

LEASING CODE OF THE KIOWA TRIBE OF OKLAHOMA

PREAMBLE

This Code is enacted pursuant to the inherent sovereign authority of the Kiowa Tribe of Oklahoma to provide a system for the Tribe to offer long term leasing options on trust land for the members of the Tribe and other individuals and entities that no longer requires the Secretary of Interior approval and restores inherent tribal sovereignty, which predates its Treaties with the United States Government. In the implementation of this inherent sovereign authority, the 2017 Constitution of the Kiowa Tribe, empowers the Kiowa Legislature to “makes laws and resolutions in accordance with the requirements of the Constitution” (Article VI, §6(a)); to “monitor the actions of the government, access the needs of the People, and make laws toward better government to address the needs of the People” (Article VI, § 1); and to “establish regulatory Commissions by law” (Article VI, § 6(h)). Pursuant to this inherent sovereign authority, the Kiowa Legislature hereby enacts this Code which shall establish the purposes, powers and duties of the Land Management Commission and the system for leasing tribal trust lands. In any suit, action or proceeding involving the validity or enforcement of or relating to any of its leases, the Land Management Commission shall be conclusively deemed to have become established and authorized to transact business and exercise its powers upon proof of the adoption of this Code. A copy of this Code duly certified by the Secretary of the Kiowa Legislature shall be admissible as evidence in any suit, action, or proceeding.

CHAPTER I

GENERAL PROVISIONS

Section 1. Title

This Code shall be known as the “Leasing Code of the Kiowa Tribe.”

Section 2. Authority

This Code is enacted pursuant to the inherent sovereign authority of the Kiowa Tribe and pursuant to and in accordance with the Helping Expedite and Advance Responsible Tribal Homeowners Act of 2012 (HEARTH Act), ~~4525~~ U.S.C. § 415(h) P.L. 112-151; 126 § 1150. In the implementation of this inherent sovereign authority, the 2017 Constitution of the Kiowa Tribe, empowers the Kiowa Legislature to “makes laws and resolutions in accordance with the reequipments of the Constitution” (Article VI, §6(a)); to “monitor the actions of the government, access the needs of the People, and make laws toward better government to address the needs of the People” (Article VI, § 1); and to “establish regulatory Commissions by law” (Article VI, § 6(h)).

Section 3. Declaration of Need

It is hereby declared:

- (a) A code governing the leases of trust lands is necessary to govern the leasing of real property held in trust by the United States for the Kiowa Tribe;
- (b) The Tribe has a crucial role and responsibility to provide Tribal Members with a sustainable, compatible method of leasing the Tribe's trust lands that clarifies the expectations and responsibilities between the lessor and lessee;
- (c) The Tribe recognizes that the provision of land and improvements play a vital role in the successful function and use of the Tribe's lands; and
- ~~(d) The Tribe recognizes the need to exercise its inherent sovereign authority by opting out of the Secretary of Interior approval requirements for tribal leases.~~

Section 4. Purpose

The purpose of this Code is to:

- (a) Establish uniform policies and procedure of the use of Tribal trust lands;
- (b) Promote the efficient use of Tribal trust lands;
- (c) Promote home ownership and access to credit for Tribal members;
- (d) Ensure that interests in Tribal lands can be easily identified; and
- (e) Protect the Tribe's long-term interests in its lands.

Section 5. Territorial Applicability

- (a) This Code applies to the following transactions on Tribal trust lands ~~made for any lawful purpose~~, including but not limited to, for agricultural purposes, business purposes, educational purposes, governmental purposes, recreational purposes, residential purposes, religious purposes, and wind and solar resource purposes:
 - (1) Leases, and subleases, ~~and assignments~~ of Tribal trust land;
 - (2) Mortgages of leasehold interests involving Tribal trust land; and
 - (3) Amendment to the leases, subleases, assignments, and mortgages referred to in subparagraphs (a)(1) and (a)(2) of this Section.
- (b) This Code does not apply to:
 - (1) Leases of land held in trust or restricted status for an individual Indian;
 - (2) Leases of unrestricted fee simple land;
 - (3) Leases of fractionated interests in land;

- (4) Mortgages of Tribal trust lands or fee lands; or
- (5) Mineral leases.

Section 6. Effective Date

The provisions of this code shall be effective on approval by the Secretary of Interior, after ratification by the Kiowa Legislature, and upon the date signed by the Chairman of the Kiowa Tribe.

Section 7. Interpretation

The provisions of this Code:

- (a) Shall be interpreted and applied as minimum requirements applicable to the leasing of trust lands subject to this Code;
- (b) Shall be liberally construed in favor of the Tribe;
- (c) Shall not be deemed a limitation or repeal of any other tribal power or authority;
- (d) Shall be liberally interpreted and construed to implement the Helping Expedite and Advance Tribal Home Ownership Act of 2012 ("HEARTH Act"), 4525 U.S.C. § 415(h) P.L. 112-151; 126 § 1150, by establishing a process which shall not require the approval of the Secretary of the Interior if the lease is executed pursuant to the terms of this Code.
- (e) Shall not be deemed to expand or limit the authority or responsibility of the Secretary of Interior beyond that provided for under applicable federal statutes or regulations; and
- (f) Shall be interpreted, to the extent possible, to be in accordance with tribal applicable Tribal law, including but not limited Tribal customary law. ~~Whenever there is uncertainty or a question as to the interpretation of certain provisions of this Code, tribal law, and custom shall be controlling, and where appropriate, may be based on the written or oral testimony of a qualified tribal elder, tribal historian, or tribal representative. If the traditions and customs of the Tribe are inconclusive /or in any matter, the Court shall construe it consistently with applicable textual tribal law. In the absence of applicable tribal customary law or textual tribal law, the Court shall construe it consistently Tribal law,~~ with applicable ~~federal~~ Federal law.

Section 8. Severability and Non-Liability

If any section, provision, or portion of this Code is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Code shall not be affected thereby.

Section 9. Relation to Other Laws

- (a) **Applicable Law.** Unless affected or displaced by this Code, principles of law and equity in the common law of the Tribe and tribal customs and traditions are applicable, and the general principles of law of any other Tribe or any other state may be used as a guide to supplement and interpret this Code.
- ~~(b) **Other Applicable Laws.** Additional tribal and federal laws may apply, including but not limited to tribal housing and real property laws and regulations.~~
- ~~(eb) **Conflicts with Other Laws.**~~
- (1) **Tribal Law.** To the extent that this Code may conflict with tribal laws or ordinances this ordinance shall govern and take precedence over the provisions of the conflicting ordinance.
- (2) **Federal Law.** Where a conflict may appear between this Code and any statute, regulation, or agreement of the United States, ~~the~~**applicable federal law shall govern** ~~if it has specific applicability and if it is clearly in conflict with the provisions of this Code.~~

~~Section 10. —~~**Repeal of Inconsistent Tribal Ordinances**

~~All existing Tribal ordinances and Tribal resolutions inconsistent with this Code are hereby repealed. To the extent that this Code imposes greater restrictions than those contained in any other tribal law, code, ordinance or regulation, the provisions of this Code shall govern.~~

~~Section 11.~~ **Amendment or Rescission**

- (a) The Kiowa Legislature may amend this Code as it deems necessary to protect the public health, safety, and welfare of its membership. The provisions of this Code may be amended from time to time by resolution of the Kiowa Legislature and subsequent approval of the Chairman of the Kiowa Tribe.
- (b) Any amendment to this Code through resolution of the Kiowa Legislature is effective only if:
- (1) the amendment is substantive and approved by the Secretary of the Interior;
or
- (2) the amendment is a minor technical amendment.

~~Section 12~~**11. No Waiver of Sovereign Immunity**

Nothing in this Code shall be construed to constitute a waiver of the sovereign immunity of the Kiowa Tribe or consent to jurisdiction by any government or forum not expressly authorized to exercise jurisdiction under this Code. The Tribe further asserts immunity on its part and that of its

agencies, employees, and/or agents from any action or damages that may occur as a result of reliance upon and conformance with this Code.

CHAPTER II

DEFINITIONS

Section 1. General Definitions

Any term not defined in this Section shall be given its ordinary meaning. The following ~~terms~~**Terms**, wherever used in this Code, shall be construed to apply as follows, except where the context indicates otherwise:

- (a) **“Agricultural Land”** means Tribal Trust Land suited or used for the production of crops, livestock, or other agricultural products, or a business that supports the surrounding agricultural community.
- (b) **“Agricultural purposes”** means the purposes of farming, haying, raising livestock, or similar agricultural uses.
- (c) **“Assignment”** means an agreement between a lessee and an assignee, whereby the assignee acquires all or some of lessee’s rights, and assumes all or some of the lessee’s obligations, under a lease.
- (d) **“Best Interest of the Tribe”** means, but is not limited to, an outcome that is most favorable based on a balancing of interests undertaken in order to attain the highest economic income, increase economic development, preserve, and enhance the value of Tribal Trust Land, increase employment, and preserve the sovereignty of the Tribe.
- (e) **“BIA”** means the Secretary of Interior of the Bureau of Indian Affairs within the Department of the Interior.
- (f) **“Building”** is a structure, and any appurtenances or additions thereto, designed for habitation, shelter, storage, and the like.
- (g) **“Business purposes”** means commercial purposes and use by for-profit and nonprofit organizations.
- (h) **“Educational purposes”** means the purposes of delivering educational services.
- (i) **“Environmental Department”** means the Kiowa Tribe Environmental Program.
- (j) **“Governmental purposes”** means the purposes of delivering government services by the Tribe or conducting Tribal governmental functions.
- (k) **“Kiowa Legislature”** means the Legislative Branch of the Kiowa Tribe.

- (l) **“Lease”** means a written contract between the Tribe and a lessee, whereby the lessee is granted a right to possess Tribal Trust land, for a specified purpose and duration. The lessee’s right to possess shall limit the Tribe’s right to possess the leased premises only to the extent provided in the lease.
- (m) ~~“Lessee” means a person or entity who has acquired a right to possess the Tribe’s lands by executing a Lease.~~
- ~~(n)~~ **“Leasehold Estate”** means the possessory interest in the ~~Tribe’s~~ Tribal Trust land established pursuant to a Lease between a Lessor and a Lessee.
- ~~(o)~~ ~~n~~ **“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.
- ~~(p)~~ ~~“Lessor” means the Tribe or any of its subdivisions, boards, commissions, or any of their assigns.~~
- ~~(q)~~ ~~“Lessee” means a person or entity who has acquired a right to possess the Tribal Trust Lands by executing a Lease.~~
- ~~(o)~~ **“Livestock”** means those animals commonly associated with a farm or performing work in an agricultural setting. Such animals include horses, donkeys, mules, cattle, sheep, poultry, swine, goats, and other animals typically associated with a farm, ranch, or stable.
- ~~(p)~~ **“LTRO”** means the Land Titles and Records Office of the Bureau of Indian Affairs within the United States Department of Interior.
- ~~(s)~~ ~~“Mortgage” means a lien on a Leasehold Estate given to secure advances on a loan to purchase, construct, refinance, or renovate a structure or improvement, and may refer both to a security instrument creating a lien, whether called a mortgage, deed of trust, security deed, or other term, as well as the credit instrument, or note, secured thereby.~~
- ~~(t)~~ ~~(q)~~ **“Mortgagee”** means any person, entity, or government agency which lends under a Leasehold Mortgage, and includes any assignee, or any heir, successor, executor, administrator, or assign thereof.
- ~~(u)~~ ~~r~~ **“Mortgagor”** means any person or entity who has executed a Leasehold Mortgage or assigned thereof.
- ~~(v)~~ ~~s~~ **“Permanent Improvements”** means buildings, other structures, and associated infrastructure attached to the Tribe’s lands.
- ~~(w)~~ ~~t~~ **“Premises”** means any portion of Tribal Trust Land, as described in any lease, and any common areas and grounds appurtenant thereto.

- (~~x~~)—~~u~~) **“Public” for purpose of environmental review** means any person or entity who can demonstrate that they shall be directly and substantially affected by the lease or lease activity.
- (~~y~~)—~~v~~) **“Real Property”** means the Tribe’s Trust and Restricted Land.
- (~~z~~)—~~w~~) **“Recreational purposes”** means the purposes of camping, fishing, hunting, ATV use, constructing and maintaining seasonal dwellings (such as cabins and hunting shacks), or similar recreational uses.
- (~~aa~~)—~~x~~) **“Residential purposes”** means the purposes of constructing or maintaining a residential house which the lessee shall use as their primary residence.
- (~~bb~~)—~~y~~) **“Restoration and reclamation plan”** means a plan that defines the reclamation, revegetation, restoration, and soil stabilization requirements for a project area, and requires the expeditious reclamation of construction areas and revegetation of disturbed areas to reduce invasive plant infestation and erosion.
- (~~ee~~)—~~z~~) **“Secretary”** means the Secretary of the Interior.
- (~~dd~~)—~~aa~~) **“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.
- (~~ee~~)—~~bb~~) **“Sublease”** means a written agreement by which the lessee grants to an individual or entity a right to possession no greater than that held by the lessee under the lease.
- (~~ff~~)—~~cc~~) **“Trespass”** means any unauthorized occupancy, use of, or action on the Tribe’s land.
- (~~gg~~)—~~dd~~) **“Tribal Court”** means the Trial Court of the Kiowa Tribe.
- (~~hh~~)—~~ee~~) **“Tribal Trust Land”** means the surface estate of any tract of land held by the United States in trust or restricted status for the benefit of the Tribe.
- (~~ii~~)—~~ff~~) **“Tribe”** means the Kiowa Tribe.
- (~~jj~~)—~~gg~~) **“Trust or Restricted Status”** means (1) that the United States holds title to the tract in trust for the benefit the Tribe or (2) that the Tribe holds title to the tract but can alienate or encumber it only with the approval of the United States because of limitations in the conveyance instrument under Federal law or limitations in Federal law.

~~(kk)~~ hh “WEEL” means a Wind Energy Evaluation Lease, which is a short-term lease that authorizes possession of Tribal Trust Land for the purpose of installing, operating, and maintain instrumentation, and associated infrastructure, such as meteorological towers, to evaluate wind resources for electricity generation.

~~(H)~~ ii “WSR Leases” are Wind and Solar Resource leases, which are leases that authorize possession of Tribal Trust 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 the historical boundaries of the Tribe’s Reservation).

CHAPTER III

GENERAL

Section 1. Application of Other Laws

This Code shall not relieve a lessee’s burden to comply with all other applicable laws, including all other Tribal ordinances that are not inconsistent with this Code and Federal Law.

Section 2. Mandatory Lease Provisions

Every lease shall:

- (a) Describe the land being leased with a description of sufficient detail to meet the recording requirements of the LTRO;
- (b) State the parties to the lease;
- (c) State the term of the lease;
- (d) State the effective date of the lease;
- (e) State the purpose of the lease and authorized uses of the leased premises (*i.e.*, agricultural, business, governmental, recreational, residential, WEEL or wind and solar resource purposes);
- (f) State how much rent is due;
- (g) State when rent is due;
- (h) State who receives rent and the place of payment;

- (i) State what form of payment is acceptable;
- (j) State whether any late payment charges or special fees apply, including the rate of interest to be charged if the lessee fails to make timely payments;
- (k) If lease payments are to be made directly to the Tribe, the Lease shall state that the tribe shall maintain documentation of the Lease payments that are sufficient to enable the Secretary to discharge the trust responsibility to the United States;
- (l) State whether lessee is required to pay any additional fees, taxes, and assessments associated with the use of the leased premises;
- (m) State the following: “If the leased premises are within an Indian irrigation project or drainage district, except as provided by 25 CFR 171, the lessee shall pay all operation and maintenance charges that accrue during the lease term. The lessee shall pay these amounts to the appropriate office in charge of the irrigation project or drainage district.”;
- (n) State whether any due diligence requirements apply;
- (o) State whether a performance bond is required and the form of bond that is acceptable;
- (p) State any insurance requirements;
- (q) Address whether permanent improvements may be constructed; the general type of improvements authorized and whether plans of development or construction schedules are required; address ownership of improvements; identify the party or parties responsible for constructing, operating, maintaining, and managing improvements during the lease term; and address removal of improvements;
- (r) State the rights to inspection of property and records;
- (s) State any mitigation measures or reclamation and restoration plan required as a result of the environmental review process;
- (t) State whether there shall be rental reviews or adjustments, how and when they shall be done, who shall make them, when any adjustments shall be effective, and how disputes regarding adjustments shall be resolved;
- (u) State whether livestock may be kept on the land (if the lease is for residential or recreational purposes, the lease shall state that no livestock may be kept on the land);
- (v) State that the lessee shall not encroach onto neighboring property and that ongoing trespass onto neighboring property shall be grounds for cancellation of the lease;

- (w) State that the lessee holds the United States and the Tribe harmless from any loss, liability, or damages resulting from the lessee's use or occupation of the leased premises;
- (x) State that the lessee indemnifies the United States and the Tribe against all liabilities or costs relating to the use, handling, treatment, removal, storage, transportation, or disposal of hazardous materials, or the release or discharge of any hazardous material from the leased premises that occurs during the lease term, regardless of fault, with the exception that the lessee is not required to indemnify the Tribe for liability or cost arising from the Tribe's negligence or willful misconduct;
- (y) State that if historic properties, archeological resources, human remains, or other cultural items not previously reported are encountered during the course of any activity associated with this lease, all activity in the immediate vicinity of the properties, resources, remains, or items shall cease, and the lessee shall contact BIA and the Tribe with jurisdiction over the land to determine how to proceed and appropriate disposition;
- (z) State the governing law, which may include this Code, the Tribe's laws and applicable federal statutes and regulations; and list other laws and ordinances applicable to the lease;
- (aa) State that the lease is subject to cancellation in accordance with the enforcement procedures contained in Chapter V of this Code;
- (bb) State any other negotiated remedies for lease cancellation or termination;
- (cc) State the process for amendment, which shall be in writing signed by both parties, and with the consent of any mortgagee; and
- (dd) State the respective addresses at which the lessee and the lessor respectively agree to accept all notifications, including any required service of process, relating to the lease and the process by which the parties can update such addresses if needed.

Section 3. Inspection Rights

- (a) The Tribe, Secretary, ~~lender,~~ and their authorized representatives shall have the rights, at ~~any reasonable times~~his/her discretion during the term of this 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.
- (b) The Lessor and the Secretary 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.

Section 4. Additional Requirements for Agricultural Leases

- (a) All lessees of leases for agricultural purposes are required to manage the land in accordance with any agricultural resource management plan developed by the Tribe.
- (b) Appropriate stipulations or conservation plans shall be developed and incorporated in all leases for agricultural purposes.
- (c) Lessee shall provide environmental and archaeological reports, surveys, and site assessments, as needed, to document compliance with applicable laws.
- (d) If lessee is a corporation, partnership, or other legal entity, it shall provide organizational and financial documents, as need to show that the lease shall be enforceable against the lessee and that lessee is able to perform all its lease obligations.
- (e) State law may apply to agricultural lease disputes or define the remedies available to the Tribe in the event of an agricultural lease violation by the lessee; the agricultural lease shall state whether or not the Tribe and lessor expressly agree to the application of state law.

Section 5. Additional Requirements for WEEL's

Every WEEL lease shall:

- (a) State that the lessee is to install testing and monitoring facilities within twelve (12) months after the effective date of the lease and that the lessee shall provide an explanation of good cause if the installation does not occur within the twelve (12) month time period;
- (b) State that the lease shall specify the ownership of any energy resource information the lessee obtains during the lease term; and
- (c) State that if the lease provides for the lessee to remove the improvements, it shall also provide the Tribe with an option to waive the removal requirement and take possession of the improvements if they are not removed within the specified time period.

Section 6. Additional Requirements for WSR Leases

Every WSR lease shall:

- (a) Indicate who is responsible for evaluating the leased premises for suitability, purchasing, installing, operating, and maintaining the WSR equipment;
- (b) State that the lessee shall commence installation of energy facilities within two (2) years after the lease effective date or a timeframe in the resource development plan

and that the lessee shall provide an explanation of good cause if installation does not occur within the specified time period;

- (c) State that the lessee shall maintain all on-site electrical generation equipment and related infrastructure and repair, place into service, or remove from the site within a time period specified in the lease, any idle, improperly functioning, or abandoned equipment; and
- (d) State that if the lease provides for the lessee to remove the improvements, it shall also provide the Tribe with an option to waive the removal requirement and take possession of the improvements if they are not removed within the specified time period.

Section 7. Terms of Leases

- (a) Leases for residential, recreational, governmental, educational, and religious purposes may have a term not to exceed seventy-five (75) years.
- (b) Leases for business, agricultural, and wind and solar resource purposes may have a term not to exceed twenty-five (25) years with an option to renew for up to two (2) additional terms, each of which may not exceed twenty-five (25) years.
- (c) WEEL leases may have a term not to exceed three (3) years with an option to renew for one additional term, which may not exceed three years.
- (d) WEEL leases may have an option period following the expiration of the WEEL term during which the lessee and the Tribe may enter into a WSR Lease.

Section 8. Lease Renewal Terms

Leases with an option to renew shall state:

- (a) The time and manner for when the option shall be exercised or whether it is automatically effective;
- (b) Any additional consideration that shall be due upon the exercise of the option; and
- (c) And any other conditions for renewal.

Section 9. Applying for a Lease

- (a) A potential lessee shall submit a lease application to the Land Management Commission. The application shall be stamped with the date and time received. The Land Management Commission retains the original application. A copy of the time and date stamped application shall be sent to the applicant.

- (b) The lease application shall identify the lessee, the type of lease requested, the parcel of land requested, and any additional information required by policies approved by the Kiowa Legislature.
- (c) The Land Management Commission is responsible for processing the lease applications, for providing reasonable assistance to potential lessees, and for coordinating with other Tribal departments to ensure that all necessary approvals are obtained before the lease is transferred to the Kiowa Legislature for review. If the Land Management Commission determines that the lease application submitted is incomplete, it shall inform the applicant of the deficiencies in the application and permit the applicant to remedy such deficiencies.
- (d) The Land Management Commission shall process lease applications in a timely manner, but there shall be no mandatory timeframe for processing lease applications.

Section 10. Land Descriptions

- (a) Leases shall contain legal descriptions based on metes and bounds, rectangular or lot and block systems based on the Public Land Survey System. When applicable, the lease shall contain a description or exhibit identifying the portion(s) of the floor(s) of a building that are subject to the lease.
- (b) If a legal description is already available for the requested parcel, the existing legal description may be used.
- (c) If a legal description is unavailable or the Land Management Commission determines that the existing legal description is inadequate, the Land Management Commission shall obtain a site survey and a legal description.
- (d) A potential lessee may be required to pay for the cost of preparing the legal description, regardless of whether the legal description was already available.

Section 11. Zoning Review

A potential lessee shall submit plans of any and all development and construction schedules to the Land Management Commission. The plans of development and construction schedules shall be sufficient to conduct a zoning review in accordance with applicable law.

Section 12. Improvements

- (a) All leases shall require the lessee to exercise due diligence and best efforts to complete construction of any improvements within the schedule specified in the lease.

- (b) Lessee, at lessee's expense or as otherwise provided in the lease, may construct improvements under a lease if the lease specifies, or provides for the development of:
 - (1) a plan that describes the type and location of any improvements to be built by the lessee;
 - (2) a general schedule for construction of the improvements; and
 - (3) a process for changing the schedule by mutual consent of the parties.
- (c) The lease shall not allow for any construction or development of improvements unless the lessee has first obtained any required permits or other approvals required under any applicable Tribal law.
- (d) Lessee shall provide to 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.
- (e) When requested by the Tribe or otherwise required in the lease, lessee shall further provide the Tribe with an updated schedule for construction in writing.
- (f) Failure of the lessee to comply with these requirements shall be deemed a violation the lease and may lead to cancellation of the lease pursuant to Chapter V of this Code.
- (g) At the expiration, termination, or cancellation of the lease term, if permanent improvements were authorized, and permanent improvements remain on the leased premises in a condition satisfactory to the Tribe then the improvements shall become the property of the Tribe unless otherwise provided for in the lease.
- (h) If improvements ~~shall~~ are to be removed, the lease shall specify the terms and conditions of such removal unless waived by the Tribe, ~~the maximum time allowed for such removal, including but not limited to~~ the lessee's responsibility for such removal; and the lessee's obligations to restore and reclaim the property to conditions acceptable to the Tribe. Tribal Trust Lands.
- (i) A lessee may develop equity value in the improvements and sell its interest in the lease based on the equity value. The Tribe has a right of first refusal to purchase the interest.
- (j) Improvements may be subject to taxation by the Tribe.

Section 13. Environmental Reviews Required

Unless exempted from this requirement under this Code, the Tribe shall not approve a lease until the proposed lease has completed the environmental review process under Chapter IV of this Code. Leases approved and executed without complying with this section shall be invalid.

Section 14. Fair ~~Market Lease~~Annual Rental Value and Payments

- (a) The Fair ~~Market Lease~~Annual Rental Value shall be determined using one of the following appraisal methods:
 - (1) The Fair ~~Market Lease~~Annual Rental Value shall be determined by an appraisal or equivalent procedure performed by the Tribe using the following data: improvement cost, replacement cost, earning capacity, sales, and lease data of comparable sites or by similar methodology as approved by the Tribe and deemed to be in the Best Interests of the Tribe.
 - (2) Alternatively, the Fair ~~Market Lease~~Annual Rental Value shall be determined by an appraisal performed by a licensed appraiser using the Uniform Standards of Professional Appraisal Practice or commonly accepted method of appraisal.
- (b) No lease may be approved for less than the present Fair ~~Market Lease~~Annual Rental Value as set forth in the appraisal, unless the Tribe determined such action is in the Best Interests of the Tribe.
- (c) An appraisal log reporting the methods of appraisal and value shall be attached to every lease unless Fair ~~Market Lease~~Annual Rental Value payments are waived by the Tribe.
- (d) A lease may be structured at a flat lease rate.
- (e) A lease may be structured at 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 over \$1,000,000.00 annually in gross receipts.
- (f) A lease may be structured based on a percentage of gross receipts or based on a market indicator.
- (g) The lease may provide for periodic review and such review may consider the economic conditions, exclusive of improvement or development required by the contract or the contribution value of such improvements.
- (h) Leases may be structured to allow for lease rate adjustments. The lease shall specify how adjustments shall be made, who shall make such adjustments, when adjustments shall go into effect, and how disputes shall be resolved.
- (i) Leases may be amended to allow for lease rate adjustments.

- (j) The Tribe shall keep written records of the basis used in determining the fair ~~market~~ annual lease value, as well as the basis for adjustments. These records shall be presented to the lessee for its review and acceptance or non-acceptance and included in any lease file.
- (k) All lease payments shall be made directly to the Tribe. The Tribe shall maintain documentation of the lease payments that are sufficient to enable the Secretary to discharge the trust responsibility of the United States.

Section 15. Insurance Requirements

- (a) A lessee shall provide insurance necessary to protect the interests of the Tribe and in amounts sufficient to protect all insurable improvements on the premises.
- (b) The insurance may include, but is not limited to, property, liability or casualty insurance or other insurance as specified in the lease.
- (c) The Tribe and the United States shall be identified as additional insured parties.
- (d) The insurance policy shall be written to provide the Tribe and any mortgagee with thirty (30) days' notice before the cancellation of any insurance policy on the property.
- (e) The Lessee shall provide proof of insurance to the Tribe.
- (f) The Tribe may waive this requirement if the Tribe determines it is in the Best Interests of the Tribe. The waiver may be revoked at any time if the waiver ceases to be in the Tribe's best interest.
- (g) Failure of the Lessee to provide adequate insurance may result in the Tribe obtaining an insurance policy on the property and charging the cost for such insurance back on the Lessee.

Section 16. Performance Bonds

- (a) Unless waived in writing by the Tribe in accordance with this Code, the lessee shall obtain a satisfactory performance bond in an amount sufficient to secure the contractual obligations of the lease. The obligations of the lessee and its sureties under the bond to the Tribe shall also be enforceable by the United States, so long as the land remains in Trust or Restricted Status. The bond shall be written to ensure that the Lessor is provided a thirty (30)-day advance written notice before any cancellation of the bond. The bond shall be for the purpose of securing the lessee's contractual obligations under the lease and shall guarantee:
 - (1) The annual lease payment;

- (2) The estimated development cost of improvements; and
- (3) Any additional amount necessary to ensure compliance with the lease.
- (b) The Tribe may waive the bond requirement, or reduce the amount, if doing so is in the Best Interests of the Tribe. The Tribe shall maintain written records of the waivers and reductions.
- (c) The performance bond may be in one of the following forms:
 - (1) Certificates of deposit issued by a federally insured financial institution authorized to do business in the United States;
 - (2) Irrevocable letters of credit issued by a federally insured financial institution authorized to do business in the United States;
 - (3) Negotiable Treasury securities; or
 - (4) A surety bond issued by a company approved by the U.S. Department of the Treasury.

Section 17. Subleases, Assignments, Amendments, and Leasehold Mortgages

- (a) Subleases, assignments, amendments, or leasehold mortgages of any lease shall be by written consent of the Kiowa Legislature and lessee, unless otherwise provided herein.
- (b) The lease may authorize sub-leases and assignments, in whole or in part, without approval from the Tribe, provided a copy of the sublease or assignment is provided to the Tribe and the following conditions, where applicable, are met and stated in the lease:
 - (1) There is no event of default under the lease or this Code;
 - (2) Any restrictions and use limitations on the use of the premises shall continue to apply to any subtenant or assignee;
 - (3) The proposed assignee or sub lessee submits a current financial statement showing financial adequacy; and
 - (4) The lessee shall not be relieved or released from any of its obligations under the lease. This subsection in no way relieves the parties from carrying out their duties under the lease, which may contain additional restrictions and conditions.
- (c) The lease may authorize mortgages of the leasehold interest for the purpose of financing to develop and improve the premises subject to the approval of the Tribe.

The lease shall state the foreclosure law that shall apply in the event of default and foreclosure.

- (d) If a sale or foreclosure of the lessee's business or assets occurs and the leasehold mortgagee is also the purchaser, the leasehold mortgagee may assign the lease without approval of the Tribe or lessee, provided the assignee agrees in writing to be bound by all the terms and conditions of the lease. If the purchaser is a party other than the leasehold mortgagee, approval by the Tribe is required and the purchaser shall agree in writing to be bound by all terms and conditions of the lease.

Section 18. Supporting Documentation for Kiowa Legislature Review

To be considered for authorization by the Kiowa Legislature, the following documentation shall be produced in support of a lease:

- (a) A draft lease that contains the minimum provisions identified in Section 2 of this Chapter; if the lease is for agricultural purposes, the terms set forth in Section 4 of this Chapter; if it is a WEEL, the terms set forth in Section 5 of this Chapter; and, if the lease is for WSR purposes, the terms set forth in Section 6 of this Chapter.
- (b) Plans of development and construction schedules as required by Sections 5, 6, and 12 of this Chapter, and applicable Tribal law;
- (c) Reports, surveys, and site assessments needed to facilitate compliance with the environmental review as required by Chapter IV, Section 4 of this Code and applicable Tribal law;
- (d) Evidence of insurability covering the scope of necessary insurance under Section 15 of this Chapter;
- (e) An appraisal log reporting the methods of appraisal used and value as required by Section 14 of this Chapter, unless Fair Market Lease Value payments shall be waived by the Band; and
- (f) Any reasonable additional documentation the Land Management Commission deems relevant to the Kiowa Legislature's review.

Section 19. Lease Approvals

- (a) All leases, amendments, assignments, subleases, and leasehold mortgages under this Code shall be approved by a resolution of the Kiowa Legislature;
- (b) Leases shall be signed by the Secretary of the Kiowa Legislature; and
- (c) Leases shall be signed by the lessee.

Section 20. Recording of Leases

- (a) All leases and lease documents shall be recorded in the Tribe's land recording system, which is maintained by the Land Management Commission; and
- (b) All leases and lease documents, except residential subleases approved pursuant to this Code, shall be provided to the Bureau of Indian Affairs for recording in the LTRO.

CHAPTER IV

Environmental Reviews

Section 1. Environmental Review Required

- (a) Unless a lease is exempt from the environmental review process under Section 2 of this Chapter, the Tribe shall not approve a lease until the environmental review process pursuant to this Chapter has been completed with respect to the lease. Leases approved and executed without compliance with this Chapter shall be invalid and *void ab initio*.
- (b) The Environmental Department shall be responsible for making threshold determinations under this Chapter and for conducting the environmental review process. The Environmental Department may charge a reasonable fee for conducting the environmental review process.

Section 2. Threshold Determination

- (a) If the Environmental Department determines that the lease approval by its nature would not have a Significant Effect on the Environment, the leasing decision is exempt from additional requirements of the environmental review process in Sections 4 through 6 of this Chapter.
- (b) If the Environmental Department determines that the lease approval might be expected to have a Significant Effect on the Environment in accordance with Section 3 of this Chapter, the Environmental Department shall fulfill the requirements of the environmental review process.

Section 3. Categorical Exclusions

- (a) The following types of leases do not individually or cumulatively have a significant effect on the environment and therefore, except as provided in Subsection (b) of this Section, are categorically excluded from the environmental review process in Sections 4 through 6 of this Chapter.
 - (1) Approval of a lease for residential use of an existing housing unit, including any associated improvements, access roads and utilities.

- (b) Notwithstanding Subsection (a) of this Section, the Environmental Department shall follow the procedures set forth in Sections 4 through 6 of this Chapter if it determines that extraordinary circumstances exist under which the residential use of the premises may, individually or cumulatively, have a Significant Effect on the Environment, including without limitation, as set forth below:
 - (1) Substantial controversy on environmental grounds; or
 - (2) Presence of cultural resources or historic properties.

Section 4. Environmental Review Process

- (a) Unless a lease is exempt from the environmental review process, the Environmental Department shall cause to be prepared before the approval of the lease a comprehensive and adequate tribal environmental report, analyzing the potentially significant effects of the proposed action on the environment; provided, however, that information or data which is relevant to such a report and is a matter of public record or is otherwise publicly available need not be repeated in its entirety in the report, but may be specifically cited as the source for conclusions stated therein; and provided further that such information or data shall be briefly described, that its relationship to the report shall be indicated, and that the source thereof shall be reasonably available for inspection at a public place or public building. The report shall provide detailed information about the Significant Effects on the Environment that the lease is likely to have, and shall include a detailed statement setting forth all of the following:
 - (1) A description of the physical environmental conditions in the vicinity of the proposed lease, including the environmental setting and existing baseline conditions, as they exist at the time the notice of preparation is issued;
 - (2) All Significant Effects on the Environment of the proposed lease;
 - (3) In a separate section:
 - (A) Any Significant Effect on the Environment that cannot be avoided if the lease is executed; and
 - (B) Any Significant Effect on the Environment that would be irreversible if the lease is executed; and
 - (C) Any mitigation measures or restoration and reclamation plan proposed, recommended, or required.
- (b) In addition to the information required pursuant to Subsection (a) of this Section, the tribal environmental report shall also contain a statement indicating the reasons for determining that various effects of the proposed lease on the off-reservation environment are not significant and consequently have not been discussed in detail

in the report. In the report, the direct and indirect Significant Effects on the Environment shall be clearly identified and described, giving due consideration to both the short-term and long-term effects.

Section 5. Notice of Completion

- (a) Within no less than thirty (30) days following the completion of a draft tribal environmental report, the Environmental Department shall post a notice of completion and a copy of the draft report on the Tribe's website or at a prominent location at the Tribal Office or Environmental Department. The notice of completion shall include all of the following information:
- (1) A brief description of the proposed lease and lease-related activities, such as any anticipated improvements;
 - (2) The location of the proposed lease;
 - (3) An address where copies of the draft report are available; and
 - (4) Notice of a period of thirty (30) days during which the Environmental Department shall receive comments on the draft report.
- (b) In addition, the Environmental Department shall provide public notice by ~~at least one of~~ the procedures specified below:
- (1) Publication of the Notice of the draft report in a ~~newspaper of general circulation~~ publicly accessible website in the area affected by the proposed lease, with notice to the public of the opportunity to comment on any Significant Effect on the Environment of the proposed action.
 - (2) Posting of the Notice of the draft report in the offices of the Tribe and on a publicly accessible Tribal website with notice to the public of the opportunity to comment on any Significant Effect on the Environment of the proposed action.

Section 6. Response to Public Comments and Final Report

After the thirty (30) day comment period has ended, the Environmental Department shall review all comments received from the public. Prior to the approval and execution of the lease, the Environmental Department shall provide written responses to relevant and substantive public comments on any Significant Effects on the Environment arising as a result of the proposed lease and proposed or recommended mitigation measures addressing any such effects. The Environmental Department shall also prepare a final tribal environmental report. The Environmental Department's written responses shall be posted in the offices of the Tribe with a notice to the ~~public~~ Public in the same manner as outlined in Section 5 of this Chapter.

CHAPTER V

ENFORCEMENT

Section 1. General Enforcement Authority & Lease Compliance Monitoring

- (a) The Tribe and Secretary shall have all powers necessary to enforce the lease terms, laws, ordinances, regulations, rules, policies, and covenants consistent with this Code. This includes the power to enter the leased premises at a reasonable time after providing reasonable notice.
- (b) The Environmental Department is responsible for monitoring lease compliance and for recommending lease enforcement actions consistent with this Code.
- (c) Nothing in this Chapter precludes the Tribe or a lessee or sublessee from terminating a lease without regard to any default if the terms of the lease so provide.
- (d) In addition to enforcement actions provided for in this Chapter, the BIA may, upon reasonable notice from the Tribe, enforce the provisions of, or cancel a lease document.

Section 2. Jurisdiction of the Tribal Court

The Kiowa Tribal Court and or Secretary of Interior shall have exclusive jurisdiction over enforcement actions brought under Section 3 of this Chapter.

Section 3. Commencement of an Action

If the Tribe believes a lessee to be in default, the Tribe may commence an enforcement action by filing a complaint under the Tribe's Rules of Civil Procedure. The complaint shall state the facts forming the basis of the default, the relief sought, and shall include a description of the leased premises at issue. The Tribe may be represented by an attorney or an authorized Environmental Department Employee.

Section 4. Notice of Hearing

After a complaint is filed, the Tribal Court shall schedule a hearing and issue a notice of hearing to the Tribe and the lessee. The hearing shall be held within fifteen (15) days of the date the complaint is filed.

Section 5. Service of the Complaint and Notice of Hearing

- (a) The Tribe shall serve the complaint and notice of hearing upon the lessee at least three (3) business days before the hearing date. Service shall be completed as follows:
 - (1) By personal service of the complaint and notice of hearing on any lessee; or
 - (2) By mailing the complaint and notice of hearing to the address identified by the lessee or lessees pursuant to Chapter 3, Section 2(ydd).

- (b) The Tribe shall complete an affidavit of service and file the affidavit with the Tribal Court.

Section 6. Answer by the Lessee

The lessee shall be exempt from the requirement in the Rules of Civil Procedure to file an answer. Unless the lessee affirmatively admits an allegation, the lessee shall be presumed to have denied all allegations in the Complaint. The hearing shall not be delayed in order to give the lessee time to file an answer.

Section 7. Burden of Proof

At the trial, the Tribe shall have the burden of establishing by a preponderance of the evidence at least one of the grounds for a default listed in Section 8 of this Chapter. The lessee shall have the right to present evidence and testimony to defend against the Complaint.

Section 8. Finding of Default

The lessee is in default if:

- (a) The lessee has failed to make rent payments or other payments required by the lease, provided that the lessee has been given notice of the violation and has failed to make the required payments within thirty (30) days after receiving notice; or
- (b) The lessee is otherwise in breach of the terms of the lease or any other requirements of this Code.

Section 9. Remedies

Upon a finding of default, and upon request of the Tribe, the Tribal Court may:

- (a) cancel the lease;
- (b) assess any damages resulting from the default, including interest and late payment penalties;
- (c) within the Court's reasonable discretion, determine whether to grant the lessee additional time to diligently proceed to complete the necessary corrective actions to cure the lease violations within a specified or reasonable time period;
- (d) grant other appropriate remedies, including execution on bonds, collection of insurance proceeds, specific performance, or negotiated remedies; or
- (e) order any combination of the remedies listed in this Section 9.

Section 10. Penalties

Unless the lease provides otherwise, the interest charges and late payment penalties prescribed by the lease shall apply in the absence of any specific notice to the lessee from the Tribe, and the failure to pay such amount shall constitute a breach of the lease.

Section 11. Order and Judgment

Within thirty (30) days after the hearing, the Tribal Court shall issue an order and judgment containing the following:

- (a) Findings of fact;
- (b) If lease cancellation was requested, an order granting the lease cancellation effective immediately or a statement that a ground for lease cancellation was not established;
- (c) If damages were requested, an order establishing the damages owed by the lessee or a statement that damages were not established; and
- (d) Any additional orders or conclusions with respect to the claims raised, remedies requested, defenses proffered, or any other subject matter relevant to ruling on the allegations in the Complaint.

Section 12. Reopening of Judgment and Appeal Rights

- (a) An aggrieved party may file for a judgment to be reopened in accordance with the Tribe's Rules of Civil Procedure.
- (b) A judgment may be appealed in accordance with the laws of the Kiowa Tribe.
- (c) The filing to reopen a judgment or of an appeal shall not prevent the enforcement of the judgment of the Tribal Court, unless the Tribal Court, on its own motion or that of the party, finds good cause to stay enforcement of the judgement pending the appeal or reopening of the judgment.
- (d) No later than ten (10) days after entry of the order and judgment, an aggrieved party may move the Tribal Court to amend the findings of fact or conclusions, make additional findings of fact or conclusions, and amend the judgment accordingly. The movant shall provide support for the request. If the Court denies the motion, the order and judgment shall be final. If the Court grants the motion, the amended order and judgment shall be final.

Section 13. Repossession of Property

Immediately upon cancellation of a lease by Court order and judgment, the Tribe may take possession of the leased premises, unless otherwise provided for by the order and judgment.

Personal property shall be disposed of in accordance with the lease and applicable policies. Any Property Exemption for Execution under the Tribe's Rules of Civil Procedure shall not be a defense to execution of the judgment and repossession of property under this Code.

Section 14. Lease Trespass

A lease trespass occurs when:

- (a) an individual or entity takes possession of, or uses, Tribal trust land without a lease and a lease is required under this Code; or
- (b) a lessee remains in possession of Tribal trust land after the expiration, termination, or cancellation of a lease.

Section 15. Trespass Enforcement Actions

In the event of a lease trespass under Section 14 of this Chapter, the Tribe may:

- (a) bring an action in Tribal Court to recover possession and/or damages, including through an eviction action, and may pursue any additional remedies available under Tribal law (except as otherwise prohibited by federal law);
- (b) contact the BIA office with jurisdiction over the Tribal trust lands and request that the office take enforcement action on behalf of the Tribe; or
- (c) pursue any other available remedies.

Section 16. Recording of Lease Cancellations and Terminations

- (a) All lease cancellations or terminations shall be recorded in the Tribe's land recording system, which is maintained by the Tribe's Land Management Commission;
- (b) All lease cancellations or terminations shall be provided to the BIA for recording.