

REVISED ORDINANCE NO. 2  
RESIDENTIAL LEASES

- Section 1. Purpose and Authority. The purpose of this ordinance is to establish a system by which the members of the Saginaw Chippewa Indian Tribe of Michigan may lease Tribal Trust Land for residential purposes. For purposes of this Ordinance, Tribal Member shall mean a member of the Saginaw Chippewa Indian Tribe of Michigan and Tribal Trust Land shall mean those lands held in trust by the United States government on behalf of the Saginaw Chippewa Indian Tribe. The goal of this leasing program is to promote adequate housing for tribal members by making home sites available at a nominal cost and by facilitating the financing of homes and home improvements on the leased land. This ordinance is adopted by the Saginaw Chippewa Tribal Council pursuant to Article VI, Sections 1(c), 1(j) and 1(1), and 1(o) of the Constitution of the Saginaw Chippewa Indian Tribe of Michigan.
- Section 2. Rescinding of Previous Ordinance. The language of Revised Tribal Ordinance No. 2, enacted May 16, 1984, and any revised versions or amendments are hereby rescinded and are superseded by this revision.
- Section 3. Lease Eligibility. Any individual who desires to obtain a residential lease for any Tribal Trust Land must first meet the following eligibility requirements:
- a. The individual must be a member of the Saginaw Chippewa Indian Tribe of Michigan;
  - b. The individual must be at least 18 years of age.
  - c. The individual must not have another lease or assignment of Tribal Trust Land;
  - d. The individual must prove that he/she is able to obtain a mortgage on the leasehold property, by providing the Saginaw Chippewa Housing Department (“Housing Department”) with a mortgage qualified certificate from a lender at the time of application.
  - e. The individual must attend a home buyer counseling class as prescribed and administered by the Housing Department and must receive a credit counseling certificate from the Housing Department in recognition of the completion of the home buyer counseling class.

Section 4. Lease Procedure. The following procedures shall be followed in order to obtain approval of a residential lease.

- a. Any Tribal member desiring to obtain a lease must first submit a completed application, a copy of his/her enrollment card, and a mortgage qualified certificate to the Saginaw Chippewa Tribal Housing Department in such form as may be prescribed by the Housing Department. The Housing Department will collect an application fee set by Tribal Council, and provide the member with a receipt.
- b. The Housing Department will review the application for eligibility requirements of Section III of this Ordinance.
- c. Upon completing its review, the Housing Department will prepare a recommendation and leasehold documents for consideration by Tribal Council. Authorized Housing Department staff will submit the documents to Tribal Council in motion request format, for approval or disapproval of a lease.
- d. Tribal Council approvals shall be in the form of a Resolution, which shall be prepared by the Tribal Recording Office.
- e. If the Tribal Council approves the Lease, the Lessee and the Tribal Chief or Sub-Chief shall sign a lease in the form prescribed by Section V of this Ordinance.
- f. The Tribal Recording Office shall prepare Resolutions concerning any lease and obtain signatures from the Tribal Chief or Sub-chief. On leases, the Tribal Recording Office shall obtain signatures from the Tribal Chief or Sub-Chief, and from the Lessee. The Tribal Recording Office shall verify all documents, and record the documents in accordance with Tribal Recording Office policy and procedures. Upon recording, all original documents shall be submitted to the Bureau of Indian Affairs for approval and recording, in accordance with federal law and Bureau requirements.
- g. The Housing Department shall maintain a current file on each application and lease, to be kept in the Housing Department vault, and entered into the Tribal Recording Office computerized recording data system. The file shall, at a minimum, contain the lease application, the Resolution described in paragraph (d) of this section, the executed lease as approved and recorded by the Bureau of Indian Affairs, any mortgage, assignment or other documents related to financing home construction or home

improvements on the leased land, any lease amendments, documentation of rental payments, all correspondence regarding the lease, and all other documents relating to the administration of the lease. Except for documents that are a matter of public record, the contents of this file shall be confidential and shall be available only to the Lessee, Housing Department staff who have responsibilities relating to administration of the lease or related loans, the Tribal Council, lenders who have been granted permission by the Lessee to access the file in connection with a home loan, and other persons who have been granted permission in writing by the lessee to access the file.

- h. If a lease is not executed by the Lessee within 30 days after Lessee receives notification of approval of the lease, said lease shall be forfeited.

Section 5. Residential Lease Form: Provisions of a Residential Lease. Subject to review and approval by the Tribal Council and the Housing Department, shall prepare a standard Residential Lease form which shall be used for all leases issued pursuant to this Ordinance. All residential leases shall contain the name of the Lessee and the legal description of the leased land and shall comply with the requirements set forth in this section.

- a. Use of the leased land shall be limited to residential purposes only, unless otherwise provided by official action of the Tribal Council.
- b. The term of the lease shall be 50 years.
- c. Rent shall be \$1.00 for each term of the lease, unless otherwise provided by official action of the Tribal Council.
- d. Subject to the provisions of paragraph (e) of this Section 5, improvements shall be the property of the Lessee; provided that any improvements not removed by the Lessee within 180 days following the expiration or termination of the lease shall become the property of the Tribe.
- e. Improvements to pre-existing fixtures on the leased land and improvements to the land itself, including but not limited to landscaping, utility service lines and ancillary equipment, in-ground swimming pools, and concrete slabs or other foundations shall become the property of the Tribe and shall not be removed from the leased land or destroyed without prior written consent of the Tribal Council.
- f. The area of the lease shall be at least as large as the minimum lot size established for the land use district and subdivision in which the leased

land is located and shall be configured so as to constitute a buildable lot considering the setback requirements of Tribal Zoning Code and any applicable subdivision regulations.

- g. Lessee may transfer this lease by will or intestate succession in accordance with tribal law; provided that the heir(s) shall request and obtain a new lease in their own name(s) upon demonstrating eligibility for said lease in accordance with tribal law.
- h. Except as provided in this paragraph: A lease shall not permit the Lessee to rent or otherwise transfer any property interest in their home or other improvements without either subleasing or assigning their interest in the lease; The Lessee is authorized to sublease the premises as provided in Section VII of this Ordinance, provided the sublease complies with federal law and Bureau of Indian Affairs requirements. A lease may contain a provision authorizing the Lessee to sublease the premises, in whole or in part, without further approval of the Secretary. Unless otherwise provided herein, an assignment or amendment of a lease may be made only with the approval of the Secretary and the written consent of the parties to the lease in the same manner the original lease was approved. Any sublease or assignment of the lease shall be in accordance with tribal law. If the leasehold interest in the leased land, or any improvements thereon, is/are subject to a leasehold mortgage pursuant to Chapter 8.8 of the Tribal Code, the written approval of the lender must be obtained.
- i. Assignment Where Leasehold is Pledged as Security of a Mortgage. Subject to the provisions of subparagraph h(vi), the lease shall permit the Lessee, without further consent of the Tribe or the Secretary of the Interior, to assign the lease or deliver possession of the leased land, including any improvements thereon, to a lender or its successors in interest if the Lessee defaults on any mortgage, or other loan agreement for which the leasehold interest in the leased land, or any improvements thereon, is/are pledged as security pursuant to subparagraph H(2). In the event of such default, the lease shall permit the Lender or its successors in interest to transfer this lease to another member of the Saginaw Chippewa Indian Tribe of Michigan who is determined by The Saginaw Chippewa Tribal Council to be eligible for a residential lease under Section III of this Ordinance, subject to the Tribe's prior right to repurchase the lease as provided in subparagraph h(iv) of this section.

- ii. Mortgages. The lease shall provide that, subject to the approval of the encumbrance instrument by the Secretary of the Interior pursuant to 25 C.F.R. section 162.12 (c), the Lessee may execute and record a mortgage, declaration of trust or other security instrument pledging as security the Lessee's leasehold interest in the leased land or improvements to the leased land, or both such leasehold interest and improvements, as may be necessary to obtain financing for the purchase, construction or improvement of a dwelling and related structures on the leased land. The lease shall also provide that in the event of default of any mortgage or other loan agreement by the Lessee, a mortgagee or other lender may foreclose or institute other appropriate proceedings, as to the leasehold and improvements in accordance with tribal law and the provisions of the lease.
- iii. Mortgage Insurance. The lease shall provide that, for the entire term of the lease, the Lessee shall procure and maintain mortgage insurance insuring repayment of the mortgage loan in the event of death or default of Lessee. The insurance policy shall carry an endorsement requiring that the Housing Department shall be given 10 days written notice prior to any change in or any cancellation of the policy. Certificates of the mortgage insurance policy shall be delivered the Housing Department. Cancellation of said policy prior to the mortgage being paid in full will constitute default of lease pursuant to this Ordinance, and shall be cause for termination subject to Section VI; in accordance with Tribal Law.
- iv. Tribal Option to Acquire Leasehold Upon Default.
  - (1) The lease shall provide that in the event of default by the Lessee on any mortgage or other loan agreement for which the Lessee's leasehold interest in the leased land or any improvements on the leased land is/are pledged as security, the Tribe shall have the right of first refusal to acquire the Lessee's interest in the leased land, subject to all valid liens and encumbrances, upon: (A) payment of all sums then in arrears; and (B) either payment of the balance of the loan or assumption of the mortgage. The lender shall be required to notify the Tribe in writing of the Lessee's default and provide the Tribe the opportunity of a right of first refusal before the lender invokes any other remedies provided under the mortgage or by law. The lease shall further permit the Tribe to exercise its right of first refusal within

30 days after receiving notice from the lender; provided that the Tribe shall exercise its right by written notice to the Lessee and the lender, subject to the Lessee's right to cure the default no later than 15 days from the date of the lessor's notice. The lease shall also provide that in the event the Tribe exercises its right of first refusal, the estate so acquired by the Tribe shall not merge with any other estate or title held by the Tribe as long as the lease or any improvements on the premises, or any interest therein, are mortgaged or otherwise pledged as security for any loan, and said estate shall remain subordinate to any valid and subsisting mortgage or other security instrument.

- (2) The lease shall provide that failure of the Tribe to exercise its option as provided in subparagraph H(4)(a) will constitute the consent of the Tribe for the assignment or transfer of the leasehold interest and all improvements by the Lessee directly to the lender or to a member of the Tribe who is determined by the Tribal Council to be eligible for a residential lease under Section III of this Ordinance, or by operation of law, through foreclosure, to the lender. The lease shall further constitute the consent of the Tribe for the assignment or transfer by the lender of the leasehold interest in the leased land and all improvements thereon to any member of the Tribe who is determined by the Tribal Council to be eligible for a lease under Section III of this Ordinance and, who, as successor in interest to the Lessee, shall assume all of the obligations of the Lessee under this the lease. Nothing in this Ordinance shall be construed to constitute the consent of the Tribe to the transfer by the lender of the leasehold interest or any improvement on the leased land by the lender to any person who is not a member of the Tribe who is determined to be eligible for a residential lease under Section III of this Ordinance.
- (3) The lease shall provide that in the event the Tribe acquires the leasehold interest as provided in this subparagraph H(4), the Tribe shall expressly and irrevocably waive any immunity from suit that it may enjoy with respect to any action in the Saginaw Chippewa Community Court to collect any and all sums due or obligations owed by the Tribe to the lender under the terms of the lease, or to enforce any of the lender's other rights or remedies relating

to the lease. This waiver is not intended to, nor shall it be construed to, waive the immunity of the Tribe for any other purpose or with respect to any claim or other matter not specifically mentioned herein.

- i. Leases shall include but not be limited to BIA mandatory lease provisions.
- j. Leases will require that the Lessee provide notification to the Housing Department of the number and ages of persons residing on the leased land within 30 calendar days of execution of the lease and that the Lessee will notify the Housing Department of any changes to the number of persons residing on the leased land within 30 days of such change.

Section 6. Lease Termination

- a. General Provision. The lease shall provide that, subject to the restrictions contained in paragraph “b” of this section, any Tribal member who has obtained a residential lease pursuant to this Ordinance shall forfeit said lease if:
  - i. The leased land is not used within one year of signing the lease.
  - ii. The Lessee is found to be ineligible for a lease under Section 3 of this ordinance.
  - iii. The Lessee fails to follow the provisions set out in Section 5 of this ordinance.
  - iv. The Lessee is evicted in accordance with Tribal Law.
  - v. The Lessee violates any of the terms or conditions of the lease.
  - vi. The leasehold or any improvements thereon are condemned by the Tribe for a tribal purpose pursuant to law.
  - vii. The leasehold is abandoned by the Lessee. For purposes of this ordinance, “abandoned” means:
    - (1) the leased land has remained unoccupied by the Lessee for at least 180 days and the Lessee, after having been given 60 days notice of potential forfeiture of the Lease, fails to demonstrate a reasonable likelihood that he/she will reoccupy the leased land within 180 days of the notice; or

(2) the leased land has remained unoccupied by the Lessee, and the Lessee has not properly maintained the land, buildings and/or appurtenances, so as to cause the appearance of neglect or disrepair; and the Lessee, after having been given 60 days notice by certified mail of potential forfeiture of the Lease, fails to demonstrate a reasonable likelihood that he/she will restore or repair the premises. The notice of potential forfeiture shall be given in writing both personally and by publication. Personal notice of potential forfeiture of a lease shall be in the form of a letter from the Tribal Council to the Lessee mailed to the Lessee's last known address. Published notice shall be in the form of a legal notice published in at least two issues of the Tribal newspaper. All notices of potential forfeiture of a lease shall describe the leased land, state that the Tribal Council has reason to believe that the Lessee has abandoned the leased land, and inform the Lessee that unless the Tribal Council receives evidence to the contrary within the time period specified herein, the lease will forfeit. The 60 day response period shall run from the date of the mailing of the letter or the date of the last publication of notice in the Tribal newspaper, whichever is later. Following the expiration of the notice period established herein, the Tribal Council shall determine by official action whether the leasehold has been abandoned and the lease should forfeit. This determination may be based on the written record of the matter without a hearing, provided that in its discretion at the Lessee's request, the Tribal Council may afford the Lessee the opportunity for a prior hearing before the Council. The determination of the Tribal Council that a lease has been abandoned shall be final, and shall not be subject to review in the tribal courts.

viii. The Lessee willfully or negligently causes a serious health hazard to exist on the premises, violates applicable Tribal zoning codes or ordinances or causes extensive physical injury to the premises and neglects or refuses for 15 days after service of notice of noncompliance with lease to substantially restore or repair the premises. Failure to comply with this provision shall be grounds for demand for possession.

b. Exception for Leases Subject to Leasehold Mortgages. So long as a lease is subject to a valid outstanding leasehold mortgage, the lease may not be



terminated for any reason without the written consent of the holder of the mortgage. This provision shall apply to any attempted termination by surrender of the leasehold interest. With the written consent of the holder of the mortgage a lease may be terminated on the grounds specified in paragraph (a) of this Section.

- c. Eviction or Termination of Lease. Tribal Council shall retain final authority to seek terminations of leases and/or evictions in the Tribal court.
- d. Unlawful conduct. A Lessee shall not use or cause to be used any part of the leased premises for any unlawful conduct or purpose, including drug-related criminal activity. Unlawful conduct or purpose, including drug-related criminal activity, by the Lessee, a member of the Lessee's household or other person under the Lessee's control shall be sufficient to terminate a lease. The term "drug-related criminal activity" means the illegal manufacture, sale, distribution, use, or possession of a controlled substance. For purposes of this Ordinance, "controlled substance" means a substance or a counterfeit substance classified in schedule 1, 2, or 3 pursuant to sections 7211 to 7216 of the Michigan Public Health Code, 1978 PA 368, MCL 333.7211 to 333.7216.

In a Tribal Court eviction proceeding, an Order of eviction may be supported by a finding of unlawful conduct or purpose, including drug-related criminal activity by the Lessee, a member of the Lessee's household or other person under the Lessee's control. Drug-related criminal activity will be presumed when a controlled substance has been found on the premises, regardless of the Lessee's knowledge, and identity of the controlled substance has been proven by any acceptable method of identification, including but not limited to identification by a trained police officer, a field test, or a certified laboratory test. For purposes of this Ordinance, a criminal conviction is not required to sustain a finding of drug-related criminal activity.

- e. Registered Sex Offenders. A Lessee, any member of the Lessee's household, guest or other person under the Lessee's control shall not be a person required to register as a sex offender under Michigan law or the laws of the Tribe unless the person required to register is a member of the Tribe.

Section 7. Sublease A Lessee may sublease the premises to a sublessee, subject to the following requirements.

- a. Sublessee Eligibility. A sublessee must be a member of the Saginaw Chippewa Indian Tribe of Michigan, must be at least 18 years of age, must not have another lease or assignment of tribal land, and must assign his per capita to Lessee for payment of rent during the term of the sublease.
  
- b. Sublease Form-Provisions of a Sublease. Subject to review and approval by the Tribal Council, the Housing Department shall prepare a standard Residential Sublease form which shall be used for all subleases issued pursuant to this Ordinance. Any residential sublease shall contain a provision making it subject to the terms of the original lease. All residential subleases shall have attached a copy of the original lease, which shall be incorporated by reference, and shall comply with the requirements set forth in this section.
  - i The sublease shall contain a provision that if the property to be subleased is subject to a mortgage or other obligation, the sublease shall be approved in writing by the lender or obligee.
  
  - ii. The sublease shall provide that any Tribal member who has obtained a sublease pursuant to this Ordinance shall forfeit said sublease and be subject to eviction if:
    - (1) Sublessee is found to be ineligible under (a) above.
  
    - (2) Sublessee fails to keep the premises covered by this lease in good repair, as defined in Section 6.
  
    - (3) Sublessee willfully or negligently causes a serious and continuing health hazard to exist on the premises, as defined in Section VI.
  
    - (4) Sublessee uses or causes to be used any part of the subleased premises for any unlawful conduct or purpose, including drug-related criminal activity, as defined in Section VI.
  
  - iii Any action by Lessee resulting in termination of the sublease or eviction of sublessee shall not create a cause of action against the Tribe, the Bureau of Indian affairs, or any lender.
  
  - iv. A sublease shall be for a fixed term and a specific amount of rent, which shall be specified in the sublease.
  
  - v. Any lease transferred by will or intestate succession under Section

V. G. of this Ordinance shall be subject to any sublease in effect at the time of the transfer.

- c. Sublease Procedure.
  - i. If the property to be subleased is subject to a mortgage or other obligation, Lessee shall obtain written permission from the lender to sublease the property, on a standard Residential Sublease form.
  - ii. Any Lessee desiring to sublease his property shall submit to the Housing Department (i) a proposed standard Residential Sublease form signed by Lessee, proposed sublessee, and lender; (ii) an application on a Housing Department-approved form completed by the proposed sublessee; and (iii) an assignment of a sublessee's per capita to Lessee, sufficient to pay rent for the term of the proposed sublease. The Housing Department will review the application to ensure the applicant meets the eligibility requirements of this Ordinance. Upon completing its review, the Housing Department will prepare a recommendation for consideration by Tribal Council. Authorized Housing Department staff will submit the documents to Tribal Council in motion request format, for approval or disapproval of a sublease.
  - iii. Upon Housing Department's approval of the application and proposed sublease, the Housing Department shall maintain a current file on each application and sublease with the existing lease file.
- d. Eviction. If sublessee violates any terms or conditions of the sublease, lessee shall evict sublessee in accordance with Tribal law. Lessee's failure to evict sublessee shall be cause for termination of Lessee's lease. Lessee shall be liable to the Tribe for any costs incurred by nonconformance with this provision.

Section 8. Jurisdiction. The Saginaw Chippewa Community Court shall have jurisdiction over any controversy or action brought under this Ordinance. Evictions shall be governed by the provisions of Title VIII, Chapter 8. 4 of the Tribal Code. The rules of civil procedure stated in Title III of the Tribal Code of Laws shall apply to lawsuits brought under this Section except where specific rules are prescribed by this Ordinance. Lawsuits under this Ordinance may not be heard by a jury.

Section 9. Governing Law. The validity, construction and enforceability of all leases issued pursuant to this ordinance shall be governed by, and construed in accordance with

the internal laws and regulations of the Tribe and with applicable federal laws and regulations. Whenever possible, each provision of such a lease shall be interpreted in such manner as to be effective and valid under such applicable law, but if any provision of the lease shall be held to be prohibited or invalid under such applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of the lease.

Section 10. Effective Date; Pre-existing Leases. This Ordinance shall apply to all leases made after the date of enactment of this Ordinance. This Ordinance shall also apply to all leases enacted prior to the passage of this Ordinance to the extent it does not impair any obligations made within the lease. Prior leases shall remain in effect according to their terms; provided that such lease may be amended or terminated and reissued to bring them into conformity with the requirements of this Ordinance upon application of the Lessee where such amendment is necessary to qualify Lessee for a mortgage loan or other home construction or home improvement financing.

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#### Legislative History

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Enacted as Ordinance No. 2, Assignment of Tribal Land to Individual Members of the Tribe, October 3, 1938, by oral motion, approved by the BIA October 13, 1938; revised May 16, 1984, by oral motion; revised July 12, 2000, Res. No. 00-081. Revised by Resolution 12-001 approved on March 14, 2012.