminate the proposed project and the lessee's ability to successfully design, construct, and obtain the funding for the project;

8. If the lessee is a corporation, limited liability company, partnership, joint venture, or other legal entity, except an LTBB entity, information such as organizational documents, certificates, filing records, and resolution, that demonstrates that the representative has authority to execute the lease, the lease will be enforceable against the lessee, and the entity is in good standing and authorized to conduct business on LTBB land.

O. **Effective Date of a WEEL Lease.** A WEEL will be effective upon approval of Tribal Council and execution by the lessee, and Executive and Tribal Council Treasurer, on behalf of the Tribe. The lease may specify a date on which the obligations between the parties to a WEEL lease begin. Such date may be before or after the effective date.

P. **Recording of a WEEL Lease.** Any WEEL, assignment, amendment, mortgage, or premature terminations, must be file by LTBB in accordance with these Regulations and an original or certified copy of such document sent to the BIA for recording in its LTRO or processing as required under applicable BIA regulations or policy.

Q. **Amendments, Assignments, Subleases and Mortgages of a WEEL Lease.** The parties may amend, assign, sublease, or mortgage a WEEL by following the procedures and requirements for amending, assigning, subleasing, or mortgaging a WSR lease.

R. **WSR Lease Requirements.**

1. Term. A WSR lease must provide for a definite lease term, state if there is an option to renew, and if so, provide for a definite term for the renewal period. The maximum term of a WSR lease may not exceed 25 years, except that any such lease may include an option to renew for up to 2 additional terms, each of which may not exceed 25 years.

2. **Renewal.** If the lease provides for an option to renew, the lease must specify:

a. The time and manner in which the option must exercised or is automatically effective;

b. That confirmation of the renewal must be submitted to Tribal Council, unless the lease provides for automatic renewal;

c. Whether LTBB consent to the renewal is required;

d. That the lessee must provide notice of the renewal to the Tribe and any sureties and mortgagees;

e. 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

f. Any other conditions for renewal (e.g., that the lessee not be in violation of the lease at the time of renewal).

g. Any renewal must be filed by LTBB and sent to the BIA in accordance with § IX(HH) of these Regulations.

S. WSR Mandatory Provisions.

1. All WSR leases must identify:

a. The tract or parcel of land being leased;

b. The purpose of the lease and authorized uses of the leased premises;

c. The parties to the lease;

d. The term of the lease;

e. The ownership of permanent improvements and the responsibility for constructing, operating, maintaining, and managing, WSR equipment, roads, transmission lines and related facilities under § IX(T) and (U);

f. Who is responsible for evaluating the leases premises for suitability; purchasing, installing, operating, and maintaining WSR equipment, negotiating power purchase agreements; and transmission;

g. Payment requirements and late payment charges, including interest;

h. Due diligence requirements, under § IX(V);

i. Insurance requirements, under § IX(EE); and

j. Bonding requirements under § IX(EE). 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 their obligations and liabilities.

2. All WSR leases must include the following provisions:

a. The obligations of the lessee and its sureties to the Tribe are also enforceable by the United States, so long as the land remains in trust or restricted status;

b. There must not be any unlawful conduct, creation of a nuisance, illegal activity, or negligent use or waste of the leased premises;

c. The lessee must comply with all applicable laws, ordinances, rules, regulations, and any other legal requirements;

d. If historic properties, archeological resources, human remains, or other cultural items not previously reported are encountered during the course of any activity associated with the lease, all activity in the immediate vicinity of the properties, resources, remains, or items will cease and the lessee will contact the Tribe to determine how to proceed and appropriate disposition;

e. LTBB 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; and

f. LTBB may, at its discretion, treat as a lease violation any failure by the lessee to cooperate with a LTBB request to make appropriate records, reports, or information available for LTBB inspection and duplication.

3. Unless the lessee would be prohibited by law from doing so, the lease must also contain the following provisions:

a. 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

b. 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.

T. Permanent Improvements under a WSR Lease.

1. A WSR lease must provide for the installation of a facility and associated infrastructure of a size and magnitude necessary for the generation and delivery of electricity. These facilities and associated infrastructure are permanent improvements. A resource development plan must be submitted for approval with the lease.

2. Any changes to the location of permanent improvements or the number or type of permanent improvements must be submitted to Tribal Council for approval and filing.

U. Ownership of Permanent Improvements under a WSR Lease.

1. A WSR lease must specify who will own any permanent improvements the lessee installs during the lease term and may specify under what conditions, if any, permanent improvements the lessee constructs may be conveyed to the Tribe during or after the lease term. In addition, the lease must indicate whether each specific permanent improvement the lessee installs will:

a. Remain on the leased premises upon the expiration, termination, or cancellation of the lease, in a condition satisfactory to the Tribe and become the property of the Tribe;

b. 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 installation of the permanent improvements; or

c. Be disposed of by other specified means.

2. 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.

V. **Due Diligence Provisions included in a WSR Lease.**

1. A WSR lease must include due diligence requirements that require the lessee to:

   a. Commence installation of energy facilities within two years after the effective date of the lease or consistent with a time frame in the resource development plan;

   b. If installation does not occur, or is not expected to be completed, within the time period specified in paragraph (1)(a) of this Section, provide the Tribe with an explanation as to the nature of any delay, the anticipated date of installation of facilities, and evidence of progress toward commencement of installation;

   c. Maintain all on-site electrical generation equipment and facilities and related infrastructure in accordance with the design standards in the resource development plan; and

   d. Repair, place into service, or remove from the site within a time period specified in the lease any idle, improperly functioning, or abandoned equipment or facilities that have been inoperative for a continuous period specified in the lease, unless the equipment or facilities were idle as a result of planned suspension of operations (e.g., for grid operations or during bird migration season).

2. Failure of the lessee to comply with the due diligence requirements of the lease is a violation of the lease and may lead to cancellation of the lease under § IX(KK).

W. **Description of the Land in a WSR Lease.** A WSR lease must describe the leased premises by reference to a private or public survey, if possible. If the land cannot be so described, the lease must include one or more of the following, and the legal description will be of sufficient detail to meet recording requirements for the LTRO.

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.

X. **Compatible Uses under a WSR Lease.** The lease may provide for the Tribe to use, or authorize others to use, the leased premises for other uses compatible with

the purpose of the WSR lease and consistent with the terms of the WSR lease. Any such use or authorization by the Tribe will not reduce or offset the monetary compensation for the WSR lease.

Y. Monetary Compensation Requirements of a WSR Lease. A WSR lease of LTBB land may allow for any payment amount negotiated by the Tribe, which may be based on fair market rental, percentage of profits, a combination, or such other factors as determined by LTBB.

Z. Payments under a WSR Lease.

1. A WSR lease must specify the dates on which all payments are due.

2. Unless the lease provides otherwise, payments may not be made or accepted more than one year in advance of the due date.

3. 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.

4. Payments must be paid to LTBB at the address set out in the lease. The Tribe will not accept cash or foreign currency, and will accept third-party checks only from financial institutions or Federal agencies. Acceptable forms of payment are:

a. Electronic funds transfer payments;

b. Money orders;

c. Personal checks;

d. Certified checks; or

e. Cashier's checks.

AA. Non-monetary or Varying Types of Compensation under a WSR Lease. A WSR lease may provide for the following:

1. Alternative forms of compensation, including but not limited to, in-kind consideration and payments based on percentage of income; or

2. Varying types of consideration at specific stages during the term of the lease, including but not limited to fixed annual payments during installation, payments based on income during an operational period, and bonuses.

BB. Notification when Payment is Due under a WSR Lease. The Tribe may issue

invoices to a lessee in advance of the dates on which payments are due under a WSR lease. The lessee's obligation to make these payments in a timely manner will not be excused if invoices are not delivered or received.

CC. Compensation Review or Adjustments under a WSR Lease. The Tribe may negotiate a provision for periodic review and adjustment of compensation.

DD. Applicability of Other Fees under a WSR Lease.

1. The lessee may be required to pay additional fees, taxes, and assessments associated with the use of the land, as determined by LTBB law and regulations.

2. If the leased premises are within an Indian irrigation project or drainage district, the lessee must pay all operation and maintenance charges that accrue during the lease term. The lessee must pay these amounts to the appropriate office in charge of the irrigation project or drainage district. LTBB will treat the failure to make these payments as a violation of the lease.

3. Where the property is subject to at least one other lease for another compatible use, such as grazing, the Tribe shall retain all rights to determine how to fairly allocate payment of the operation and maintenance charges.

EE. Bonding and Insurance under a WSR Lease. The lessee must provide a performance bond or alternative form of security, except as provided in paragraph (7) of this Section.

1. No less than:

a. The highest annual rental specified in the lease, if the compensation is paid annually; or

b. If the compensation is not paid annually, another amount established by the Tribe.

c. The installation of any required permanent improvements;

d. The operation and maintenance charges for any land located within an irrigation project; and

e. The restoration and reclamation of the leased premises, to their condition at the start of the lease term or some other specified condition.

2. The performance bond or other security must be deposited with LTBB and made payable only to the Tribe, and may not be modified without LTBB's approval.

3. The lease must specify the conditions under which the LTBB may adjust security or performance bond requirements to reflect changing conditions.

4. LTBB may require that the surety provide any supporting documents needed to show that the performance bond or alternative forms of security will be enforceable, and that the surety will be able to perform the guaranteed obligations.

5. The performance bond or other security instrument must require the surety to provide notice to LTBB at least 60 days before canceling a performance bond or other security. This allows the Tribe to notify the lessee of its obligation to provide a substitute performance bond or other security and require collection of the bond or security before the cancellation date. Failure to provide a substitute performance bond or security is a violation of the lease.

6. LTBB may waive the requirement for a performance bond or alternative forms of security if the lease is for public purposes or if the waiver is in the Tribe's best interest.

7. **Acceptable Forms of Security.**

   a. LTBB will accept a performance bond only in one of the following forms:

      i. Certificates of deposit issued by a federally insured financial institution authorized to do business in the United States;

      ii. Irrevocable letters of credit issued by a federally insured financial institution authorized to do business in the United States;

      iii. Negotiable Treasury securities; or

      iv. Surety bonds issued by a company approved by the U.S. Department of the Treasury.

   b. LTBB may accept an alternative form of security that provides adequate protection for the Tribe, including but not limited to an escrow agreement and assigned savings account.

c. All forms of performance bonds or alternative security must, if applicable:

i. Indicate on their face that LTBB approval is required for redemption;

ii. Be accompanied by a statement granting full authority to LTBB to make an immediate claim upon or sell them if the lessee violates the terms of the lease;

iii. Be irrevocable during the term of the performance bond or alternative security; and

iv. Be automatically renewable during the term of the lease.

d. LTBB will not accept cash bonds.

8. **Release of Security.** Upon expiration, termination, or cancellation of the WSR lease, the lessee must ask LTBB in writing to release the performance bond or alternative form of security. If the lessee has complied with all lease obligations LTBB will release the performance bond or alternative form of security to the lessee.

9. **Insurance.** A lessee must provide insurance when necessary to protect the interests of the Tribe and in the amount sufficient to protect all insurable permanent improvements on the leased premises. The insurance may include property, crop, liability, and casualty insurance, depending on the Tribe's interests to be protected. Both the Tribe and the United States must be identified as additional insured parties.

FF. **Approval.** The lessee must submit the following documents to Tribal Council to obtain approval of a WSR lease:

1. A proposed lease that meets the requirements of these Regulations;

2. A statement that the proposed use is in conformance with applicable LTBB law, and an approved site plan;

3. Environmental and archeological reports, surveys, and site assessments as needed to facilitate compliance with applicable Federal and LTBB environmental and land use requirements;

4. A restoration and reclamation plan (including any subsequent modifications to the plan);

5. Where the lessee is not an entity owned and operated by the Tribe, documents that demonstrate the technical and financial capability of the lessee to construct, operate, maintain, and terminate the proposed project and the lessee's ability to successfully design, construct, and obtain the funding for a project.

6. If the lessee is a corporation, limited liability company, partnership, joint venture, or other legal entity, except an LTBB entity, information such as organizational documents, certificates, filing records, and resolution, that demonstrates that the representative has authority to execute a lease; the lease will be enforceable against the lessee and the legal entity is in good standing.

GG. Effective Date of WSR Lease. A WSR lease will be effective upon approval of Tribal Council and execution by the lessee, and Executive and Tribal Council Treasurer, on behalf of the Tribe. The lease may specify a date on which the obligations between the parties to a WSR lease begin. Such date may be before or after the effective date.

HH. Recording of a WSR Lease. Any WSR lease, amendment, assignment, or leasehold mortgage, or premature terminations, must be filed by LTBB in accordance with these Regulations and an original or certified copy of such document sent to the BIA for recording in its LTRO or processing as required under applicable BIA regulations or policy.

II. Leasehold Mortgages. A lessee may mortgage a WSR lease only with Tribal Council approval.

JJ. Late Payments.

1. LTBB may issue bills or invoices to a lessee in advance of the dates on which rent payments are due under a residential lease, but the lessee's obligation to make such payments in a timely manner will not be excused if such bills or invoices are not delivered or received.

2. A lessee's failure to pay rent in the time and manner required by a WSR lease will be a violation of the lease, and a notice of violation will be issued under § IX(KK)(1) of these Regulations.

3. The Tribe may accept partial payments, but acceptance will not operate as a waiver with respect to any amounts remaining unpaid or any other existing lease violations. Unless otherwise provided in the lease, overpayments may be credited as an advance against future rent payments, or refunded.

4. If a personal or business check is dishonored, and a rent payment is

therefore not made by the due date, the failure to make the payment in a timely manner will be a violation of the lease, and a notice of violation will be issued under § IX(KK)(1) of these Regulations. Any payment made to cure such a violation, and any future payments by the same lessee, must be made by one of the alternative payment methods listed in § IX(Z)(4) of this unless the Executive determines that circumstances warrant allowing the continued use of personal or business checks.

5. LTBB may charge lessee a fee of:

a. $50.00 administrative fee for dishonored checks; and

b. $15.00 administrative fee for processing of each notice or demand letter.

KK. Violations and Cancellation.

1. If the Executive determines that a WEEL or WSR lease has been violated, it will send the lessee a notice of violation within five business days of that determination. The notice of violation must be provided by certified mail, return receipt requested, or personal delivery.

2. Within ten business days of the receipt of a notice of violation, the lessee must:

a. Cure the violation and notify LTBB in writing that the violation has been cured;

b. Dispute the determination that a violation has occurred or explain why LTBB should not cancel the lease; or

c. Request additional time to cure the violation.

3. If the lessee does not cure a violation of a residential lease within the requisite time, the Executive will determine whether:

a. The lease should be cancelled by LTBB under §IX(KK);

b. LTBB should invoke any other remedies available to it under the lease, including collecting on any available bond; or

c. The lessee should be granted additional time in which to cure the violation.

4. If the Executive decides to grant a lessee additional time in which to cure a violation, the lessee must proceed diligently to complete the necessary corrective actions within a reasonable or specified time period from the

date on which the extension is granted, notify Tribal Council, and the extension only takes effect upon Tribal Council approval.

5. The Executive will request approval from Tribal Council prior to cancelling a WEEL or WSR lease. If Council approves cancellation of a lease, the Executive will send the lessee a cancellation letter within five business days of that decision. The cancellation letter must be sent to the lessee by certified mail, return receipt requested, or personal delivery. The cancellation letter will explain the grounds for cancellation, notify the lessee of the amount of any unpaid rent, interest charges, or late payment penalties due under the lease, notify the lessee of its right to appeal to Tribal Court under applicable law or Court Rules, including the amount of any appeal bond that must be posted with an appeal of the cancellation decision; and order the lessee to vacate the property within 30 days of the date of receipt of the cancellation letter.

6. If a lessee or any other party causes or threatens to cause immediate and significant harm to the leased premises during the term of a residential lease, the Executive will take appropriate emergency action. Emergency action may include trespass proceedings under LTBB criminal statutes, or judicial action seeking immediate cessation of the activity resulting in or threatening the harm.

7. If a lessee remains in possession after the expiration or cancellation of a residential lease, LTBB will treat the unauthorized use as a trespass. The Executive will take action to recover possession on behalf of LTBB, and pursue any additional remedies available under applicable law.

X. ENVIRONMENTAL REVIEW

A. The Environmental Services Division of the Department of Natural Resources (ESD) is charged with preparing findings as to compliance with applicable environmental laws before any of the types of leases provided for in these regulations are presented to Tribal Council for final approval. Tribal Council will not consider a lease until completion of the ESD review under this Section or threshold determination of no significant environmental impact by the ESD.

B. Threshold Determination.

1. Lessee Not Subject to Environmental Review Process: If the ESD determines that the proposed lease by its nature would not create a Significant Effect on the Environment, the ESD will prepare a written document stating its categorical exclusion determination, and the proposed lease is exempt from additional review requirements. A single family residential lease consistent with a Tribal Council approved site plan is presumed to present no Significant Effect on the Environment, but the ESD may override such presumption if it determines there are significant

environmental concerns not considered in the site plan, such as disturbance of hazardous waste or the presence of endangered species.

2. Lessee Subject to Environmental Review Process: If the ESD determines that the proposed lease is expected to likely to create a Significant Effect on the Environment, the Lessee must fulfill the requirements of the environmental review process set forth in this section. The physical disturbances must be direct, such as land clearing, new building construction, or discharge of emission or effluent associated with the project. Therefore, leases or subleases within an existing building, such as food vendors within the casino or retail establishments in a portion of an already existing structure are generally exempt from further review unless they will be a significant source of emissions or effluent.

C. Action on Leasing Decision Subject to Completion of Environmental Review Process. If the ESD determines that the proposed lease is subject to the environmental review process hereunder, the Tribal Council will not vote on whether to approve the lease until the ESD completes the review process in accordance with applicable Tribal environmental regulations.

D. Environmental Review Process.

1. Unless the ESD makes a threshold determination that the lease is not subject to the environmental review process, the lessee or Tribal entity proposing the lease shall prepare a comprehensive and adequate tribal environmental impact report ("TEIR"), analyzing the potentially Significant Effect on the Environment of the proposed action. Information or data which is relevant to such a TEIR that is a matter of public record or is generally available to the public need not be repeated in its entirety in the TEIR, but may be specifically cited as the source for conclusions. Such information or data shall be briefly described, its relationship to the TEIR indicated, and the information source shall be reasonably available for inspection by the public on the Internet or at a public building. The TEIR shall provide detailed information about the significant effect(s) on the environment which the lease is likely to have, and shall include a detailed statement setting forth all of the following:

a. A description of the physical environmental conditions in the vicinity of the proposed project (the environmental setting and existing baseline conditions), as they exist at the time the ESD determines that a TEIR will be required;

b. All significant effects on the environment, including land, water, air and biological impacts, of the proposed lease;

c. In a separate section:

i. Any significant effect on the environment that cannot be avoided if the lease is executed;

ii. Any significant effect on the environment that would be irreversible if the lease is executed;

iii. Any alternatives to the proposed lease and/or lease activities;

iv. Any mitigation measures proposed, recommended, or required.

d. The TEIR shall also contain a statement indicating the reasons for determining that various effects of the lease on the off-reservation environment are not significant and consequently have not been discussed in detail in the TEIR. In the TEIR, the direct and indirect significant effects on the environment shall be clearly identified and described, giving due consideration to both the short-term and long term effects.

2. Notice of Completion of Draft TEIR. The entity preparing the TEIR shall submit its draft to the ESD upon completion. Within fourteen (14) business days of submission the ESD will submit the draft TEIR to the Tribe's Management Information System (MIS) Department or webmaster for posting a notice of availability of draft TEIR on the Tribe's website. Additionally, to satisfy the requirement for public notice and opportunity to comment under the HEARTH Act, the ESD or such other entity designated by the Tribal Chairman will provide public notice by publication of the availability of the draft TEIR in a newspaper of general circulation in the area affected by the proposed lease. The notice will include:

a. A brief description of the project anticipated in the proposed lease;

b. The proposed location of the lease and project;

c. An address where copies of the draft TEIR are available; the TEIR may also be posted on a Tribal Citizens only portion of the website; and

d. Notice of a period of thirty (30) days during which the Tribe will receive comments on the draft TEIR.

3. Response to Public Comments. After the thirty (30) day comment period

has ended, the ESD will review all comments received from the public and provide them to the lessee or entity that submitted the TEIR. Within thirty (30) days from the close of the comment period, the ESD shall provide responses to relevant and substantive public comments on any significant effect on the environment arising as a result of the proposed project, and give the preparer of the TEIR the opportunity to submit its responses to the ESD for inclusion the TEIR packet for Tribal Council.

4. At that end of such thirty (30) day period, the ESD will submit the TEIR, public comments, TEIR preparer's responses, and the responses of the ESD, if any, to Tribal Council. The ESD submission will contain the determination of either a finding of no significant impact (FONSI), a mitigated FONSI, or a decision to prepare a more in-depth environmental review. Unless superseded by other tribal laws, regulations and/or policies, this determination will be made using standards contained within and consistent with federal laws, regulations and guidance documents for environmental review.

CERTIFICATION

As Chairperson, I approve this Leasing on LTBB Trust Lands Regulations.

Date: 5/19/16 Regina Gasco-Bentley

Regina Gasco-Bentley, Tribal Chairperson

Received by the Tribal Council Office on: 5-19-16 by:

Per the LTBB Constitution, Article XIII(G)(2), when the Legislative Leader is the Tribal Chairperson, then as the Tribal Council Secretary and Treasurer, we certify that this Disclosure of Public Documents Regulations were approved by the Tribal Council of the Little Traverse Bay Bands of Odawa Indians at a regular meeting of the Tribal Council held on May19, 2016 at which a quorum was present, by a vote of 8 in favor, 0 opposed, 0 abstentions, and 0 absent.

Date: 5-23-2016

Aaron Otto, Secretary

Date: 5.23.2016 Marcella R. Reyes

Marcella Reyes, Treasurer