

**BAY MILLS INDIAN COMMUNITY  
LEASE ORDINANCE**

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1. TITLE- This Ordinance Regulating the Issuance of Residential and Business Leases on the Tribal Trust Land of the Bay Mills Indian Community shall be known as Bay Mills Indian Community Lease Ordinance.
2. PURPOSE- The purpose of this Ordinance is to set out the tribe's authority to issue, review, approve and enforce leases. In addition, the purpose of this statute shall be liberally interpreted and construed to implement the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012 ("HEARTH Act"), Pub. L. 112-151 which amended 25 U.S.C. 415, by establishing a process under which leases will not require approval of the Secretary of the Interior if the Lease is executed under Bay Mills Indian Community HEARTH Act Leasing Ordinance approved by the Secretary of the Interior. Nothing in this Ordinance is intended to expand the authority or responsibility of the Secretary of the Interior beyond that provided under applicable federal statutes or regulations. This Ordinance shall serve to promote self-determination, encourage economic self-sufficiency, facilitate economic development, and further promote investment in the tribal community while maintaining the critical role and responsibility of protecting Tribal Trust Land and resources.
3. POLICY- It is the policy of the Bay Mills Indian Community to ensure that the Tribal Trust Land held in trust for its benefit by the United States, which encompass its Reservation, are used for the benefit of its citizens, as follows:
  - A. Adequate sites are available for governmental purposes, including, but not limited to:
    1. Physical and mental health, social services, education, law enforcement, cultural activities, recreation, senior citizen and youth services and programs and meetings of tribal government.
    2. Establishment of water, sanitation, electricity, heat, telephone and similar utility services to all locations.
    3. Protect and manage of areas of cultural and historical significance to the Bay Mills Indian Community.
    4. Protect, enhance and preserve of the natural environment encompassing the Reservation.
    5. Locate tribally-operated enterprises for the generation of revenue, employment, and services.
  - B. Adequate land is provided for the establishment and maintenance of primary residences for citizens of the Bay Mills Indian Community.
  - C. Establishment and maintenance of secondary, or seasonal, residences by citizens of the Bay Mills Indian Community is authorized, but subordinate to the policy expressed in §§A and B, above.
  - D. Establishment and maintenance of business enterprises owned and operated by citizens of the Bay Mills Indian Community is authorized, but subordinate to the policies expressed in §§ A and B of this section.
  - E. Residential Leases shall not be issued for any purpose to non-citizens of the Bay Mills Indian Community unless special circumstances exist which demonstrate to the satisfaction of the Executive Council that Undue Hardship would result to citizens of the Bay Mills Indian

Community in the absence of such lease issuance. The procedures to demonstrate Undue Hardship are described in §12 of this Ordinance.

4. AUTHORITY- The Bay Mills Indian Community (“BMIC”) is a federally recognized Indian Tribe with a Constitution enacted pursuant to the Indian Reorganization Act of 1934, 25 U.S.C. sec. 5101, et seq.; and by Article VI, section (1)(c) of the Bay Mills Indian Community Constitution to veto any sale, disposition, lease, or encumbrance of tribal lands, interests in lands, or other tribal assets. By Resolution dated April 13, 1970, the General Tribal Council has delegated to the Executive Council its power to approve or veto any sale, disposition, lease, or encumbrance of tribal lands, interests in lands, or other tribal assets.
  
5. APPLICABILITY- This Ordinance does not apply to fee land, fractionated interests or individual Indian-owned land. This Ordinance applies to all leases and use permits of land held in trust for the benefit of the Bay Mills Indian Community which are issued after this Ordinance is approved by the Secretary of the Interior pursuant to the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012 (HEARTH Act), P.L. 112-151, codified as 25 U.S.C. 415(h), and to annual renewal of lease terms sought after enactment of this Ordinance. The Ordinance governs:
  - A. Business Leases, excluding mineral leases,
  - B. (Governmental) Public/Religious/Recreational Leases,
  - C. Residential Leases,
  - D. Agricultural Leases, and
  - E. Wind or Solar Resource Leases.
  
6. CONTROLLING LAW- To the extent any provision of this Ordinance conflicts with any applicable federal statutes or regulations, the federal statute or regulation shall control.
  
7. AMENDMENTS- This Ordinance may be amended through the ordinance process by majority vote of the Executive Council; provided that no major substantive amendment hereto shall be effective unless approved by the Secretary of the Interior in accordance with applicable federal laws and regulations. Minor technical amendments shall be effective without approval by the Secretary of the Interior.
  
8. DEFINITIONS- For the purpose of this Ordinance, the following terms shall have the meaning indicated:
  - A. “Agricultural Land”-means Tribal Trust Land suited or used for the production of crops, livestock, or other agricultural products or on which is located a business that supports the surrounding agricultural community.
  - B. “Agricultural Lease”-means a lease of Bay Mills Indian Community agricultural land for farming, and/or grazing purposes.
  - C. “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.

- D. "Best Interest of the Tribe"- means carrying out the policies in Section 3.
- E. "BIA"- means The Bureau of Indian Affairs; an agency of the federal government of the United States within the U.S. Department of the Interior.
- F. "Business Lease"- means both ground Leases (undeveloped land) and Leases of developed land (together with the permanent improvements thereon) on Tribal Trust Land for business or industrial purposes including retail, office, manufacturing, storage, biomass, waste-to-energy, or other business purposes or any mixed-use projects that include a business purpose.
- G. "Business Plan"- means a document which provides, at a minimum, a business description and structure of ownership, and summarizes business objectives, market and competition, products and services, and financial projections.
- H. "Domestic Partnership"- means two persons who declare that they are in a relationship of mutual support, caring and commitment; who share the common necessities of life; who are not related by blood in a manner that would bar marriage under Tribal Law.
- I. "Executing Official"- means the President of the Bay Mills Indian Community with the authority to execute Residential, Agricultural, Business, Public/Religious/Recreational, and Wind and Solar Resource leases on Tribal Trust Land of the Bay Mills Indian Community, of that office holder designated to act in the President's absence by the Constitution of the Bay Mills Indian Community. This authority is subject to the necessary approvals of the lease.
- J. "Fair Annual Lease Value"- means the amount of rental income that a leased tract of Tribal Trust Land would most probably command in an open market or competitive market, or as determined by competitive bidding.
- K. "Family Unit"- means two persons legally married and recognized by Tribal law, two individuals living together (meaning cohabitation as evidenced by a sworn statement on the application form), or a single adult person residing in the same household as the above, or with any biological children or legally adopted children, under the age of 18 years old.
- L. "Lease" -means a written contract between the Tribe as Lessor and a Lessee, whereby the Lessee is granted a right to possession of Tribal Trust Land, for a specified purpose and duration.
- M. "Leased Premises"- means the property and improvements subject to a lease.
- N. "Leasehold Estate"- means the possessory interest in the Tribe's land established pursuant to a Lease between a Lessor and a Lessee.
- O. "Leasehold Interest"- means the interest of a lessee in the lease.

- P. "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.
- Q. "Lessee"- means a person or entity to whom property (Bay Mills Indian Community Tribal Trust Land) is leased under a lease.
- R. "Lessor"- means the Bay Mills Indian Community.
- S. "LTRO"- means the Land Titles and Records Office of the BIA; is the office responsible for maintaining the Indian Land Record of Title and for examining and determining the completeness and accuracy of the records, certifying the findings of examination and reporting the status of title to Indian trust and restricted lands.
- T. "Citizen(s)" -means one or more enrolled citizens of the Bay Mills Indian Community.
- U. "Mortgagee"- means any lender that makes and holds a mortgage and its successors and assigns, or any heir successor, executor, administrator, or assign therefor, under a Leasehold Mortgage.
- V. "Mortgagor"- means the Tribe or any person or entity who has executed a leasehold mortgage, including any assign(s) thereof.
- W. "NEPA"- means the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*
- X. "Permanent Improvement"- means buildings, other structures, and associated infrastructure attached to the Tribal Trust Land.
- Y. "Primary Residential Lease"- means Residential Lease for land which will be the citizen's legal residence, and upon which the citizen will physically reside at least seven (7) months of each year.
- Z. "Public, For Purposes of Environmental Review"- means any person or entity who can demonstrate that they will be directly and substantially affected by the Lease or the lease activity. Records of activities taken pursuant to this Ordinance are property of the Bay Mills Indian Community and are not public documents except for the documents required to be publicly posted in compliance with the environmental review process in this Ordinance.
- AA. "Public/Religious/Recreational Leases"- Public/Religious/Recreational Leases include both ground leases (undeveloped land) and Leases of developed land (together with permanent improvements thereon) on Tribal Trust Land for any public, governmental, religious, or recreational purpose as designated by the Tribe.
- BB. "Reservation"- The jurisdiction of the Bay Mills Indian Community shall extend to all territory within the original confines of the Bay Mills Reservation purchased under the Act of June 19, 1860 (12 Stat. 58), and to such other land within or without said boundary lines as may be added thereto under any law of the United States, except as otherwise provided

by law.

- CC. "Residential Leases"- Residential Leases include both Primary Residential Leases and Seasonal Residential Leases on Tribal Trust Land for housing purposes.
- DD. "Secretary"- means the Secretary of the Interior or his or her delegate.
- EE. "Seasonal Residential Lease"- Residential Lease for land which is not the citizen's legal residence, and upon which the citizen will physically reside no more than seven (7) months of each year.
- FF. "Significant Effect on the Environment"- means a substantial, or potentially substantial, adverse change in the environment including land, air, water, minerals, flora, fauna, ambient noise, cultural areas and objects of historic, cultural, or aesthetic significance.
- GG. "Sublease"- means a written agreement by which the lessee grants to an individual or entity a right to possession no greater than held by the lessee under the lease and approved by the Bay Mills Indian Community.
- HH. "Substantial Progress"- means a determination of Executive Council upon review of implementation schedule submitted by Permittee and recommendation of the Bay Mills Land Office.
- II. "Surety"- means one who guarantees the performance of another.
- JJ. "Trespass"-Any unauthorized occupancy, use of, or action on the Tribal Trust Land.
- KK. "Tribe"- means the Bay Mills Indian Community, a federally recognized Indian Tribe with a Constitution enacted pursuant to the Indian Reorganization Act of 1934, (25 U.S.C. §5101, et seq.),
- LL. "Tribal Trust Land"- means any tract title to which is held by the Tribe, and which the United States ("US") requires that it be alienated or encumbered solely with the approval of the US.
- MM."Restricted Status"- means land the title to which is held by the Tribe and which can only be alienated or encumbered with the approval of the US because of limitations contained in the conveyance instrument pursuant to Federal law.
- NN. "Undue Hardship"- exists when a non-citizen is legally married to a citizen, and financing of a home on Tribal Trust Land by a lender requires that the non-citizen be co-borrower and mortgagor. Undue Hardship may also occur when a citizen is in a domestic partnership with a non-citizen, as attested to by sworn written statement, and the financing of a home on Tribal Trust Land requires that the non-citizen domestic partner be co-borrower and mortgagor.
- OO. "Unlawful Conduct" - means any action which is in violation of Tribal laws, ordinances,

regulations, and Constitution, and any applicable Federal laws.

PP. "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 purpose of enforcement of a lease under this Ordinance no matter how "violation" or "default" is defined in the lease.

QQ. "Wind and Solar Resource Lease" ("WSR")- Wind and Solar Resource (WSR) leases, which are leases that authorize possession of Indian land for the purpose of installing, operating, and maintaining instrumentation, facilities, and associated infrastructure, such as wind turbines and solar panels, to harness wind and/or solar energy to generate and supply electricity:

1. For resale on a for-profit or non-profit basis;
2. To a utility grid serving the public generally; or
3. To users within the local community (e.g., on and adjacent to a reservation).

9. APPROVAL OF LEASE(S)-

- A. All leases will be subject to the approval of the Bay Mills Indian Community Executive Council in accordance with this Ordinance.
- B. Leases submitted for approval shall have attached all documents required to be submitted with the lease application under this Ordinance, including, as applicable, financial statements, environmental review, site survey and legal descriptions.
- C. All leases shall be signed by the Executing Official of the Tribe.
- D. The approval of the Secretary of Interior is not required for any leases approved under this Ordinance and executed by the parties thereto, upon issuance of the Secretary's approval of this Ordinance.
- E. Any lease, which is approved and executed under this Ordinance, shall refer to this Ordinance as authority for its execution on behalf of the Tribe.

10. GENERAL ELIGIBILITY PROVISIONS- The following requirements apply to every request for a Residential, Agricultural, Public, Religious, Recreational, Wind and Solar Resource, and Business leases:

- A. The applicant requesting a lease shall do so in writing and may specify a particular parcel for such lease. In the absence of a specified location request, the Executive Council, in consultation with the Bay Mills Indian Community Land Office, shall identify the Tribal Trust Land to be leased.
- B. The applicant must be an enrolled citizen of the Tribe, except:
  1. Tribally-controlled entities and special purpose legal entities, Tribal departments, and Tribal programs shall be deemed citizens of the Bay Mills Indian Community for the purpose of leasing Tribal Trust Land pursuant to this Ordinance.

2. Special circumstances exist which demonstrate to the satisfaction of the Executive Council that Undue Hardship would result to citizens of the Bay Mills Indian Community in the absence of such lease issuance. The procedures to demonstrate undue hardship are described in §12 of this ordinance.
3. Special circumstances exist which demonstrate the lease sought by a non-Tribal citizen, business, or entity would advance the health, safety and welfare of the Bay Mills Indian Community if granted
  - I. The Executive Council shall determine whether the issuance of the requested lease for business purposes is warranted by special circumstances. A notice period of thirty (30) days will be provided prior to the issuance of any such lease, for review and comment by the General Tribal Council.
  - II. The Executive Council shall determine whether the issuance of the requested lease for residential, agricultural, public, religious, recreational or wind and solar power generation is warranted by special circumstances.
- C. Before a lessee can reapply or be approved for any future lease, they must pay back any lease fees that are owed to the Bay Mills Indian Community.
- D. The lease issued may contain restrictions on siting of structures, excavation, construction of access points, addition of fill material, reservation of land for utility corridors, and similar matters, as may be required by application of Tribal and Federal law.
- E. Residential Lease General Eligibility.
  1. An applicant is not eligible for a Residential Lease if they already have a lease from the Tribe for a residential property. Applicants are only eligible for only one (1) residential lot per Family Unit. In the event that such a citizen seeks another lease for a residence, the citizen must do one of the following:
    - I. Relinquish the existing Residential Lease to the Bay Mills Indian Community; or
    - II. Assign the first Residential Lease to another citizen within one (1) year of issuance of the second lease, with the approval of the Executive Council; or
    - III. Terminate the first Residential Lease and apply for and are approved for a Business Lease.
  2. No business enterprise shall be located on land subject to a Residential Lease without the express, written authorization of the Executive Council. Payment of the Fair Annual Lease Value must be made in order for the Executive Council to authorize the business enterprise. Fair Annual Lease Value may be waived if it is in the Best Interest of the Tribe. The Tribe reserves the right to determine any rent amount that is deemed in its Best Interest.
  3. The Executive Council may issue a lease for seasonal residential use by a citizen of the Bay Mills Indian Community upon the following terms:
    - I. The citizen requesting a Seasonal Residential Lease shall do so in writing, and must specify a particular parcel for such lease.
    - II. No lease shall be issued for seasonal residential use if there is a pending request for a Primary Residential Lease for the same parcel, unless the citizen requesting the Primary Residential Lease shall consent to the issuance.



III. No citizen Family Unit shall be issued a Seasonal Residential Lease if any adult in the family unit holds a Primary Residential Lease.

IV. A Seasonal Residential Lease may be converted to a Primary Residential Lease upon the request of the lessee and subject to the provisions of §10 of this Ordinance.

11. LEASE TERMS- These terms shall apply to the following leases:

- A. Residential Leases may be authorized for a term of not more than seventy-five (75) years.
- B. Agricultural Leases shall not exceed ten (10) years unless a substantial investment in the improvement of the land is required of the lessee. If a substantial improvement is required, the maximum term may be up to twenty-five (25) years, and any such lease may include option(s) to renew. Such renewals shall not exceed twenty-five (25) years per term and the total maximum lease term shall not exceed seventy-five (75) years.
- C. Business Lease initial terms shall not exceed twenty-five (25) years except that any such lease may include option(s) to renew. Such renewals shall not exceed twenty-five (25) years per term and the total maximum lease term shall not exceed seventy-five (75) years.
- D. Public/Religious/Recreational Leases may be authorized for a term of up to seventy-five (75) years.
- E. Wind and Solar Resource Leases may be authorized for a term not to exceed twenty-five (25) years except that any such lease may include option(s) to renew. Such renewals shall not exceed twenty-five (25) years per term and the total maximum lease term shall not exceed seventy-five (75) years.
- F. The Tribe may approve permits for the use of its Tribal Trust Land without following all standards and procedures set out in these regulations as long as permitted activities comply with all applicable environmental and cultural resource laws. Permits may be issued for any temporary and non-exclusive use of Tribal Trust Land or Tribal facilities located on Tribal Trust Land; provided that the permit shall not exceed a term of two (2) years.

12. LEASE PROCESSING-

- A. Reviews and Determination.
  - 1. *Environmental Review.* Once a Lease package is complete, the Land Office will submit the Lease package, including all supporting documentation, for environmental review in accordance with §20 below and applicable law.
  - 2. *Business Plan Review.* If an applicant is seeking a Business Lease, the Land Office will submit the Business Plan and related documents to the Planning and Development Department for determination.
  - 3. *Site Plan and Construction Design Review.* If a Lease involves construction of any improvements, the Land Office will submit these documents to the Tribal Manager for review and determination as circumstances require.
  - 4. *Agriculture Resource Management Plan Review.* Agricultural operations must be conducted pursuant to a 10-year Agriculture Resource Management Plan prepared by the applicant. The applicant must provide environmental and archaeological reports, surveys and site assessments, as needed to document compliance with NEPA and other applicable federal and tribal laws. If an applicant is seeking an Agriculture Lease,

the Land Office will submit the Agriculture Resource Management Plan, and aforementioned documents to the Biological Services Department for determination.

5. *Agriculture Organizational and Financial Document Review.* If the applicant is a corporation or other legal entity, it must provide organizational and financial documents, to demonstrate that the terms of the requested Lease will be enforceable against the proposed Lessee and that it can perform all of its Lease obligations.
  6. *Undue Hardship Determination.*
    - I. A lease interest may be granted to a non-citizen of the Bay Mills Indian Community for residential use, when undue hardship will result to a citizen of the Tribe in the absence of such issuance.
    - II. Lease Interest Not Required. A non-citizen of the Bay Mills Indian Community may reside on Tribal Trust Land subject to a residential lease, without being named as a lessee, under the following circumstances:
      - a) The non-citizen is the surviving spouse of a citizen who was a named lessee during his or her lifetime, resided with the citizen on the leased land, and was, by will or by order of the Tribal Court in probate proceedings, allowed to remain in the residence for the remainder of the surviving spouse's lifetime. Under such circumstances, the non-citizen may continue to reside on the land for his or her lifetime provided it is their primary residence, or until they may assign, sell, transfer or otherwise dispose of the non-citizen's interest in the leased land to a citizen of the Bay Mills Indian Community, subject to the terms set forth in this Ordinance; or,
      - b) The non-citizen is subject to a judgment of the Bay Mills Indian Community Tribal Court, which grants such non-citizen legal and or physical custody of the non-citizen's minor children who are citizens of, or eligible for citizenship in, the Bay Mills Indian Community, and which further grants the non-citizen the right to occupy and/or own a residence on the Bay Mills Reservation.
- B. Lease Valuation/Rental Amounts. The Land Office shall keep written records of the basis used in determining the Fair Annual Lease Value as well as the basis for adjustments. Should an appraisal be needed to determine Fair Annual Lease Value, the cost of the appraisal must be paid for by the prospective lessee. These records shall be presented to the Lessee for its review and acceptance or non-acceptance and included in the Lease file. Executive Council shall approve and publish a lease fee schedule annually.
1. *Business Leases.* The Land Office shall review the appraisal to determine whether it meets the requirements set forth in §§ I-VI, below.
    - I. Fair Annual Lease Value and Rate Structure.
      - a) No Lease shall be approved for less than the present Fair Annual Lease Value set forth in the appraisal, except as follows:
        - (i) The Lease is in the development period;
        - (ii) The Tribe is providing an incentive for a business to locate on the Tribe's land and must provide Lease concessions, Lease improvement credits, or Lease abatements to attract such businesses; or

- (iii) The Tribe determines such action is in the Best Interest of the Tribe. The Tribe can determine any amount that is in its Best Interest.
  - II. A Lease may be structured at a flat Lease rate.
  - III. A Lease may be structured as a flat Lease rate plus a percentage of gross receipts if the Lessee is a business located in a shopping center or mall or the Lessee generates more than \$1,000,000 annually in gross receipts.
  - IV. A Lease may be structured based on a percentage of gross receipts or based on a market indicator.
  - V. The Lease may provide for periodic review and such review may give consideration to the economic conditions, exclusive of improvement or development required by the contract or the contribution value of such improvements.
  - VI. Leases may be structured to allow for Lease rate adjustments. The Lease shall specify how adjustments will be made, who will make such adjustments, when adjustments will go into effect, and how disputes shall be resolved.
  - 2. *Public/Religious/Recreational*. The lease rate for each Public, Religious and Recreational Lease shall be approved by Executive Council.
  - 3. *Agricultural*. The lease rate for each Agricultural Lease shall be approved by Executive Council.
  - 4. *Wind and Solar Resource*. The lease rate for each WSR Lease shall be approved by Executive Council.
  - 5. *Residential*. The lease rate for Residential Leases shall be approved by Executive Council.
13. MANDATORY GENERAL PROVISIONS- All leases shall be in writing, and at a minimum, shall contain provisions addressing and/or identifying the following:
- A. Describe the tract or parcel of the Tribe's land or building that is being leased with reference to a public or private survey, if available, in terms sufficient to determine the location. Descriptions must be of sufficient detail to meet recording requirements of the LTRO. Unless otherwise approved, no Residential Lease shall exceed one (1) acre in size.
  - B. State the purpose of the Lease and authorized uses of the premises.
  - C. Identify the parties to the Lease.
  - D. State the effective date and term of the Lease, which shall not exceed the term as noted in § 11. The Lessee shall notify in writing the Land Office of the intent to apply for a new Lease at least ninety (90) days before such Lease is due to expire.
  - E. If the Lease provides an option to renew, it must specify the manner in which the option becomes effective including (1) if it is automatically effective, (2) any consideration that will be due upon the option to renew, and (3) any other requirements for renewal.
  - F. Improvements. All Leases contemplating construction of improvements shall require the Lessee to exercise due diligence and best efforts to complete construction of any improvements within a reasonable schedule specified in the Lease. If a Lease authorizes the Lessee to make permanent improvements during the term of the Lease, the Lessee shall

identify the general type of each improvement by providing a building plan, construction schedule, the location of the improvement, and the responsibility for constructing, operating, maintaining, and managing the permanent improvements during the Lease term. Lessee shall provide the Tribe written justification as to the nature of any delay, the anticipated date of construction of the improvements, and evidence of progress toward commencement of construction. When requested by the Tribe or otherwise required in the Lease, Lessee shall further provide the Tribe, in writing, an updated schedule for construction. Improvements to the Premises shall become the property of the Tribe unless otherwise provided for in the Lease. If improvements will be removed, the Lease may specify the maximum time allowed for such removal. The Tribe may waive the removal of the permanent improvement and take possession if not removed within a specified time period.

1. Wind and Solar Resource Leases. The lease must indicate who is responsible for evaluating the Leased premises for suitability for its purpose and for purchasing, installing, operating, and maintain the WSR equipment. The Lessee must:
  - I. Commence installation of energy facilities within two (2) years after the Lease effective date or a timeframe in the resource development plan;
  - II. Lessee must provide an explanation of good cause if installation does not occur;
  - III. Maintain all on-site electrical generation equipment and related infrastructure;
  - IV. Repair, place into service, or remove from the site within a time period specified in the Lease, any idle, improperly functioning, or abandoned equipment.
- G. The Lessee shall be required to provide reasonable notice to the Tribe of the construction of any permanent improvements.
- H. Specify all rent and payment requirements, including payment due dates, payee, place of payment, and any interest. Payment by cash, check, or authorized bank transfer will be acceptable. If a lease allows for lease payments to be made to the Tribe, the Tribe must maintain documentation of the lease payments that are sufficient to enable the Secretary to discharge the trust responsibility of the U.S. See 25 U.S.C. 415(h)(6)(B).
- I. If permitted, the Lease must describe how and when rental reviews or adjustments will be done, when they become effective, and how any disputes regarding adjustments will be resolved.
- J. State the due diligence, performance bond, and insurance requirements that apply, if any.
- K. State the process for amendment, which shall be in writing, signed by both parties.
- L. State the process for termination. Including, if applicable, failure to dispose of a first Residential Lease as required in §10(E)(1) I-III, above which shall cause the automatic termination of the second lease. Additionally, if construction of improvements is contemplated, include the following provision:
  1. Termination of Lease for non-commencement. If utilization of leased premises has not commenced within one (1) year of the execution date of the Lease, the Lease may be terminated. The Land Office will notify the Lessee that they have thirty (30) days in which to show utilization of the site. If Lessee does not show utilization of the site within thirty (30) days, the Land Office will terminate the Lease unless Executive Council directs the Land Office to grant an extension.

- M. Specify the rate of interest to be charged if the Lessee fails to make payments in a timely manner. The Lease shall identify additional late payment penalties. Unless the Lease provides otherwise, interest charges and late payment penalties shall apply in the absence of any specific notice to the Lessee from the Land Office, and the failure to pay such amount shall be treated as a breach of the Lease.
- N. Specify any fees, taxes and assessments associated with the lease premises Lessee is required to satisfy.
- O. State the governing law, which may include the Tribe's laws and applicable federal statutes and regulations.
- P. Require the Lessee to obtain consent of any surety for any legal instrument that directly affects their obligations and liabilities.
- Q. If the leased premises are within an Indian irrigation drainage project or drainage district, the Lease must include the following provision:
  - 1. If the leased premises are within an Indian irrigation drainage project or drainage district, except as provided in 25 C.F.R. Part 171, the Lessee must pay all operational 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.
- R. State that during the Lease term there must not be any unlawful conduct, creation of a nuisance, illegal activity, or negligent use of waste on the leased premises.
- S. State that the Lessee must comply with all applicable laws, ordinances, rules and regulations, and failure to do so constitutes grounds for lease termination.
- T. State that the Lessee must comply with all the Tribal cultural protection laws. Further, if Lessee discovers, encounters, or becomes aware of any objects or sites of cultural value on the leased premises such as historical or pre-historical ruins, graves or grave markers, fossils or artifacts, Lessee will immediately suspend all operations in the vicinity of the cultural objects or sites and notify the Bay Mills Tribal Historic Preservation Officer ("THPO"). Any activity in the area may not resume until approval to proceed is acquired from the THPO.
- U. State that the lender, if any, the Secretary of Interior and his/her authorized representatives pursuant to authority to fulfill the trust obligation of the United States to the Tribe under federal law (including regulations), and the Lessor and their authorized representative shall each have the rights, at any reasonable times during the term of a Lease, and with reasonable notice, to enter upon the leased premises, or any part thereof, to inspect the same and all buildings and other improvements erected and placed thereon.
- V. State that the Lessor and the appropriate agencies may treat any failure by the Lessee to cooperate with a request to make appropriate records, reports, or information available for inspection and duplication as a Lease violation.
- W. Require that the Lessee holds the Lessor and the United States of America harmless from any loss, liability, or damages resulting from the Lessee's use or occupation of the leased premises.
- X. Require the Lessee to indemnify the Lessor and the United States of America against all liabilities or costs in relation to the 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 Lessor for liability or cost arising from the Lessor's negligence or willful misconduct.

Y. Insurance.

1. A Lessee shall provide insurance necessary to protect the interests of the Tribe in amounts sufficient to protect all insurable improvements on the leased premises.
2. The insurance may include, but is not limited to, property, liability or casualty, or other insurance as specified in a business Lease.
3. The Tribe and the United States of America must be identified as additional insured parties. The Tribe may waive these requirements if the waiver is in the Best Interest of the Tribe and can revoke the waiver at any time if the waiver ceases to be in the Tribe's best interest.
4. Residential Leases shall not be subject to this insurance provision unless determined by Executive Council to be in the Best Interest of the Tribe.

14. PERFORMANCE BOND-

A. Business Leases.

1. Unless waived in writing by the Tribe in accordance with this Subsection, the Lessee shall obtain a satisfactory performance bond in an amount sufficient to secure the contractual obligations of the Lease. Such bond shall (1) require the Tribe receive written notice at least sixty (60) days before cancellation of the bond and (2) be for the purpose of securing the Lessee's contractual obligations under the Business Lease and must guarantee:
  - I. The annual Lease payment;
  - II. The estimated development cost of improvements; and
  - III. Any additional amount necessary to ensure compliance with the Lease.
2. The performance bond must state that the obligations of the Lessee and its sureties to the tribe will be enforceable by the U.S. so long as the land remains in trust or restricted status.
3. The Tribe may waive the bond requirement, or reduce the amount, if in the Best Interest of the Tribe. The Land Office shall maintain written records of waivers and reductions.
4. The performance bond may be 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 bond issued by a company approved by the U.S. Department of Treasury.

- B. Public/Religious/Recreational Leases.
  - 1. If the Tribe determines a performance bond is appropriate, follow the procedures as outlined for a Business Lease above.
  - 2. The Tribe may waive the bond requirement, or reduce the amount, if in the Best Interest of the Tribe. The Land Office shall maintain written records of waivers and reductions.
- C. Agriculture Leases.
  - 1. Unless waived in writing by the Tribe in accordance with this Subsection, the Lessee shall obtain a satisfactory performance bond in an amount sufficient to secure the contractual obligations of the Lease. Such bond shall (1) require the Tribe receive written notice at least sixty (60) days before cancellation of the bond and (2) be for the purpose of securing the Lessee's contractual obligations under the Agriculture Lease and must guarantee:
    - I. The annual Lease payment;
    - II. The estimated development cost of improvements;
    - III. The operation and maintenance charges for any land within an irrigation project;
    - IV. The restoration and reclamation of the Leased premises; and
    - V. Any additional amount necessary to ensure compliance with the Lease.
  - 2. If the Tribe determines a performance bond is appropriate, follow the procedures as outlined for a Business Lease above.
  - 3. The Tribe may waive the bond requirement, or reduce the amount, if in the Best Interest of the Tribe. The Land Office shall maintain written records of waivers and reductions.
- D. Wind and Solar Resource Leases. A performance bond is not required for a WSR Lease.
- E. Residential Leases. A performance bond is not required for a Residential Lease.

15. PERMITS-

- A. The Executive Council may issue a permit for residential use or business under the following circumstances:
  - 1. The applicant requests a lease, under the procedure described in §10 of this Ordinance, and the permit is desired in order to obtain financing for construction and/or development of the applicant's planned residence or business
  - 2. Such permit shall identify the area by survey and legal description
  - 3. Such permit shall be issued for a period of two (2) years in duration, and may be extended for an additional year upon Executive Council approval.
- B. The permit shall be cancelled and a Residential Lease shall be authorized when:
  - 1. A written commitment letter from a lender is provided to the Executive Council, that funds will be provided for construction of the Permittee's residence on the premises subject to the permit; or

2. The Executive Council is satisfied that the Permittee has made Substantial Progress in accordance with the project schedule guidance established by the Executive Council in constructing a residence on the premises subject to the permit.
- C. The permit shall be cancelled and a Business Lease shall be authorized when:
1. A written commitment letter from a lender is provided to the Executive Council, that funds will be provided for construction of the Permittee's business on the premises subject to the permit; or
  2. The Executive Council is satisfied that the Permittee has made Substantial Progress in constructing a business on the premises subject to the permit.
16. SUBLEASING-
- A. Subleasing is not allowed without the written consent of the Executive Council. If approved, the lease shall contain language that defines and describes the subleasing process, restrictions on subleases, sublessee rights and guidelines.
  - B. No sublease shall relieve the Lessee or sublessee of any liability under the Lease.
  - C. All subleases and amendments thereto shall be recorded with the Land Office with copies provided to the LTRO with jurisdiction over the tribal land.
  - D. All subleases and assignments shall require the prior approval of any Mortgagee or Surety, if required by the Mortgagee or Surety Agreement.
17. LEASEHOLD MORTGAGES, ASSIGNMENTS, AND TRANSFERS- All assignments, other than to a Mortgagee, do not require tribal action but must comply with eligibility requirements in this Ordinance.
- A. Leasehold Mortgages.
    1. Approval of Leasehold Mortgage. All Leasehold Mortgages under a Lease must be separately authorized under Bay Mills code, unless the Lease authorizes a Leasehold Mortgage and states the law governing foreclosure.
    2. After the Secretary approves this Ordinance, all Leasehold Mortgages which are authorized under this Section shall be effective without federal approval under this Ordinance unless the Secretary rescinds approval of this Code and reassumes responsibility for such approval.
    3. Recording. All Leasehold Mortgage, shall be recorded at the Tribal Court and the County Register of Deeds Office with copies provided to the Land Office and to the LTRO with jurisdiction over the tribal land.
  - B. All assignments, other than to a Mortgagee, do not require tribal action but must comply with eligibility requirements in this Ordinance. In any assignment, other than to a mortgagee of the leasehold estate, the assignee must agree in writing to assume all of the obligations and conditions of the Lease and that the lease is subject to all applicable laws.
  - C. All assignments and amendments thereto shall be recorded with the Land Office with copies provided to the LTRO with jurisdiction over the tribal land. Unless otherwise designated in this Ordinance or the lease, lessee shall annually verify or update assignments and/or heir(s).



- D. Neither Lessee nor Lessor shall, unless otherwise expressly authorized in this Ordinance, sell, transfer, or assign a lease or any interest without the written consent of the other party.
- E. No assignment or transfer shall be approved unless the assignee or transferee is eligible to receive a lease of land from the Bay Mills Indian Community pursuant to §10.
- F. Death of Lessee/Transfer on Death. In the event Lessee dies during the term of their lease, all leases shall expire three hundred sixty-five (365) days after the date of the Lessee's death unless the lessee's interest in the lease:
  - 1. is assigned or transferred by Lessee according to the lease's beneficiary documents; or
  - 2. is assigned or transferred by Lessee's personal representative in accordance with Tribal law; or
  - 3. is transferred pursuant to valid probate order to a person eligible to receive a lease of land as described above in §C and the person agrees in writing to be bound by each and all of the terms and conditions of the lease and tribal and federal laws and regulations; or
  - 4. is transferred pursuant to a lawful affidavit of transfer and the person agrees in writing to be bound by each and all of the terms and conditions of the lease and tribal and federal laws and regulations; or
  - 5. is cancelled by the Executive Council pursuant to the Ordinance.

18. RECORDATION OF LEASES-

- A. The Land Office will provide BIA with all Leases and lease documents for recording with the LTRO. Lease documents may include attachments, subleases, amendments, assignments, leasehold mortgages, renewals or terminations, but need not include residential subleases.
- B. The Land Office will provide the LTRO with a survey or map of any subdivisions that are necessary to properly record encumbrances upon Tribal Trust Land.

19. ENVIRONMENTAL REVIEW

- A. Process. The purpose of the environmental process is to determine if an Environmental Review is necessary prior to lease issuance. If the Biological Services Department and Tribal Historic Preservation Office determines the leasing activity would not have Significant Effect on the Environment or effect the natural and/or cultural resources of the Tribe, the leasing activity is exempted from additional requirements of the Environmental Review.  
  
If the Biological Services Department determines the leasing activity might impact, alter or cause physical disturbance to the natural resources of the Tribe, the lessee must fulfill the requirements of the Environmental Review Process in order to be eligible for a lease.
- B. Scope. The scope of the work will be conducted by the Biological Services Department and be based on existing environmental review processes. These processes must determine if a leasing activity has Significant Effect on the Environment.
- C. Leasing Activity. For any leasing activity, a request will be directed to the Biological Services Department for consultation on an Environmental Review for the specific land to be leased. The Biological Services Department will review the notice of request to determine specific

information for any relevant documentation to be included as part of a review.

D. Environmental Review Checklist.

1. A Categorical Exclusion Exception Review (CEER) Checklist will be used to determine if the leasing activity would impact, alter or cause physical disturbance to the natural resources of the Tribe and if so, an environmental assessment will need to be completed. If no for all checklist points, the CEER checklist along with attached documentation will complete the Environmental Process. This determination does not preclude other Tribal or federal agencies from requesting additional reporting/Environmental Reviews.
2. For the purposes of Residential Leases only, the following actions do not individually or cumulatively have a Significant Effect on the Environment, and therefore, except as otherwise provided in this Ordinance are categorically excluded from the procedures set forth in §20.
  - I. Approval of the Lease for residential use of an existing housing unit, including any associated improvements, access roads, and utilities;
  - II. Approval of a lease for one (1) acre or less of contiguous land for construction and use of a single structure of one (1) to four (4) dwelling units and any associated improvements, access roads, and utilities.
3. Notwithstanding §B, the Biological Services Department shall follow the procedures set forth above if it determines that extraordinary circumstances exists under which the residential use of the Premises may, individually or collectively, have a Significant Effect on the Environment, including without limitation, as set forth below:
  - I. Substantial controversy on environmental grounds;
  - II. Presence of cultural resources; or
  - III. Presence of historical properties.

E. Environmental Review.

1. If it is determined an Environmental Review is required, the Biological Services Department will conduct the Environmental Review by existing practices for assessing environmental impacts. The list of impacts includes Significant Effects on the Environment, such as threatened and endangered species, wetlands, scenic rivers, refuges, floodplains, rivers placed on nationwide river inventory or prime or unique farmlands. Further assessments include, but are not limited to
  - I. Site visits and examinations, public comment periods, consultations with Tribal Historic Preservation Officer to assure NHPA and Tribal Cultural Resource laws have been addressed;
  - II. Threatened and Endangered Species examination to determine if any impacts to Federally or Tribally listed species;
  - III. Review of applicable laws, Federal and Tribal, to include hazardous materials, zoning, invasive species and surface water regulations.
2. Public comments addressing the Environmental Review will be taken through direct contact at public hearings, if determined necessary by the Biological Services

Department, and through postings in the Tribal Newspaper or Website. In addition, electronic or written comments can be directed to the Bay Mills Biological Services Department for consideration. Comments received will be considered before the close of the Environmental Assessment and posted as part of the Environmental Review Process.

3. Upon completion, an Environmental Assessment Report will be drafted summarizing the checklist items, determinations, recommendations and included consultation correspondence. This review will be the basis for any approvals or denials of leasing activities, with regards to the Environmental Process.
4. Unless a categorical exclusion applies, the Biological Services Department shall cause the effects on the environment of the intended uses as authorized by the proposed Lease to be identified and evaluated as follows:
  - I. If the Biological Services Department determines that the uses authorized by the proposed Lease will not have a Significant Effect on the Environment, then it shall cause the following to occur in the order set forth below:
    - a) A finding of no significant impact shall be issued and posted for a minimum of fifteen (15) calendar days in a prominent, noticeable place
    - b) If there is a substantial interest in holding a public meeting it shall be held to provide an opportunity for Tribal citizens to comment, both written and verbal, on the finding of no significant impact.
    - c) Comments shall be reviewed and analyzed and a report shall be issued by the Biological Services Department responding to relevant and substantive comments, if any, regarding the finding of no significant impact. The report shall be posted for a minimum of fifteen (15) calendar days in a prominent, noticeable place.
    - d) A final decision on confirming that the uses authorized by the proposed Lease are expected to have no Significant Effect on the Environment shall be issued, sent to the Executive Council for approval by motion, and posted for fifteen (15) calendar days in a prominent, noticeable place.
  - II. If the Biological Services Department determines that the proposed Lease will have a Significant Effect on the Environment, then it shall cause the following to occur in the order set forth below:
    - a) A draft environmental review which identifies and evaluates any Significant Effect of the Environment of uses authorized by the proposed Lease shall be issued and posted on the Tribe's publicly-accessible website for a minimum of thirty (30) calendar days.
    - b) A meeting shall be held on the draft environmental review to provide an opportunity for Tribal citizens and residents on the Tribe's land to comment, both written and verbal, on any Significant Effect on the Environment of the uses authorized by the proposed Lease;
    - c) Public comments shall be reviewed and analyzed and a report by the Biological Services Department shall be issued on the Tribe's publicly-accessible website responding to relevant and substantive comments, if any, on any Significant

Effect on the Environment of the uses authorized by the proposed Lease. The report shall be posted for a minimum of thirty (30) days.

- d) A final environmental review describing the conclusions of the Biological Services Department report on the issues and evidence gathered under this Subsection shall be issued and posted on the Tribe's publicly-accessible website for a minimum of thirty (30) calendar days.

20. ARCHAEOLOGICAL REVIEW

- A. An archaeological review is necessary to protect and preserve historical properties, archaeological resources, human remains, or other cultural items on the Bay Mills Indian Community Reservation.
- B. Scope. The lessee, federal agency, or their applicant or authorized consultant, must make a reasonable or good faith effort to identify any significant historic or cultural resources within the leased area. Prior to any leasing of tribal land, an applicant must submit the project plans for an archaeological review to the Tribal Historic Preservation Officer if no archaeological survey or assessment has been completed.
- C. If historic properties, archaeological resources, human remains, or other cultural items not previously reported are encountered during the course of any activity associated with leases of tribal land, all activity in the immediate vicinity of the properties, resource, remains, or items will cease and the Lessee shall make immediate contact with the Tribe to determine how to proceed with appropriate disposition. Lessee's shall not disclose newly discovered archaeological resources outside of the Department or THPO.

21. SEVERABILITY AND SUPERSEDING EFFECT-

- A. In the event that any section, or provision, of this Ordinance is held invalid, it is the intent of the Executive Council that the remaining sections or provisions of this Ordinance shall remain in full force and effect. Any portion of this Ordinance found to be inconsistent with the Constitution and By-laws of the Bay Mills Indian Community shall be held invalid.
- B. To the extent that this Ordinance 's language differs from the Land Use Plan this Ordinance shall supersede. In the event of a conflict between provisions of this Ordinance and any other chapter or ordinance of the Tribe, the provisions of this Ordinance shall control.

22. EFFECTIVE DATE- The provisions in this Ordinance shall become effective upon final approval by the Executive Council and upon approval thereof by the Secretary of the Interior or his duly authorized representative or designee.

23. NO WAIVER OF SOVEREIGN IMMUNITY- Nothing in this Ordinance shall be deemed to waive the sovereign immunity of the Bay Mills Indian Community or any of its officials, employees or representatives.

24. NEGOTIATED REMEDIES- Negotiated remedies may apply in addition to, or instead of, a cancellation remedy for lease violations but only if approved by the Executive Council and recorded in the lease. If approved, the lease shall fully define and describe the violations and the applicable negotiated remedies.

25. GENERAL DUTIES OF LESSEES- Lessees are responsible for knowing the requirements of this

Ordinance. Any failure to strictly observe the requirements of this Ordinance and the terms of the lease shall result in cancellation of the lease.

26. HOLDOVER- If a Lessee remains in possession after the expiration or termination of a Lease, the Land Office shall treat such occupation as a trespass and refer the matter to the Tribe's Legal Department for seeking appropriate remedy. Filing shall be pursuant to Tribal laws, or alternatively, for Tribal Trust Land, the Land Office may make a written request sent by certified mail to the Secretary for resolution under any applicable federal laws.
27. ENFORCEMENT OF LEASE VIOLATIONS AND TRESPASS- The Tribe shall have all powers necessary and proper to enforce lease terms, laws, ordinances, regulations, rules, policies, and covenants.
  - A. Determination of Violation and Notification. If the Land Office determines, either through routine inspection or upon submittal of a written complaint to the Land Office, that the lease holder is in violation of the lease, the Land Office shall notify the lease holder of said violation within a reasonable time.
  - B. Notice shall be mailed to the lease holder's last known address.
28. LEASE REMEDIES- Within thirty (30) days of notification of the violation, the lessee shall:
  - A. Cure the violation, and notify the Land Office in writing that the violation has been cured;
  - B. Dispute, in writing, the Land Office's determination that the lease has not been violated, and explain why the lease should not be cancelled; or
  - C. Request additional time to cure the lease violation.
29. FAILURE TO CURE- If the lease holder fails to cure the lease violation within the specified period, the Land Office shall either:
  - A. Notify the lease holder that the lease is being cancelled and forwarded to the Executive Council for approval;
  - B. Grant an extension of time to cure the default; or
  - C. Pursue any other remedies that may be available.
30. APPEALS AND COMPLAINTS- A Lessee may appeal decisions related to lease enforcement provisions.
  - A. A Lessee must file an appeal with the Executive Council of any final determination of the Land Office under this Ordinance within thirty (30) days of issuing the determination. An appeal filed after the thirty (30) days following a final determination is not timely and may not be considered.
  - B. Upon receipt, the Executive Council shall review the appeal within thirty (30) days. The review shall include an opportunity for the Lessee to present information for consideration of Executive Council.
  - C. Executive Council shall issue a decision in writing within ten (10) days of their review.
  - D. All decisions of Executive Council are final under this Section.