

CHAPTER 18 - LAND LEASE REGULATIONS

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JURISDICTION

CHAPTER 18 - LAND LEASE REGULATIONS

18.1 SECTION 1: DEFINITIONS

- 18.1.1 For purposes of this Ordinance, certain terms are defined in this Article. The word "shall" is always mandatory and not merely advisory.
- 18.1.2 "Family" means an adult living with or without children, an elder, a near elderly person, a disabled person, and/or a single person.
- 18.1.3 "Immediate family member" includes a person's spouse, parents, siblings, child(ren), or a resident of the person's household.
- 18.1.4 "Improvements" refer to permanent structures affixed to the land, intended for the primary purpose of serving as a residence. Improvements do not include mobile homes and other movable personal property.
- 18.1.5 "Lease" means a document granting a tribal member an interest in Tribal lands entered into between the Tribe and an individual Tribal member(s) issued in the form approved by the Bureau of Indian Affairs, United States Department of Interior.
- 18.1.6 "Lease holder" means the party who has entered into a lease for a specific lot upon Tribal lands.
- 18.1.7 "Leasehold estate" means an estate established pursuant to a Lease.
- 18.1.8 "Leasehold Mortgage" means the first lien mortgage of a leasehold estate given to secure a mortgage loan made by a mortgage in accordance with RCCL Chapter 30.
- 18.1.9 "Legal Department" means the Red Cliff Legal Department, which is in charge of reviewing and processing lease applications, recording land transactions, registering documents, canceling leases where warranted, and other duties and responsibilities as established and further set forth in this ordinance.

- 18.1.10** "Lessee" means (a) the individual Tribal member beneficiary of a lease; (b) the non-member trustee or life estate holder of a lease; or (c) the holder of a business lease.
- 18.1.11** "Lessor" means the Tribe.
- 18.1.12** "Lot" means a parcel of real estate upon Tribal lands designated for use as a single family, townhouse, condominium or other single family ownership.
- 18.1.13** "Mortgagee" means the approved lender under any leasehold mortgage under RCCL Chapter 30. This definition also includes, without any consent by the Tribe, any subsequent holder, whether by assignment, succession or otherwise, of the original mortgagee's right, title or interest in and to the leasehold mortgage and/or the leasehold estate.
- 18.1.14** "Mortgagor" means any member of the Tribe who has executed a leasehold mortgage, including any heir(s), successor(s), executor(s), administrator(s) or assign(s) of such member.
- 18.1.15** "Nuisance" means a condition which:
- (a) Unreasonably threatens the health or safety of the public or neighboring land users; or
 - (b) Unreasonably and substantially interferes with the ability of neighboring real property users to enjoy the reasonable use and occupancy of their property.
- 18.1.16** "Secretary" as used herein means the Secretary of the Interior or his authorized representative(s).
- 18.1.17** "Sublease" means temporary authorization by a Lease holder to another Tribal member of the right to occupy the residential premises upon a leased lot.
- 18.1.18** "Subsequent Lienholder" means the holder of any lien, including a mortgage, perfected subsequent to the recording of a leasehold mortgage under this

ordinance; provided, however, such terms shall not include the Tribe.

- 18.1.19** "Testamentary designation" means designation in a lease holder's will or estate planning documents that his leasehold estate interest shall be inherited by another Tribal member. Testamentary designations are subject to the restrictions on transfer and assignment in sec. 18.8.
- 18.1.20** "Transfer" means legal assignment of leasehold interest from lease holder to another Tribal member.
- 18.1.21** "Tribe" means the Red Cliff Band of Lake Superior Chippewa Indians.
- 18.1.22** "Tribal Council" means the Red Cliff Tribal Council.
- 18.1.23** "Tribal Land" means any land within the boundaries of the Red Cliff Reservation where title is held either by the Tribe or in trust for the benefit of the Tribe.
- 18.1.24** "Tribal Court" means the Tribal Judiciary of the Red Cliff Band of Lake Superior Chippewa Indians.
- 18.1.25** "Tribal Lands" means real property owned by the Tribe or the United States of America in trust for the Tribe including lands acquired in fee or set in trust after this ordinance is enacted.
- 18.1.26** "Tribal member" means an individual enrolled as a member of the Tribe.
- 18.1.27** "Unlawful Detainer Action" means a suit brought before the Tribal Court to terminate a Lease holder interest in a leasehold estate and/or to evict any person from occupancy of such leasehold estate or residence built upon.
- 18.1.28** "Waste" means to spoil or destroy land, building, gardens, trees or other improvements on the leasehold estate which results in substantial injury to the lessor's interest in the leasehold estate. Waste may include the failure to build on

leasehold within the required time period thus depriving another member of the opportunity for affordable housing.

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

18.2 **SECTION 2: LEASING OF TRIBAL LANDS**

18.2.1 The Tribal Council in cooperation with the Secretary shall have authority to lease Tribal lands to Tribal members under the conditions prescribed by this chapter.

18.2.2 Approval. A lease of tribal lands held in trust by the United States shall be valid and binding only after approval by the Secretary. Notwithstanding any other provisions of tribal law, a lease or encumbrance of tribal land not held in trust or otherwise subject to a deed restriction by the United States shall only require approval of the Tribal Council, and shall not require approval by the Secretary. The Secretary shall have no authority to approve leases or encumbrances of such tribal lands held by the Tribe in fee simple title, whether within or without the Reservation, nor shall the Tribe seek or require the Secretary's approval of such leases or encumbrances. Article VIII, Section 4 of the Constitution shall be construed accordingly. (Res. No. 7/21/2015D)

18.2.3 *Residential Leases.* It is the policy of the Tribe that all residential lot leases are intended for homestead purposes. Only one (1) residential lease shall be granted per household. For purpose of this section "Household" is defined as one or more persons living in common, along with all minor children of either party or both. The obligations imposed by this ordinance shall be in addition to the obligations imposed by the Residential Lease.

18.2.4 *Recreational Leases.* Recreational leases are no longer permitted, provided that all recreational

leases presently in effect on the effective date of these amendments shall be valid.

18.2.5 *Business Leases.* In addition to the requirements and restrictions set forth in this Code, business and commercial uses of land (leased land and otherwise) shall be governed by the terms of the individual lease, any permit granted by the Tribal Council pursuant to RCCL Chapter 16 as well as any applicable contract with the Tribe. No business lease shall be granted unless the applicant has a valid, current business permit issued by the Red Cliff Tribal Council.

18.2.6 *Eligibility.* Applicants requesting a residential lease must be Tribal members 18 years of age or older and declare the intent to use the lot to build a home as his/her primary residence. With respect to all other leases, applicants must be at least 18 years of age.

18.2.7 *Non-member.* It is the policy of the Tribe that tribal leases are for the benefit of the membership. However, the Tribal Council recognizes that under certain circumstances, non-members can obtain an interest in a tribal lease. Notwithstanding other rules set forth in this ordinance, the following restrictions shall apply to all non-member interests in a tribal lease:

- (a) If a non-tribal member is the surviving spouse of a tribal member, their interest in any lease shall only extend during their lifetime (life estate), provided, that any life estate granted to a non-member shall terminate upon the non-member's marriage to another non-member. In addition, any surviving non-member spouse shall comply with Lessee's obligations under this ordinance and the Lease;
- (b) Any non-member interest in a tribal lease shall revert to the Tribe upon the death of the non-member having an interest in the lease;
- (c) Individuals holding tribal leases who relinquish membership to the Red Cliff Band

shall have their interest in any such lease terminated;

- (d) In exceptional circumstances where a minor child(ren) have a substantial equity interest in a tribal leasehold, a court or competent jurisdiction may grant an interest in a tribal leasehold to non-member as trustee for a tribal member child(ren) for the purpose of managing the tribal member's interests in said leasehold, provided that the Tribal Council has approved the transfer of said interest. In such a circumstance, the non-member's interest in the lease shall terminate upon either closing of the estate or the eldest child's eighteenth birthday, whichever occurs first.

18.2.8 Leases granted prior to June 2, 2008 shall be exempt from the requirements of sec. 18.7.1 and 18.7.2 for a period of six (6) months, it being the stated intent of the Tribal Council that all vacant tribal leases shall be scheduled for development within said six (6) month period or be terminated and made available to the membership. After December 2, 2008, all vacant tribal leases in effect prior to said date shall either be scheduled for development or cancelled; tribal members shall not be entitled to additional time to begin development or obtain financing. For purposes of this section "scheduled for development" means that construction of the residence has begun on the lease site.

All non-member leases in effect prior to the effective date of this ordinance shall continue to be valid, provided, that such leases shall be subject to a life estate.

18.3 **SECTION 3: RESTRICTIONS**

18.3.1 Lots leased upon Tribal trust lands cannot be encumbered.

18.3.2 *Prohibited Structures.* Structures or shelters of a temporary character on a lot such as vehicles, campers, trailers, basements, tents, shacks, garages, or other buildings may be used as a

residence only upon Special Permit from the Tribal Council obtained in advance. Only a permanent dwelling may be used as a residence, and then only upon its certification. Mobile homes are not prohibited structures within the meaning of this section. (10/7/19)

18.4 **SECTION 4: RESIDENTIAL LEASES**

In issuing approval on applications for residential leases, the following rules shall apply:

18.4.1 *General Provisions*

A. Role of Tribal Council. The Tribal Council shall have the authority to:

1. Approve Residential Leases, Assignment Certificates, Business Leases, easements, rights of way and other interests in Tribal Land, provided, that such documents shall bear the signature of the Tribal Chair or, in the Chair's absence, the Vice-Chair or their designee;
2. Adopt rules, policies, forms and procedures, consistent with this Ordinance, for the efficient operation of the Land Office;

B. Duties of the Land Specialist. The Land Specialist shall:

1. Process applications for Residential Leases and Assignment Certificates for submission to the Tribal Council for final approval'
2. Facilitate the approval and recording of documents by the Bureau of Indian Affairs to the extent required by federal law;
3. Maintain a verifiable inventory of Tribal Lands and develop and maintain a land records system for the filing and recording of documents that affect interests in Tribal Land;

4. Serve as the custodian of tribal lands for those lands designated by the Tribal Council;
5. Recommend to the Tribal Council policies and procedures related to the duties of the Land Office;
6. Provide such assistance in connection with land acquisitions and applications for transfer of fee land into trust status, as the Tribal Council shall request;
7. Report to the Tribal Council upon request and not less frequently than monthly;
8. Perform such additional duties as set forth in this ordinance and as may be necessary in order to fulfill the purposes of this ordinance.

18.4.2 *Application Procedure.* A Tribal member requesting a lease for a specific lot, a renewal of an existing lease or a transfer of a lease shall submit a written application to the Legal Department in the form approved by the Tribal Council. A tribal member may only submit one application for a lease at a time; until a decision is reached on a pending application no further applications are permitted. The written request must include the following information:

- (a) Applicant's demonstrated ability to arrange necessary financing to build a residence meeting the standards specified under tribal law (where applicable).
- (b) Applicant is not in default or delinquency of any debt to the Tribe or any of its enterprises. (Res. No. 7/21/2015D)
- (c) Applicant has no criminal record of felony convictions related to violence, sexual assault or controlled substances unless the

applicant has received special accommodation from the Tribal Council waiving this requirement. For purposes of this section, prohibited offenses shall be the same as those listed in RCCL Chapter 43, Attachment B. (05/06/19)

Special accommodation may only be granted upon hearing before the Tribal Council pursuant to the applicant's formal request. To qualify for special accommodation under this section applicant must demonstrate: (05/06/19)

- (i) Support from any neighboring leaseholders in the form of either written affidavit or testimony;
- (ii) Documentation that all conditions of any probation or parole term have been satisfied, including but not limited to any term of incarceration;
- (iii) Written apologies to any victims, the community and the Tribal Council; and
- (iv) That applicant has no outstanding obligations with respect to any previous or existing lease, including but not limited to remediation or clean-up of a lease site.

In making its determination, Tribal Council shall consider the nature of the offense leading to the prohibited conviction, as well as the length of time since the date of conviction and any subsequent criminal history. If granted special accommodation under this section, any subsequent felony conviction by applicant shall result in summary cancellation of applicant's lease by the Land Specialist. (05/06/19)

The Legal Department shall have the authority to determine whether applications are complete or

incomplete, and shall return incomplete applications to the applicant as soon as reasonably practical. No application that is incomplete will be considered for further action. Failure to provide accurate information in connection with an application for a land lease shall subject the applicant to cancellation of their lease.

18.4.3 *Lot Selection and Assignment.* The Legal Department shall rank applicants for a lot assignment by the following criteria to present for determination and approval by the Tribal Council.

- (a) Applicant's request should specify the lot number requested. The Legal Department upon receiving such request shall post the request at the Tribal Administration Building by presenting such notice to the main receptionist or other person responsible for posting notices for the building; the notice should also be posted at the Red Cliff Chippewa Housing Authority bulletin board. The Legal Department is mandated to personally notify any subsequent applicant who, within the posting period files a request for the lot number covered in the Notice. The posting period shall be ten (10) days. During the posting period, interested tribal members may file an objection to issuance of the lease for good cause with the Land Specialist. Upon the expiration of the posting period, the Legal Department shall issue a certification that the posting period has expired and that no valid objection or additional applications regarding the same lot were received during such posting period. The Legal Department will not accept a request filed by an applicant who currently holds a residential lease on another lot upon Tribal trust lands.
- (b) If no valid objection is submitted or no additional applicants request the same lot, the Legal Department will issue a recommendation to the Tribal Council to approve the requested lot and continue with the lease process.

- (c) If during the posting period an objection to the requested lot for good cause, as determined by the Land Specialist, is filed or a new applicant requests the same lot, as part of its recommendation the Legal Department shall submit a copy of the objection document or the new applicant's request to the Tribal Council for a final decision as to who will be granted a lease for the lot in question.
- (d) When making a recommendation on a disputed lot, the Legal Department shall take into consideration the following factors:
1. *Constitutional Preference for Cooperative Associations and Landless Indians.* The Department shall apply Article VIII Section 4 of the Constitution which provides; preference shall be given, first, to cooperative associations of members of the tribe; and secondly, to individual Indians who are members of the Red Cliff Band of Lake Superior Chippewa Indians and consider whether the applicant currently holds an interest in any tribal lands. Whether the applicant currently holds an interest in any tribal lands. **(05-21-19)**
 2. *Readiness to develop the property.* An applicant who is more prepared to successfully complete the mortgage or financing procedure in a shorter period of time should be awarded the lot over the applicant who is at the early stages of the process. An applicant who has obtained a mortgage or financing pre-approval from a lender will be considered to be more prepared than someone who has not yet obtained such pre-approval. This factor will be assigned fifty percent weight overall.
 3. If, after applying the criteria above, there are still two or more applicants in equal eligibility standing, the Legal Department will decide through a lottery

or other random selection system approved by the Tribal Council.

- (e) Where there are more applications than available leases, the Legal Department shall maintain an active waiting list.

18.5 **SECTION 5: BUSINESS LEASES**

18.5.1 *Applicability.* This Title applies to Leases for business, commercial or industrial purposes of (i) undeveloped Tribal Land, and (ii) tribally-owned interests in allotted lands, except in cases in which the Tribe's consent for the leasing of such interests in allotted lands is not required by law. Provided, that the requirements of this section shall still apply if the Lessee proposes substantial redevelopment of Tribal land, which shall be determined in the sole discretion of the Red Cliff Tribal Council. (03/23/10)

18.5.2 *General Requirements.* A Business Lease may be granted provided:

- A. Potential environmental impacts have been identified and the requirements of any applicable environmental laws have been satisfied, including the National Environmental Protection Act (NEPA), Endangered Species Act, and Historic Preservation Act.
- B. all tribal environmental and land use laws and ordinances have been satisfied.
- C. The proposed use of the leased premises is described in the Lease and does not unduly affect the neighboring lands;
- D. The height, quality, and safety of any structures or other facilities to be constructed on the leased lands satisfies the requirements of all applicable laws;
- E. The Lessee has provided adequate evidence of ability to meet lease payment obligations. The Tribe may require, as appropriate, the

organization documents and a certificate of good standing in the case of a lessee that is not an individual, financial statements, and/or credit reports.

- F. Documents describing any planned improvements have been submitted to the Tribe and approved; at the discretion of the Tribal Council, such documents may be required to include a site plan describing the location of any new buildings, roads, and utilities, construction schedule, and survey.
- G. The lessee has provided a bond to secure (i) payment of one year of rent, (ii) construction of planned improvements, (iii) payment of any additional lease obligations, operation, and maintenance charges or other legal obligations, and (iv) restoration of the Leasehold to its condition before issuance of the Lease or restoration to such condition as may be agreed upon by the parties. The Tribe may waive the requirements of this paragraph only pursuant to an express determination that such waiver is in the public interest.
- H. The Business Lease is in the best interests of the Tribe, as determined by the Tribal Council.

18.5.3 *Business Lease Approval.* A Business Lease may be granted pursuant to a Tribal Council resolution that includes findings that all requirements of this Section 5 have been satisfied.

18.5.4 *Business Lease Provisions.* Every Business Lease shall provide that:

- A. The Lessee construct all improvements in compliance with all applicable laws.
- B. The Lessee maintain the Leasehold in good condition and in compliance with all applicable laws.

- C. The Lessee comply with all applicable federal, tribal, state, and local laws, ordinances, regulations and other requirements.
- D. The Lessee not use the Leasehold for any unlawful conduct, create waste, cause nuisance, or interfere with his or her neighbors' use of their properties.
- E. The Lessee maintain insurance on the Leasehold that is sufficient to (i) protect any improvements on the Leasehold, (ii) covers losses arising from liability for personal injury or death, and (iii) identifies the Tribe and the United States as insured parties.
- F. The obligations of the Lessee and its sureties to the Tribe are also enforceable by the United States as long as the land is in trust status.
- G. If required by federal law, that nothing in the Lease operates to delay or prevent a termination of federal trust responsibilities with respect to the land by issuance of a fee patent or otherwise during the term of the lease, that any sureties be notified of any change in status of the land and that any such termination shall not abrogate the lease.
- H. The Lessee indemnify and hold harmless the Tribe and the United States from any loss, liability, or damages resulting from the Lessee's use or occupation of the Leasehold and indemnify and hold harmless the Tribe and the United States from 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 materials that occurs during the lease term, regardless of fault, unless the liability or cost arises from the gross negligence or willful misconduct of the Tribe.

18.5.5 *Lease payment.*

- A. Lease payments shall be based on fair market rental value or a percentage of business revenues except that the Tribal Council may grant a lease at a lesser amount if the resolution granting the Business Lease identifies a public interest that the Business Lease will promote and finds that such public interest justifies a below market lease payment.
- B. "Public interest" for purposes of this Section includes, but is not limited to, a business use of the leased premises that will provide (i) employment opportunities for tribal members, (ii) needed goods and services not otherwise readily available to Members, or (iii) entrepreneurship opportunities for a Member or a business entity owned wholly by the Tribe or none or more Members.
- C. Fair market rent for purposes of this section may be (i) a sum certain per month or per year, (ii) a percentage of revenue generated by the business conducted on the leased premises, or (iii) a combination of (i) and (ii).
- D. The Tribe may require an appraisal, at Lessee's expense, for the purpose of determining fair market rent.

18.5.6 *Assignment of Business Leases.*

- A. Tribal Approval requirement. A Business Lease may be assigned only with the express written consent of the Tribal Council, except where a Lease expressly permits assignment without the Tribe's consent or expressly approves a future assignment.
- B. Form of Assignment. An assignment shall be in writing, in a form acceptable to the Tribe, shall include the assignee's agreement to assume all of the Lessee's obligations under the Lease, and shall be executed by the assignor and assignee. The Land Office will make assignment forms available.

- C. BIA Requirements. An assignment of a Business Lease shall be subject to applicable restrictions under federal law.
- D. Recording. All assignments shall be recorded in accordance with federal and tribal law.

18.5.7 *Subleases.*

- A. Tribal Approval. A Business Lease may be subleased only with the express written consent of the Tribe, except where a Lease expressly permits subleasing without the Tribe's consent or expressly approves a future sublease.
- B. Form of Sublease. A sublease shall be in writing, in a form acceptable to the Tribe, and shall require sublessee's performance of all of the Lessee's obligations under the Lease, and shall be executed by the sublessor and sublessee. The Land Office will make assignment forms available.
- C. Sublessor's Obligations. A sublease shall not relieve the Sublessor of its obligations under the Lease.
- D. BIA Requirements. A sublease is subject to applicable requirements of federal law governing subleases.
- E. Recording. All subleases shall be recorded in accordance with federal and Tribal law.

18.5.8 *Mortgages of Leasehold Interests.*

- A. Tribal Approval. A Business Lease may be mortgaged only with the express written consent of the Tribal Council, except where the Lease expressly permits a mortgage without the Tribe's consent or expressly approves a future mortgage.
- B. BIA Requirements. A mortgage is subject to the requirements of 25 CFR § 162.430 or its

successor federal regulation governing mortgages of Business Leases.

- C. Recording. All subleases shall be recorded in accordance with federal and Tribal law.

18.5.9 *Term and Expiration.*

- A. Maximum Term. The term of a Business Lease shall not exceed ten (10) years unless the Tribal Council expressly identifies reasons why a longer term is in the best interests of the Tribe. No Business Lease shall exceed twenty-five (25) years but may include a provision for an automatic renewal unless the Lessee elects to terminate.
- B. Expiration. A Business Lease shall expire upon the earlier of the death of the Lessee or the end of the term stated in the Business Lease.
- C. Lessee's Rights Upon Expiration. Subject to the Tribe's option to purchase the Leasehold pursuant to paragraph (D) below and as otherwise provided under tribal law, a Lessee may upon expiration of a Business Lease, (i) at his or her sole cost, remove the improvements within 120 days to a new location and repair any damage to the Leasehold caused by such removal; or (ii) abandon the Leasehold, in which case title to the Leasehold and all of its improvements shall automatically revert to the Tribe without compensation to the Lessee.
- D. Tribe's Option and Right of First Refusal. Notwithstanding (A) through (C) above, upon the expiration of a Business Lease, the Tribe may purchase the Leasehold improvements for fair market value, as determined by agreement between the parties or by the Tribal Court. In the event Lessee receives an offer to purchase improvements, Lessee shall notify Tribe of such offer within seven (7) days of receipt. The Tribe shall have a right of first refusal to match said offer by so notifying

Lessee in writing within ten (10) days of receipt of the notice of an offer, and shall provide to Lessee within thirty (30) days of the receipt of such amount of earnest money as is specified in the first offer to purchase. Additional terms and conditions of sale shall be contained in the Tribe's offer to purchase and as agreed upon by the parties.

18.6 SECTION 6: LEASE APPROVAL AND RENEWAL

18.6.1 Before entering into a lot lease the applicant shall determine whether or not s/he will utilize their own financial resources to build on the lot or if s/he will seek private or public financing. All applications shall include information concerning the applicant's present ability to develop the lot for which they seek approval.

18.6.2 *Approval of lot request.* The Tribal Council shall retain the authority to approve lot requests. Approval constitutes authorization for the execution of a lease between the applicant and the Tribe. The applicant whose request for a lot has been approved by Tribal Council shall execute the Lease form within thirty (30) days of notice from the Land Specialist that the BIA has prepared the lease and that the lease is ready for execution by the parties. Notwithstanding any other provision of this ordinance, no construction shall begin prior to execution of the lease document.

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

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

applicant's package to the proper federal agency for approval prior to closing on the mortgage loan.

- 18.6.5** *Renewal.* All applications for renewal of existing leases shall be made to the Red Cliff Legal Department on a form approved by the Red Cliff Tribal Council. The Legal Department shall review the application and shall forward its recommendation to the Tribal Council, along with a written explanation of any reasons behind any recommendation for disapproval.

18.7 **SECTION 7: VOIDANCE OF LEASES; CANCELLATION**

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

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

- 18.7.3** *Failure to execute compliance affidavit.* A lot lease shall be considered void of the Lease holder or any successor (s) in interest fail to execute an affidavit stating that the house proposed to be constructed on the lot leased will comply with the Tribal Building Restrictions or other applicable land use regulations and that all the required permits will be sought and requested. The affidavit shall be executed prior to the Tribe submitting the executed lease to the Bureau of Indian Affairs.
- 18.7.4** *Illegal conduct.* The lessee agrees that she/he will not use or cause to be used any part of said premises for any felony conduct or purpose. Further, conviction of a felony related sexual assault or controlled substances shall constitute cancellation unless the lessee receives special accommodation from the Tribal Council waiving this restriction.
- 18.7.5** FAILURE TO COOPERATE WITH LAW ENFORCEMENT. The Lessee shall cooperate with law enforcement and shall consent to all reasonable law enforcement requests to access the leased premises. Failure to cooperate with law enforcement requests in connection with the leased premises shall constitute grounds for cancellation. **(Res. No. 8/21/12G)**
- 18.7.6** *Other Instances of Non-Compliance; Land Lease Specialist Authority to Cancel Leases.* The Red Cliff Legal Department shall undertake a periodic review (no less than annually) of all tribal leased in an effort to determine compliance. The Land Specialist is hereby vested with the authority to cancel leased granted under this chapter for non-compliance with lease terms or for non-compliance with this chapter or other applicable tribal law, specifically including but not necessarily limited to Chapter 37 (Land Use) and Chapter 12 (Pollution and Environmental Protection). All cancellations shall comply with applicable federal law.

18.7.7 *Prohibition Against Transfer.* Once a notice of cancellation is issued by the Land Specialist, the person (s) holding the lease scheduled for cancellation shall be ineligible for a lease transfer or assignment.

18.7.8 *Abandoned Property.* Where abandoned property remains on the lease site after expiration or cancellation of a lease, the Tribe shall undertake reasonable efforts to contact the owner to make arrangements for its return. Where the owner cannot be located or when the owner has not removed his/her property from the leased premises within thirty days of notice from the Tribe, the Tribe shall be authorized to sell or otherwise dispose of said personal property upon obtaining appropriate judgment in the Tribal Court. The Tribe shall be entitled to reimbursement for any amounts expended in connection with its efforts to return the property to its owner, including but not limited to amounts spent on attorneys fees and court costs. The Tribe shall also be entitled to recover costs for returning the real estate to its original condition in connection with improvements made by a former lessee to tribal lands in appropriate circumstances.

18.7.9 *Trespass*

A. No unauthorized occupancy. No person may occupy Tribal Land except as authorized by this Ordinance. Unauthorized occupancy shall constitute trespass.

B. Removal. A person occupying tribal trust lands without authorization is subject to immediate removal and Tribe shall have no liability for loss or damage to personal property.

C. Tribal Court Jurisdiction. The Tribal Court shall have jurisdiction to hear trespass actions.

18.7.10 *Public Health and Safety.* The Tribal Council shall have the right, upon certification from a public health official, to cancel leases or to refuse to

renew leases upon its determination that the lease presents a threat to public health or safety, as provided under federal law. The Tribal Council may also impose such conditions, as it deems necessary to address public health and safety concerns in connection with the issuance or renewal of leases.
(11-03-08K)

18.8 SECTION 8: SUBLEASES; TRANSFER & ASSIGNMENT

18.8.1 *Subleases and assignments.* Unless otherwise provided herein, a sublease, assignment or amendment of a lease may be made only with the approval of the Secretary and the written consent of all parties to the lease, including the surety of sureties.

18.8.2 *Transfer and assignments.* The Lease holder may transfer or assign his leasehold only to another Tribal member with prior approval of the Tribal Council. Transfers or assignments within the first two years of a lease term are prohibited. All lease transfer requests must be in writing and must bear the leaseholder's original, notarized signature. Monetary consideration is not allowed in regards to transfers, except regarding the improvements or structures on the lot. When necessary, the Tribal Council will approve the transfer and/or assignment based on the same criteria set forth in section 18.4.2 above. Transfer and assignment of the leasehold interest is further restricted if the leaseholder has already obtained a mortgage. In this case, the leaseholder interest can be only transferred or assigned with consent of the Tribe, mortgagor and guarantor as required by the governing lease document.

18.8.3 *Sublease of residence.* Lessees shall not cause nor permit the sublease or rental of any portion of the lease or any residence or other structure on the lease without the express prior approval of the Red Cliff Tribal council, and subject to any conditions or restrictions imposed by the Tribal Council.

18.9 SECTION 9: CONDITIONS APPLICABLE TO LOT LEASES

18.9.1 *Vacancy of lease.* If a residence upon a lot is vacated without an approved sublease for a period

of one year, the Land Specialist shall have discretion either to declare the lot assignment void and designate a successor, or to request the Tribal Court to exercise equitable jurisdiction to designate a successor. Leases within the various Leasehold Mortgage Programs are not subject to cancellation.

18.9.2 *Homes at the end of a lease.* Any structure or other improvements capable of being removed from the lot shall be considered the property of the former leaseholder at the time of termination of the lease. If the former leaseholder does not remove their property from the leased premises promptly upon termination of their lease the Tribe may after (30) calendar days notice, commence a proceeding in tribal court to obtain title to said property. All such actions shall include any party holding a security interest in the premises as a named party and shall comply with the filing, notice and other requirements of RCCL Chapter 4 or Chapter 46 (as the case may be). Upon a successful award from the Tribal Court in such a proceeding, such structure and improvements will become an asset of the Tribe, subject to any restrictions or encumbrances imposed by the Court. If the leasehold still remains encumbered at the end of lot lease, the Tribe cannot release the leaseholder of any of his contractual obligations with lenders or the federal agency that may have provided a mortgage guaranty.

18.9.3 *Intestate transfers and testamentary designations.* The Lease holder may transfer or devise his leasehold right pursuant to applicable federal regulations and subject to the prohibition on transfers in sec. 18.8 and consistent with the provisions of this Chapter 18.

18.10 **SECTION 10: OTHER APPLICABLE TRIBAL LAW**

18.10.1 All leases must comply with other applicable tribal law.

18.10.2 *Leasehold Mortgages.* Provisions governing the recording of leasehold mortgages, lien procedures, and other subjects relative to leasehold mortgages are set forth in RCCL Chapter 30.

18.10.3 *Zoning Restrictions.* Provisions governing building and zoning applicable to all lot leases are set forth in RCCL Chapter 37.

18.10.4 The lessee, his heirs, successors, executors, administrators, and assigns, shall be required to comply with all applicable laws and regulations governing zoning, land use, sanitation, plumbing, electrical, building and other applicable codes.

18.11 **SECTION 11: LAND LEASE COMMITTEE**

18.11.1 There is hereby established a Land Lease Committee which shall consist of five positions as set forth in this Section. The members of the committee shall be as follows: Tribal Zoning Administrator, Tribal Planner, Tribal Attorney, Red Cliff Chippewa Housing Authority Representative (to be appointed by the RCHA Executive Director) and one (1) Representative appointed by the Tribal Chairperson.

18.11.2 The Land Lease Committee is hereby authorized to hear any and all appeals from the decisions of the Land specialist canceling, voiding or otherwise terminating a lease. All other decisions of the Land Specialist are non-appealable. The authority of the Land Lease Committee shall extend only to (a) the review of contested decisions made by the Land Specialist and (b) recommendations for amendments to this Chapter or other related Chapters of this Code.

18.11.3 Where a member of the land lease committee is related to a party with business before the committee as an immediate family member, the committee member so related shall refrain from participating in the decision in any respect.

18.12 **SECTION 12: APPEAL PROCESS**

18.12.1 The decisions of the Land specialist to cancel a lease for non-compliance may be appealed to the Land Lease committee provided that said appeal must be:

- (a) in writing; and

- (b) contain a concise statement of the facts clearly specifying the basis for appeal and explaining why the appellant feels that the decision of the Land Specialist is in error; and
- (c) filed within twenty (20) calendar days of issuance of the Land Specialist's certification of cancellation.

18.12.2 Decisions of the Land Lease committee may only be appealed to the Red Cliff Tribal Court provided the following conditions are met:

- (a) The appeal is filled with the clerk of the Red Cliff Court within ten (10) calendar days after issuance of the Committee's final decision; and
- (b) All provisions for commencing an action as specified in RCCL Chapter 4 are met, including but not limited to the payment of the necessary filing fees, service of process, authentication, and so on; and
- (c) Appeals from final decisions of the Land Lease Committee shall be limited to whether the Land Specialist was correct in his/her determination that the Appellant (Lessee) was in violation of the provisions of his/her lease or applicable tribal law.

18.13 **SECTION 13: MISCELLANEOUS PROVISIONS**

18.13.1 Interest. It is understood and agreed between the parties to the lease that if any installment of rental is not paid within thirty (30) days after becoming due, interest at the rate of 6 percent per annum will become due and payable from the date such rental became due and will run until said rental is paid.

18.13.2 Relinquishment of supervision by the Secretary. Nothing contained in the lease shall operate to delay or prevent a termination of Federal trust responsibilities with respect to the land by the

issuance of a fee patent or otherwise during the term of the lease; however, such termination shall not serve to abrogate the lease. The owners of the land and the lessee and his surety or sureties shall be notified by the Secretary of any such change in the status of the land.

- 18.13.3** Rental adjustment. The rental provisions in all leases which are granted for a term of more than five years and which are not based primarily on percentages of income produced by the land shall be subject to reviews and adjustment by the Secretary at no less than five-year intervals in accordance with the regulations in 25CFR 162. Such review shall give consideration to the economic conditions at the time, exclusive of improvement or development required by the lease or the contribution value of such improvements.
- 18.13.4** Interest of Member of Congress. No member of, or Delegate to, Congress or resident Commissioner shall be admitted to any share or part of a lease or to any benefit that may arise there from, but this provision shall not be construed to extend to a lease if made with a corporation or a company for its general benefit.
- 18.13.5** Assent Not Waiver of Future Breach of Covenants. No assent, express or implied, to any breach of any of the lessee's covenants, shall be deemed to be a waiver of any succeeding breach of any covenants.
- 18.13.6** Upon Whom Binding. These regulations shall extend to and be binding upon the heirs, assigns, successors, executors, and administrators of the parties of a lease. While the leased premises are in trust or restricted status, all of the lessee's obligations of its sureties, are to the United States as well as to the owner of the land.
- 18.13.7** Rights Reserved. Lessor, and the Secretary of the Interior or his duly authorized representative (s), reserve the right of ingress and egress for the purpose of checking compliance with the provisions of a lease.

18.14 **SECTION 14: AREA LEASED**

18.14.1 The area leased shall be limited to no more than 1 ¼ acres per lease. This restriction shall not apply to business leases.

18.15 **SECTION 15: RENT AND FEES**

18.15.1 Rent. The rent for all Recreational and Residential lease shall be \$50.00 per year for Tribal members and \$100.00 per year for Tribal members whose spouse is a non-member. Non-Tribal members are eligible to hold a lease only in limited instances as further defined in this ordinance, and only upon the conditions and subject to the restrictions set forth this ordinance. (3/2/2009H)

18.16 **SECTION 16: LEASE DISPUTES**
(8/24/99/D)

18.16.1 Authority. The Tribal Court is authorized to hear disputes over lease interests in tribal lands granted by the Tribal Council pursuant to Red Cliff Constitution Art. VIII,

18.16.2 Procedure. An action to resolve disputes over lease interest in tribal lands shall be commenced by the filing of a complaint under RCCL Chapter 4. Unless otherwise indicated within this section, procedure in cases involving lease disputed under this section shall be governed by the provisions of Chapter 4.

18.16.3 Factors. In making a decision on a disputed leasehold interest, the court shall give consideration to the following factors:

(a) Tribal Membership - The court shall give a presumption in a favor of lease interests remaining with Red Cliff Tribal Members;

(b) Children - Where children reside on the property that is the subject on the lease the court shall give a presumption in favor of the custodial parent if they have no other land interests;

- (c) History of the lease - The court shall consider the history of the lease itself and the circumstances surrounding any changes to the lease;
- (d) Hardship to the Parties - The court shall give due consideration to who will suffer the greatest hardship if they lose their interest in the lease;
- (e) Relative Financial Contributions of the Parties - The court shall evaluate the relative contributions of the parties to development of the property, including, but not limited to the following:
 - (1) The amount that each side has paid out of pocket in connection with development of the parcel; (Res. No. 7/21/2015D)
 - (2) Each party's financial obligations (loans) on the parcel;
 - (3) Whether the non-contributing party has been given the opportunity to contribute and benefit from development of the parcel.
- (f) Other factors that the court considers relevant to the issue of who should be awarded the lease interest.

In applying the factors set forth above, the court shall use its discretion to achieve fairness in the dispute over the lease interest at issue and shall assign appropriate importance circumstances of the case. In all cases, the court shall issue a written opinion detailing its findings.

18.16.4 Implementation. Upon issuance of its written decision, the prevailing party shall take all necessary measures to implement the decision of the court, including but not limited to, notification to the United States Department of Interior - Bureau of Indian Affairs and processing all necessary documents to amend the lease.

SECTION 17: ADDITIONAL TRIBAL COURT JURISDICTION

In addition to the jurisdiction specified in other portions of this Chapter, the Tribal Court shall have the authority to issue final decisions in connection with tribal member appeals over decisions made by the Red Cliff Legal Department in applying the provisions of this ordinance specifically relative to cancellation of leases for non-compliance with tribal law and/or the provisions of a lease. All decisions of the Red Cliff Tribal Court shall be final and non-appealable. The Red Cliff Tribal Court of Appeals shall have no jurisdiction to hear appeals from the decision of the Red Cliff Tribal Court in cases arising under this Chapter. The Tribal Court shall also have the jurisdiction to make awards and issue appropriate orders in connection with equity interests in leasehold estates and abandoned property upon termination of a lease.