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CHAPTER ONE PURPOSE

I. Purpose:

The purpose of this ordinance is to avail the Chippewa Cree Tribe and its members of financing for the construction, purchase or improvement of family residences on trust land within the jurisdiction of the Rocky Boy's Reservation by prescribing procedures for the recording, priority sale and foreclosure of leasehold mortgages given to secure loans made by mortgage lenders such as banks, savings and loan associations and mortgage companies and government agencies such as ... (VA, HUD, FmHA, etc.).

CHAPTER TWO DEFINITIONS

I. Definitions:

- A. Lease shall mean the assignment of a right of possession and occupancy inlands including trust property for which a Leasehold Mortgage, as defined in this document, has or will be given.
- B. Leasehold Mortgage shall mean the pledging of lessee's rights in property defined in a lease including trust property for purposes of securing a loan for the purchase, construction or improvement of family residence.
- C. Leasehold Mortgage Foreclosure Proceeding shall mean a proceeding in the Tribal Court;
1. To consider a petition to foreclose the interest of the Mortgagor(s) and each person or entity claiming through the Mortgagor(s) in a lease for which mortgage has been given and as security on a loan based upon claim by petitioner that the mortgagor has defaulted on the loan.
 2. To assign lease(s) to the originator of the loan and/or his successors in interest.
- D. Lessor shall mean the owner of real property including the beneficial or equitable owner of trust or otherwise restricted property under a lease for which a Mortgage, as defined in this document, has been given, or the heir(s), successor(s), executor(s) administrator(s), or assign(s) of the mortgages. The Mortgagor may be a tribe or the member of a tribe.
- E. Mortgagor shall mean the individual who has taken a mortgage loan on property and who has executed a Leasehold Mortgage as defined in this document, including any heir(s), successor(s), executor(s) administrator(s) or assignee(s) of the mortgage. The Mortgagor may be a tribe or a member of a tribe.

- F. Mortgagee shall mean the mortgagee under any Leasehold Mortgage as defined in this document or the successor(s) in interest of any such mortgages, including the lawful representative of any government agency authorized to make mortgage loans as defined in this document, or the representative's assignee under any such mortgage.
- G. Nuisance shall mean the maintenance of real property in condition which:
1. Unreasonably threatens the health or safety of the public or neighboring land users; or
 2. Unreasonably and substantially interferes with the ability of neighboring property users to enjoy the reasonable use and occupancy of their property.
- H. Secretary shall mean the secretary of the United States Department of Veteran Affairs (VA) or designee.
- I. Subordinate Lien holder shall mean the holder of any lien, including a subsequent mortgage, perfected subsequent to the recording of a leasehold Mortgage under this document (except the Tribe with respect to a claim for a tribal leasehold tax).
- J. Tenant shall mean any person who occupies real property under a lease, rental agreement or other agreement with a lessor as defined in this document.
- K. Tribal Court shall mean the Tribal Court as established by the laws of this tribe or such body as may now or hereafter be authorized by the law of the Tribe to exercise the powers and functions of a court of law.
- L. Tribal Recording Clerk shall mean the person designated by the Tribe to perform the recording functions required by this document or any deputy or designee or such person.
- M. Tribe shall refer to the Chippewa Cree Tribe, Rocky Boy's Indian Reservation as defined in the Tribal Constitution.
- N. Unlawful Detainer Action shall be a suit brought before the Tribal Court to terminate a tenant's interest in real property and/or to evict any person from occupancy or real property.
- O. Waste is spoiled or destruction by a tenant of land, buildings, gardens, trees or other improvements which result in substantial injury to the lessor's interest in the property.
- P. Writ of Restitution us an Order of the Tribal Court;
1. Restoring an owner of lessor to possession of real property and,

2. Evicting tenant or other occupant there from.

CHAPTER THREE PRIORITY

I. Priority:

A leasehold Mortgage recorded in accordance with the recording procedures set forth in this Title shall have priority over any lien not recorded at the time of such recording and any subsequent lien or claim excepting a lien or claim arising from a tribal leasehold tax assessed after the recording of the mortgage. Nothing in this document shall prevent any person or entity from recording a leasehold mortgage in accordance with State law or from filing a leasehold mortgage with the Bureau of Indian Affairs.

CHAPTER FOUR RECORDING

I. Recording:

- A. The Tribal Recording Clerk shall maintain in the Tribal Court a system for the recording or leasehold mortgage and such other documents as the Tribe may designate by law or resolution.
- B. The Tribal Recording Clerk shall endorse upon any Leasehold Mortgage or other received for recording;
 1. The date and time of receipt of the leasehold mortgage or other document;
 2. The filing number, to be assigned by the Tribal Recording Clerk, which shall be a unique number for each Leasehold Mortgage or other document received; and,
 3. The name of the Tribal Recording Clerk receiving the Leasehold Mortgage or document.
- C. The Tribal Recording Clerk shall maintain the copy in the record of the recording system and shall return the original of the leasehold Mortgage or other documents to the person or entity that presented the same for recording.
- D. The Tribal Recording Clerk shall also maintain a log of each Leasehold Mortgage or other document recorded in which there shall be entered:
 1. The name(s) of the Mortgagor(s) of each Leasehold Mortgage, identified as such;

2. The name(s) of the Mortgagee(s) of each Leasehold Mortgage, identified as such;
 3. The name(s) of the grantor(s), grantee(s), or other designation of each party named in any other documents;
 4. The date and time of receipt;
 5. The filing number assigned by the Tribal Recording Clerk; and
 6. The name of the Tribal Recording Clerk receiving the Leasehold Mortgage or document.
- E. The certified copies of the Leasehold Mortgage and other documents and the log maintained by the Tribal Recording Clerk shall be made available for public inspection and copying.

CHAPTER FIVE

LEASEHOLD MORTGAGE FORECLOSING PROCEEDINGS

I. Leasehold Mortgage Foreclosing Proceedings:

Upon the default of the Mortgagor(s) under a Leasehold Mortgage, the mortgagee may commence a Leasehold Mortgage foreclosure proceeding in the Tribal Court by filing;

A. A verified complaint

1. Naming the Mortgagor(s) and each person or entity claiming through the Mortgagor(s) subsequent to the recording of the Leasehold Mortgage, including each Subordinate Lien holder (except the Tribe with respect to a claim for a tribal leasehold tax), as a defendant;
2. Describing the property
3. Stating the facts concerning the execution of the Lease and the Leasehold Mortgage; the facts concerning the recording of the Leasehold Mortgage; the facts concerning the alleged default(s) of the Mortgagor(s); and such other facts as may be necessary to constitute a cause of action.
4. Having appended as Exhibits true and correct copies of each Promissory Note, Lease, Leasehold Mortgage, or assignment thereof relating to the property; and;
5. Including an allegation that all relevant requirements and conditions prescribed in [(i) Title 38 U.S.C. 3761 et. Seq., (ii) the regulations

promulgated there under by the Secretary an (iii) the provisions of] the Lease, have been complaint on a date and time specified in the Summons.

CHAPTER SIX SERVICE OF PROCESS AND PROCEDURES

I. Service of Process and Procedures:

The law of the Tribe governing service process and all other matters relating to the conduct of Tribal Court proceedings shall apply to any Leasehold Mortgage Foreclosure Proceeding pursuant to this ordinance.

CHAPTER SEVEN CURE OF DEFAULT BY SUBORDINATE LIEN HOLDER

I. Cure of Default by Subordinate Lien holder:

Prior to the entry of a judgment of foreclosure, any Mortgagor or any Subordinate Lien holder may cure the default(s) under the Leasehold Mortgage. Any subordinate Lien holder who has cured a default shall thereafter have included in its lien the amount of all payments made by such Subordinate Lien holder to cure the default(s), plus interest on such amounts at the rate stated in the Leasehold Mortgage.

CHAPTER EIGHT POWER OF THE TRIBAL COURT

I. Power of the Tribal Court:

If the alleged default(s) have not been cured, and if the Tribal Court should find for the mortgagee, the Tribal Court shall enter judgment:

- A. Foreclosing the interest in the Lease of the Mortgagor(s) and each other defendant named in the Complaint upon whom proper and timely service has been made; including each such Subordinate Lien holder; and
- B. Assigning such lease to the mortgagee or the mortgagee assigned.
- C. Eviction Procedures

CHAPTER NINE JURISDICTION

- I. **Jurisdiction:** The provisions of this section shall apply to all persons and property subject to the governing authority of the Tribe as established by the Tribal Constitution and Bylaws.

II. Definitions:

The definitions provided in the sections of Leasehold Mortgages apply to this section as well.

III. Unlawful Detainer:

The tenant or other occupier of land shall be guilty of unlawful detainer if such person shall continue in occupancy of real property under any of the following situations:

A. Without the requirement of any notice;

1. After the expiration of the term of the lease or other agreement; or
2. If such person has entered onto or remains on the real property of another without the permission of the owner and without having any substantial claim of a lease or title of the property; or
3. After the Indian Housing Authority has terminated such person's tenancy pursuant to procedures providing such person a hearing before the Housing Authority involved; or
4. After the interest of such person in a lease has been foreclosed in a leasehold mortgage foreclosure proceeding in the Tribal Court.

B. After having received 30 days notice, the tenant or other occupier of land shall remain in possession of the property contrary to the terms of the notice as follows:

1. When a person has received notice
 - a. that he or she is in default in the payment of rent; and
 - b. requiring him or her, to either pay the rent or surrender possession of the occupied property; and such person has remained in possession after receipt of such notice without either surrendering possession of the property or paying the rent; or
2. When the lease of the property is for an indefinite time, when rent to be paid monthly or some other time period, and the lessor has given notice of termination of the tenancy at least 30 days prior to the end of such month or other time period; or
3. When such person shall continue to fail to keep or perform any conditions or covenant of the lease or Agreement under which the property is held after he has been given notice of such failures and the requirement to surrender the property based on such failures; or

4. When such person continues to commit or to permit waste or maintain a nuisance upon the property after having been given notice, to either cease such waste or maintenance or nuisance or to surrender the property.

IV. Procedures for Service of Notice:

Notices required or authorized shall be given in writing by either:

- A. Delivering a copy personally to the tenant or occupier or to any adult member of his or her family residing on the premises; or
- B. Posting said notice in a conspicuous place near the entrance to said premises, and by sending additional copy to the tenant or occupier by certified mail, return receipt requested, properly addressed, postage prepaid.
- C. Proof of service by either of the above methods may be made by affidavit of any adult person stating that he or she has complied fully with the requirements of either of these two (2) methods of service.

V. Complaint and Summons:

The owner of real property or lessor or Secretary shall commence an action for unlawful detainer by filing with the Court in writing, the following documents:

- A. A complaint, signed by the owner, lessor, the Secretary, an agent, or attorney, stating:
 1. The facts on which he or she seeks to recover.
 2. Describing the property so that it can be identified with reasonable certainty; and
 3. Any claim for damages or compensation due from the persons to be evicted;
- B. A summons, issued as in other cases, requiring the defendants to appear for trial upon the complaint on a date and time specified in the summons. The trial date specified in the summons shall not be less than 6 nor more than 30 days from the date of service of the Summons and Complaint. The Summons must notify the defendant that judgment will be taken against them in accordance with the terms of the Complaint unless they file with the court an Answer and appear for trial at the time, date, and place specified in the Summons.

VI. Service of Summons and Complaint:

A copy of the Summons and Complaint shall be served upon the defendants in the matter provided by the Tribal Court rules for service of process in civil matters. In the absence of

such Tribal Court rules, the summons and Complaint shall be served by one of the two methods authorized in the section on procedures for service notice above.

VII. Power of the Tribal Court:

The Tribal Court shall enter a Writ of Restitution if:

- A. Notice of suit and trial is given by service of Summons and Complaint in accordance with the procedures provided in the document; and
- B. The Tribal Court shall find that the occupier of the real property has committed an act of unlawful detainer.
- C. Upon issuance of a Writ of Restitution, the Tribal Court shall have the authority to enter against the defendants a judgment for the following: back rent, unpaid utilities, charges due the Tribe, Indian Housing Authority, or land owner under any lease or occupancy agreement (not including a leasehold mortgage); And for damages caused by the defendants to the property other than ordinary wear and tear. The Tribal Court shall have the authority to award to the prevailing party costs and reasonable attorney's fees in bringing suit.

VIII. Continuance in Cases Involving the Secretary:

Except by agreement of all parties, there shall be no continuance which will interfere with the requirements that the Writ of Restitution be enforced no later than 60 days from the date of service if the Summons and Complaint.

IX. Enforcement:

Upon issuance of a Writ of Restitution by the Tribal Court, Tribal Law enforcement officers shall enforce the Writ of Restitution by evicting the defendants and their property from the premises which are unlawfully occupied. [In all cases involving the Secretary] the Writ of Restitution shall be enforced no later than 60 days after the date of service of the Summons and Complaint.

X. Alternate Remedies:

- A. In those cases in which the persons of property are subject to the jurisdiction of the courts of the State of Montana, or of the United States, the remedies and procedures provided by this document are in the alternative to the remedies and procedures provided by the laws of the State of Montana, or of the United States.
- B. Upon completion of the above endorsement, the Tribal Recording Clerk shall make a true and correct copy of the Leasehold Mortgage or other document and shall certify the copy as follows: