

**TITLE XVII**  
**CHOCTAW HOUSING AND BUILDING CODE**

<b>CHAPTER 1.</b>		
<b>GENERAL HOUSING PROVISIONS.....</b>		<b>4</b>
§17-1-1	Applicability .....	4
§17-1-2	Relation to Other Laws .....	4
§17-1-3	Purposes and Interpretation.....	5
§17-1-4	Definitions .....	5
<b>CHAPTER 2.</b>		
<b>LEASEHOLD MORTGAGES AND FORECLOSURES.....</b>		<b>9</b>
§17-2-1	Priority .....	9
§17-2-2	Recording.....	9
§17-2-3	Leasehold Mortgage Foreclosure Proceedings .....	10
§17-2-4	Service of Process and Procedures.....	11
§17-2-5	Cure of Default by Subordinate Lienholder .....	11
§17-2-6	Power of the Tribal Court .....	11
§17-2-7	Foreclosure Evictions.....	11
§17-2-8	Appeals .....	13
§17-2-9	Sample Residential Homebuyer Lease.....	13
<b>CHAPTER 3.</b>		
<b>VETERANS' NATIVE AMERICAN DIRECT LOAN PROGRAM .....</b>		<b>18</b>
§17-3-1	Purpose .....	18
§17-3-2	Definitions .....	18
§17-3-3	Priority .....	19
§17-3-4	Recording.....	19
§17-3-5	Leasehold Mortgage Foreclosure Proceedings .....	21
§17-3-6	Service of Process and Procedures.....	21
§17-3-7	Cure of Default by Subordinate Lienholder .....	21
§17-3-8	Power of the Tribal Court .....	22
§17-3-9	Evictions: Unlawful Detainer.....	22
§17-3-10	Evictions: Service of Notice .....	23
§17-3-11	Evictions: Complaint and Summons.....	23
§17-3-12	Evictions: Service of Summons and Complaint.....	24
§17-3-13	Evictions: Power of the Tribal Court.....	24
§17-3-14	Continuances in Cases Involving the Secretary .....	24
§17-3-15	Enforcement.....	24
§17-3-16	Alternative Remedies.....	24
§17-3-17	Form of Lease .....	24
§17-3-18	Amendment.....	28
<b>CHAPTER 4.</b>		
<b>CHOCTAW BUILDING CODE.....</b>		<b>29</b>
§17-4-1	Purpose .....	29
§17-4-2	Findings .....	29
§17-4-3	Applicability .....	29
§17-4-4	Definitions .....	29
§17-4-5	Adoption of International Building and Residential Codes .....	30
§17-4-6	General Provisions Related to Codes Incorporated by Reference.....	30
§17-4-7	Amendments to International Building Code .....	31
§17-4-8	Amendments to International Residential Code.....	32
§17-4-9	Requirement that Contractor Be Licensed When Valuation Exceeds \$50,000.....	32
§17-4-10	Violation and Civil Penalties .....	32
§17-4-11	Administrative and Judicial Appeals .....	33

§17-4-12	Administrative Appeal Process.....	33
§17-4-13	Judicial Appeal Process .....	33
§17-4-14	Severability .....	33
§17-4-15	Waiver of Building Code Compliance by Resident.....	34

## CHAPTER 1. GENERAL HOUSING PROVISIONS

### §17-1-1      **Applicability**

This title shall apply to any and all arrangements, formal or informal, written or agreed to orally or by the practice of the parties, in selling, buying, renting, leasing, occupying, or using any and all housing, dwellings or accommodations for human occupation and residence.

- (1) Jurisdiction is extended over all buildings and lands intended for human dwelling occupation or residence which may lie within:
  - (a) the exterior boundaries of the Choctaw Indian Reservation;
  - (b) lands owned by, held in trust for, leased or used by the Tribe, its Housing Authority or any other entity of the Tribe; or
  - (c) the Indian Country of the Tribe, as may be defined from time to time by the laws of the Tribe or the United States.
- (2) Jurisdiction is extended over all person or entities within the jurisdiction of the Tribe who sell, rent, lease or allow persons to occupy housing, dwellings or accommodations for the purpose of human dwelling occupation or residence, and all persons who buy, rent, lease or occupy such structures. Such personal jurisdiction is extended over all persons and entities, whether or not they are members of the Tribe, whether they are Indian or non-Indian and whether they have a place of business within the Choctaw Indian Reservation. Any act within the Reservation dealing with the subject matter of this title shall be subject to the jurisdiction of the Tribe.
- (3) Jurisdiction over all matters arising within the jurisdiction of the Tribe with respect to the subjects of this title and jurisdiction with respect to any person or entity acting or causing actions which are within this title shall be exercised by the Tribal Court of the Mississippi Band of Choctaw Indians.

### §17-1-2      **Relation to Other Laws**

- (1) Statutes, Regulations and Agreements with the United States: This title shall not be interpreted in such a way as to conflict with statutes, regulations or other laws of the United States, or agreements with the United States, which are specifically applicable to the subjects of this title. Where a conflict may appear between this title, any such provision, such statute, regulation or agreement of the United States shall govern if it has specific application and if it is clearly in conflict with the provisions of this title.
- (2) State Statutes and Laws: To the extent to which the laws of the State of Mississippi may have been made applicable to the Choctaw Indian Reservation, if there is a conflict between such laws and the provisions of this title, this title shall govern and shall preempt the application of such laws. To the extent that the laws of the State of Mississippi or those of any other state may be applicable to the subject matter of this title, such laws shall be read to be advisory and not directly binding, but shall not govern the relations of the parties.

- (3) Other Tribal Laws: To the extent that this title may conflict with Tribal laws or ordinances which have been enacted to comply with statutes or regulations of any agency of the United States, such Tribal laws or ordinances will govern over the provisions of this title.
- (4) Other Principles of Law: Unless affected or displaced by this title, principles of law and equity in the unwritten common law of the Tribe are applicable, and the general principles of law of the State of Mississippi or any other state may be used to supplement and interpret this title.

### **§17-1-3 Purposes and Interpretation**

This title shall be liberally construed and applied to carry out its purposes and intent, and it shall:

- (1) simplify, clarify, modernize and revise the law governing the occupation of dwelling units and accommodations, as well as the rights, obligations and remedies of the owners, sellers, lessors, landlords, lessees, tenants and occupiers of such structures;
- (2) preserve the peace, harmony and safety of the people of the Tribe and those permitted to enter or reside on the Choctaw Indian Reservation; and
- (3) avail the Mississippi Band of Choctaw Indians, Tribal entities and Tribal members of financing for the construction and/or purchase of family residences on trust land within the jurisdiction of the Mississippi Band of Choctaw Indians by prescribing procedures for the recording, priority and foreclosure of leasehold mortgages given to secure loans made by any federal agency.

The following arrangements are not governed by this title:

- (a) residence at an institution, public or private, if incidental to detention or the provision of medical, geriatric, educational, counseling, religious, or similar service; or
- (b) transient occupancy in a hotel, motel, or other commercial lodging.

### **§17-1-4 Definitions**

As used in this title, the following words will have the meanings given them in this section:

- (1) “Action, suit or lawsuit, claim, complaint or defense” means and shall include any dispute between persons or entities which relates to the sale, rental, use or occupancy of any housing, dwelling or accommodation for human occupancy, including claims for the payment of monies for such housing, dwellings or accommodations, damages to such units, condition of such units or the relationships between owners and occupiers of such units, including the right to occupy them.
- (2) “Building or housing code” means any law, ordinance or governmental regulation of the Tribe or an agency of the United States which deals with fitness of habitation, health conditions or the safety, construction, maintenance, operation, occupancy, use or

appearance of any dwelling unit. Where appropriate to the situation, standard or recognized building standards or codes may be applied as building or housing codes.

- (3) “Dwelling or dwelling unit” means a structure that is used as a home, residence or sleeping place by any person who maintains a household and is not, for purposes of this title, any public transient accommodation, such as a hotel room.
- (4) “Indian” means any person recognized as being an Indian or Alaska Native by any federally-recognized Tribe or by the government of the United States because of his status as an Indian.
- (5) “Indian Country,” the “territorial jurisdiction,” or the “jurisdiction” of the Tribe means and shall include all lands owned by, held in trust for, leased, occupied or otherwise controlled by the Mississippi Band of Choctaw Indians, as well as any such ownership or used by an entity of the Tribe and those terms shall include any and all areas which may constitute the “Indian Country” of the Tribe under applicable provisions of its laws or the laws of the United States.
- (6) “Housing Authority” means the Choctaw Housing Authority, established by revised Tribal Ordinance No. 1 for the purpose of constructing and maintaining dwellings for public use within the territorial jurisdiction of the Tribe.
- (7) “Lease” means the lease of trust property, subject to Chapter 3 of this title, for which a qualified Leasehold Mortgage, as defined in this document, has at the same time been given.
- (8) “Leasehold Mortgage” means the mortgage of a lease of trust property given to secure a loan made under the auspices of any federal agency homebuyer program except for purchase arrangements under the Mutual Help Home Ownership program administered by the Housing Authority.
- (9) “Leasehold Mortgage Foreclosure Proceeding” is a proceeding in the Tribal Court:
  - (a) to foreclose the interest of the Mortgagor(s), and each person or entity claiming through the Mortgagor(s), in a lease for which a mortgage has been given under the home purchase program of any federal agency; and
  - (b) to assign such lease to the Secretary or the Secretary’s assignee.
- (10) “Lessor” means 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 Tribe or such Indian(s).
- (11) “Lessee” means the homebuyer under any federal mortgage program (but not the Mutual Help Program, under which the homebuyer is considered a tenant). The Lessee may, for purposes of federal agency home mortgage programs, be the Housing Authority.
- (12) “Mortgage” means a first lien as is commonly given to secure advances on, or the unpaid purchase price of real estate 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.

- (13) “Mortgagee” means the mortgagee (usually, a commercial bank) under any leasehold mortgage as defined in this document or the successor(s) in interest of any such mortgagee, including the Secretary, as defined in this document or the Secretary’s assignee under any such mortgage.
- (14) “Nuisance” means the maintenance or allowance on real property of a condition which:
  - (a) unreasonably threatens the health or safety of the public or neighboring land users; or
  - (b) unreasonably and substantially interferes with the ability of neighboring property users to enjoy the reasonable use and occupancy of their property.
- (15) “Owner” means any person or entity jointly or individually having legal title to all or part of land or a dwelling, including the legal right to own, manage, use or control a dwelling unit under a mortgage, long-term lease or any other security arrangement.
- (16) “Person” means and includes an individual or organization, and where the meaning of a portion of this title requires, it means a public agency, corporation, partnership or any other entity recognized by the Tribe.
- (17) “Secretary” means the Secretary of the United States Department of Housing and Urban Development, an officer of the United States; but specifically does not include the Secretary of the Department of Veterans Affairs (with respect to Veteran’s Housing Program), or the Secretary of Agriculture (with respect to programs of the Farmers’ Home Administration.)<sup>72</sup>
- (18) “Subordinate Lienholder” means 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).
- (19) “Tribal Court” means the court as established by the laws of this Tribe or such body as may now or hereafter be authorized by the laws of the Tribe to exercise the powers and functions of a court of law.
- (20) “Tribal Recording Clerk” means the director of the Tribal Real Estate Program or such other person designated by the Chief to perform the recording functions required by this document or any deputy or designee of such person.
- (21) “Tribe” means the Mississippi Band of Choctaw Indians.
- (22) “Unlawful Detainer Action” means a suit brought before the Tribal Court to terminate a lessee’s interest in real property and/or to evict any person from occupancy of real property under a leasehold mortgage.
- (23) “Waste” means spoiling or destruction by a lessee of land, buildings, gardens, trees or other improvements which result in substantial injury to the lessor’s interest in the property.

- (24) “Writ of Restitution” means an order of the Tribal Court:
- (a) restoring an owner, lessor or the Secretary to possession of real property, and
  - (b) evicting a lessee or other occupant therefrom.



**CHAPTER 2. LEASEHOLD MORTGAGES AND FORECLOSURES**

**§17-2-1 Priority**

A Leasehold Mortgage recorded in accordance with the recording procedures set forth in this chapter, and including loans guaranteed or held by the Secretary, shall have priority over any lien not perfected at the time of such recording and any subsequent lien or claim except 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.

**§17-2-2 Recording**

- (1) The Tribal Recording Clerk shall maintain in the Tribal Real Estate Program a system for the recording of Leasehold Mortgages and such other documents as the Tribe may designate by laws or resolution.
- (2) The Tribal Recording Clerk shall endorse upon any Leasehold Mortgage or other document received for recording:
  - (a) the date and time of receipt of the Leasehold Mortgage or other document;
  - (b) 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
  - (c) the name of the Tribal Recording Clerk or designee receiving the Leasehold Mortgage or document.

Upon completion of the above-cited endorsements, 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:

Mississippi Band of Choctaw Indians) \_\_\_\_\_ )ss  
 Choctaw Indian Reservation )

I certify that this is a true and correct copy of a document received for recording this date.

Given under my hand and seal this \_\_\_\_ day of \_\_\_\_\_.

(SEAL) \_\_\_\_\_  
 (Signature)  
 \_\_\_\_\_  
 (Date)

The Tribal Recording Clerk shall maintain the copy in the records of the recording system, and shall return the original of the Leasehold Mortgage or other document to the person or entity that presented the same for recording.

- (3) The Tribal Recording Clerk shall also maintain a log of each Leasehold Mortgage or other document recorded in which there shall be entered:
  - (a) the name(s) of the Mortgagor(s) of each Leasehold Mortgage, identified as such;
  - (b) the name(s) of the Mortgagee(s) of each Leasehold Mortgage, identified as such;
  - (c) the name(s) of the grantor(s), grantee(s), or other designation of each party named in any other documents filed or recorded;
  - (d) the date and time of the receipt;
  - (e) the filing number assigned by the Tribal Recording Clerk; and
  - (f) the name of the Tribal Recording Clerk or designee receiving the Leasehold Mortgage or document.
- (4) The certified copies of the Leasehold Mortgages and other documents and the log maintained by the Tribal Recording Clerk shall be made available for public inspection and copying. Rules of copying shall be established and disseminated by the Recording Clerk.

### **§17-2-3 Leasehold Mortgage Foreclosure Proceedings**

- (1) Upon the default of the Mortgagor(s) under a Leasehold Mortgage, the Secretary or the mortgagee may commence a Leasehold Mortgage foreclosure proceeding in the Tribal Court by filing papers:
  - (a) 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 Lienholder (except the Tribe with respect to a claim for a Tribal leasehold tax), as a defendant;
  - (b) describing the property;
  - (c) 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;
  - (d) having appended as exhibits true and correct copies of each promissory note, Lease, Leasehold Mortgage or assignment thereof relating to the property; and
  - (e) including, if applicable, an allegation that all relevant requirements and conditions prescribed in:
    - (i) the statute authorizing the program of the appropriate federal agency;
    - (ii) the regulations promulgated there under by the Secretary; and

- (iii) the provisions of the Lease, have been complied with by the Secretary.
- (2) A summons, issued as in other cases, requiring the Mortgagor(s) and each other defendant to appear for a trial upon the complaint on a date and time specified in the summons.

**§17-2-4 Service of Process and Procedures**

Service of process shall be carried out in accordance with the procedures provided by the Tribal Court rules for service of process in civil matters.

**§17-2-5 Cure of Default by Subordinate Lienholder**

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

**§17-2-6 Power of the Tribal Court**

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

- (1) 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 Lienholder;
- (2) assigning such Lease to the Secretary or the Secretary's assignee; and
- (3) defining the deficiency judgment, if any, in dollars.

**§17-2-7 Foreclosure Evictions**

- (1) Unlawful Detainer: A Lessee 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:
    - (i) after the expiration of the term of the lease or other agreement;
    - (ii) 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;
    - (iii) after the Housing Authority or other Public Housing Authority has terminated such person's tenancy pursuant to procedures providing such person a hearing before the housing authority involved; or

- (iv) 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 thirty (30) days' notice, the Lessee or occupier shall remain in possession of the property contrary to the terms of the notice as follows:
  - (i) when such person has received notice:
  - (ii) that he is in default in the mortgage payments;
  - (iii) requiring him to either pay 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;
  - (iv) when the lease of the property is for an indefinite time, with payments to be made monthly or by some other period, and the lessor has given notice of termination of the tenancy at least thirty (30) days prior to the end of such month or period;
  - (v) when such person shall continue to fail to keep or perform any condition or covenant of the lease or agreement under which the property is held after he has been given notice to surrender the property; or
  - (vi) when such person continues to commit or to permit waste upon or maintain a nuisance upon the occupied property after having been given notice, to either cease such waste or maintenance of nuisance or to surrender the property.
- (2) Complaint and Summons: The owner of real property, lessor or Secretary shall commence an action for unlawful detainer by filing with the court, in writing the following documents:
  - (a) a complaint; and
  - (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 six (6) nor more than thirty (30) days from the date of service of the summons and complaint. The summons must notify the defendants 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.
- (3) Service of Summons and Complaint: A copy of the summons and complaint shall be served upon the defendant(s) in the manner provided by the Tribal Court rules for service of process in civil matters.
- (4) 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 this document; and
- (b) the Tribal Court shall find that the occupier of the real property is guilty of an act of unlawful detainer.

Upon issuance of a Writ of Restitution, the Tribal Court shall have the authority to enter against the defendant(s) a judgment for the following: back payments, unpaid utilities, charges due the Tribe, Housing Authority or land owner under any lease or occupancy agreement 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 his costs and reasonable attorney's fees in bringing suit.

- (5) Continuances in Cases Involving the Secretary: Except by agreement of all parties, there shall be no continuances in the cases involving the Secretary, which will interfere with the requirement that the Writ of Restitution in a case involving the Secretary be enforced no later than sixty (60) days from the date of service of the summons and complaint.
- (6) 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 defendant(s) 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 sixty (60) days after the date of service of the summons and complaint.

**§17-2-8 Appeals**

Appeals under this chapter shall be handled in accordance with the Tribal Code.

**§17-2-9 Sample Residential Homebuyer Lease**

Homeownership leases under the auspices of an applicable federal agency program shall be made substantially in this form:

THIS LEASE, made and entered into between the Mississippi Band of Choctaw Indians, hereinafter designated as "Lessor" and \_\_\_\_\_, member(s) of the Mississippi Band of Choctaw Indians, who are purchasing a housing unit under the regulations of \_\_\_\_\_ and are residing upon the Choctaw Indian Reservation, hereinafter designated as "Lessee(s)."

WITNESSETH:

- 1. SECRETARIAL APPROVAL. As used in this Lease, the term "Secretary" means the Secretary of Interior or duly authorized representative. This Lease is subject to the approval of the Secretary pursuant to the Act of August 9, 1955, 69 Stat. 539, as amended, 25 U.S.C. 415.
- 2. PREMISES. Lessor, as authorized by law in accordance with the Tribal Ordinance No. 16-DD, hereby leases to the Lessee(s) all that tract or parcel of land situated on the Mississippi Choctaw Indian Reservation, further described as follows, to-wit:

3. USE OF PREMISES.
  - (a) The object of this Lease is to enable the Lessee(s) to construct, improve and/or maintain a dwelling and related structures on the leased premises, and otherwise to use said premises as a principal residence.
  - (b) In the event the appropriate federal agency denies a loan application to construct, improve and/or maintain a dwelling and related structures, the Lessor may, in its discretion, terminate the lease. Any termination invoked under this clause will be made in writing and served on the Lessee by certified mail and a copy provided to the Secretary of the Interior or duly authorized representative. This provision shall not be interpreted to change or alter any other term, condition or provision of this lease.
4. TERM. Lessee shall have and hold the premises for a term of twenty-five (25) years beginning on the effective date of this Lease. This Lease shall automatically and without notice renew for an additional term of twenty-five (25) years on the same terms and conditions contained herein. This Lease may not be terminated by either or both parties during its initial or renewal term if, and as long as, the Lease and/or any improvements on the premises, or any interest therein, are mortgaged or otherwise pledged as security for any loan in accordance with the provisions hereof, unless consent in writing to such termination is given by the appropriate federal agency. This Lease shall not be subject to any forfeiture or reversion and shall not be otherwise terminable, if such event would adversely affect any interest in the premises, including improvements hereon, acquired in accordance with the provisions hereof by the holder of any mortgage or other lien, or of any purchaser at a foreclosure sale under such mortgage (or lien) or under any conveyance given in lieu of foreclosure, or of any holder subsequent to such purchase. The Lessor shall not terminate the Lease without the written consent of the appropriate federal agency as long as the mortgage is in force.
5. PAYMENTS. The improvement of housing for Choctaw families is a public purpose of the Lessor, the consideration for this Lease is
  - (a) the said purpose;
  - (b) the promise hereby given of Lessee(s) to pay the Lessor at the rate prescribed by the Tribal Council, currently a rate of seven (\$7.00) dollars per year, for a twenty-five (25) year term, payment to be made each term in advance;
  - (c) the extinguishment, hereby agreed to by Lessee(s), of any and all use rights heretofore held by Lessee(s) in the premises, so that Lessee(s) shall hereafter hold rights only by virtue of this Lease; and (d) other good and valuable considerations, the receipt of which is hereby acknowledged by Lessor. It is agreed that there shall be no adjustment of the payment other than a general increase prescribed by the Tribal Council if the Lease is terminated before its term otherwise would expire or in the event that any part of the premises is taken by condemnation for highway or other public purposes.
6. IMPROVEMENTS. All buildings or other improvements now existing or hereafter constructed on the premises shall be the leasehold property of the Lessee(s) during the term of this Lease, including any extension or renewal thereof.

7. USE RIGHT. Upon expiration of this Lease, or upon its termination in accordance with the terms hereof, unless such termination is due to default upon the part of Lessee(s), Lessee(s) or any successors in interest shall be entitled to full enjoyment of the premises. If not so eligible, Lessee(s) and any successors in interest shall, upon demand, surrender to Lessor upon expiration or other termination of this Lease complete and peaceable possession of the premises and any or all improvements thereon, which shall be the property of the Mississippi Band of Choctaw Indians.
8. FEDERAL SUPERVISION.
  - (a) Nothing contained in this Lease shall operate to delay or prevent a termination of federal responsibilities with respect to the premises by the issuance of a fee patent, the lifting of restrictions on alienation or otherwise during the term of the Lease; such termination; however, shall not serve to abrogate the Lease.
  - (b) No member of Congress or any delegate thereto or any Resident Commissioner shall be admitted to any share or part of this Lease or to any benefit that may arise herefrom.
  - (c) The Lessee(s) agree(s) not to use or cause to be used any part of said premises for any unlawful conduct or purpose.
9. QUIET ENJOYMENT. Lessor agrees to defend the title to the premises and also agrees that Lessee(s) and any successors in interest shall peaceably and without any hindrance, interruption, ejection or molestation by Lessor or by any other persons whomsoever, as long as Lessee is not in default or violation of the lease.
10. ASSIGNMENT. Except as otherwise provided herein, Lessee(s) shall not assign this Lease without the prior written consent of the Lessor and, if this Lease and/or any improvements on the premises are mortgaged or pledged as security for a loan, without the written approval of the lender. Lessee(s) may assign the Lease or deliver possession of the premises, including any improvements thereon, to the lender or its successors in interest if Lessee(s) default(s) in any mortgage or other loan agreement for which the Lease and/or improvements on the Lease or possession of the premises to a successor Lessee, subject to the approval of the Chief of the Tribe. Nothing in the Lease shall prevent the Lessee(s) from executing and recording a mortgage, declaration of trust and/or other security instrument as may be necessary to obtain financing for the construction and/or improvement of a dwelling and related structures, or shall prevent the appropriate federal agency or designee, as lender, from foreclosing or instituting other appropriate proceedings under law in the event of default on any mortgage or other loan agreement by the Lessee(s).

Notwithstanding the provisions contained above, the following additional requirements shall be applicable to a Lease which secures a loan made or held by the appropriate federal agency:

- (a) Lessee(s) or Lender (Mortgagee) shall not sell or otherwise assign this Lease except without the prior written consent of the Tribe of which the Lessee(s) is/are member(s), if the Lessor is not such Tribe.

- (b) In the event the appropriate federal agency acquires the Lease by foreclosure, or by the assignment of the Lease by Lessee(s) (for which the approval of the Tribe is not required) then:
  - (i) The appropriate federal agency will notify the Tribe of the availability of the Lease for sale, the sales price and other terms of sale.
  - (ii) If a purchaser is found who is an enrolled member of the Tribe, the Lease will be transferred by the appropriate federal agency to the purchaser, with the written consent and approval of the Tribe.
  - (iii) If a purchaser cannot be found, the appropriate federal agency shall be entitled to sublease the leased premises to any enrolled member of the Mississippi Band of Choctaw Indians wishing to sublease the same. The term of the initial sublease period and any succeeding periods shall not exceed one year each. A purchaser approved by the Tribe must wait, where the leased premises are sublet, until the expiration of any current sublease before occupying the premises.
  
- 11. **OPTION.** In the event of default by the Lessee(s) on any mortgage or other loan agreement for which this Lease or any improvements on the premises are pledged as security, the Lessor shall have the right of first refusal to acquire the Lessee's interest in the premises (subject to all valid liens and encumbrances) upon (a) payment of all sums then in arrears, and (b) either payment of the balance of the loan or assumption of the mortgage. This right of first refusal may be exercised at any time within thirty (30) days after notice in writing from the appropriate federal agency of the Lessee's default, which notice shall be given before the appropriate federal agency invokes any other remedies provided under the mortgage or by law, and shall be exercised by notice in writing from the Lessor to the Lessee(s) and the appropriate federal agency; provided, however, that the Lessee(s) shall have fifteen (15) days from the date of the latter notice to cure the default. The estate acquired by the Lessor through exercise of the said right of first refusal shall not merge with any other estate or title held by the Mississippi Band of Choctaw Indians as long as this Lease and/or any improvements on the premises, or any interest therein, are mortgaged or otherwise pledged as security for any loan, and the estate shall remain subordinate to any valid and subsisting mortgage or other security instrument, and subject further to the terms and conditions of this lease.
  
- 12. **EFFECTIVE DATE.** This lease and all its terms and provisions shall be binding upon the heirs, successors, executors, administrators and assigns of the Lessee(s), and any successor in interest to the Lessor, and shall take effect on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_.
  
- 13. **OBLIGATIONS TO THE UNITED STATES.** It is understood and agreed that while the leased premises are in trust or restricted status, all of the Lessee(s)' obligations under this lease and the obligation of his, her or their sureties, are to the United States as well as to the owner of the land.



Mississippi Band of Choctaw Indians  
Lessor

ATTEST:

\_\_\_\_\_

By: \_\_\_\_\_  
(Authorized Official)

WITNESS:

\_\_\_\_\_

\_\_\_\_\_  
Lessee

WITNESS:

\_\_\_\_\_

\_\_\_\_\_  
Lessee

APPROVED:

DATE:

\_\_\_\_\_

Secretary of the Interior

\_\_\_\_\_

## CHAPTER 3. VETERANS NATIVE AMERICAN DIRECT LOAN PROGRAM

### §17-3-1 Purpose

The purpose of this chapter is to avail the Mississippi Band of Choctaw Indians and its members of financing for the construction and/or purchase of family residences on trust land within the jurisdiction of the Mississippi Band of Choctaw Indians by prescribing procedures for the recording, priority and foreclosure of leasehold mortgages given to secure loans made by the Department of Veterans Affairs under the Native American Veteran Direct Loan Program authorized under Title 38 U.S.C. §§3761 et seq. The provisions of this chapter shall apply to all persons and property subject to the governing authority of the Mississippi Band of Choctaw Indians as established by its Tribal Constitution and Tribal Code.

### §17-3-2 Definitions

- (1) “Lease” means the lease of trust property for which a Leasehold Mortgage, as defined in this chapter, has or will be given;
- (2) “Leasehold Mortgage” means the mortgage of a lease of trust property given to secure a loan made under the VA Native American Direct Loan Program and 38 U.S.C. §3761 et seq;
- (3) “Leasehold Mortgage Foreclosure Proceeding” means a proceeding in the Tribal Court:
  - (a) to foreclose the interest of the Mortgagor(s), and each person or entity claiming through the Mortgagor(s), in a Lease for which a Mortgage has been given under the VA Native American Direct Loan Program and 38 U.S.C. §3761 et seq; and
  - (b) to assign such Lease to the Secretary or the Secretary’s assignee;
- (4) “Lessor” means the beneficial or equitable owner of trust or otherwise restricted property under a Lease for which a Mortgage, as defined in this chapter, has been given, or the heir(s), successor(s), executor(s), administrator(s) or assign(s) of such Lessor;
- (5) “Mortgagor” means the Tribe or any Native American(s) who has executed a Leasehold Mortgage as defined in this chapter, or any heir(s), successor(s), executor(s), administrator(s) or assign(s) of the Tribe or such Native American(s);
- (6) “Mortgagee” means the mortgagee under any Leasehold Mortgage as defined in this chapter or the successor(s) in interest of any such mortgagee, including the Secretary as defined in this chapter, or the Secretary’s assignee under any such mortgage;
- (7) “Nuisance” means the maintenance on real property of a condition which:
  - (a) unreasonably threatens the health or safety of the public or neighboring land users; or
  - (b) unreasonably and substantially interferes with the ability of neighboring property users to enjoy the reasonable use and occupancy of their property;

- (8) “Secretary” means the Secretary of the United States Department of Veterans Affairs, an officer of the United States, or designee;
- (9) “Subordinate Lienholder” means the holder of any lien, including a subsequent mortgage, perfected subsequent to the recording of a Leasehold Mortgage under this chapter (except the Tribe with respect to a claim for a Tribal leasehold tax);
- (10) “Tenant” means any person who occupies real property under a lease, rental agreement or other agreement with a lessor as defined in this chapter;
- (11) “Tribal Court” means the Tribal Court as established by the laws of the Mississippi Band of Choctaw Indians or such body as may now or hereafter be authorized by the laws of the Mississippi Band of Choctaw Indians to exercise the powers and functions of a court of law;
- (12) “Tribal Recording Clerk” means the person designated by the Tribe to perform the recording functions required by this chapter or any deputy or designee of such person;
- (13) “Tribe” means refer to the Mississippi Band of Choctaw Indians as defined in the Tribal Constitution;
- (14) “Unlawful Detainer Action” ,means a suit brought before the Tribal Court to terminate a tenant’s interest in real property and/or to evict any person from occupancy of real property;
- (15) “Waste” means spoil or destruction by a tenant of land, buildings, gardens, trees or other improvements which results in substantial injury to the lessor’s interest in the property; and
- (16) “Writ of Restitution” is an order of the Tribal Court:
  - (a) restoring an owner or lessor or the Secretary to possession of real property; and
  - (b) evicting a tenant or other occupant therefrom.

**§17-3-3 Priority**

A leasehold mortgage recorded in accordance with the recording procedures set forth in this chapter shall have priority over any lien not perfected 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 chapter 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.

**§17-3-4 Recording**

- (1) The Tribal Recording Clerk shall maintain in the Tribal Court a system for the recording of Leasehold Mortgages and such other documents as the Tribe may designate by law or resolution.



- (4) The certified copies of the Leasehold Mortgages and other documents and the log maintained by the Tribal Recording Clerk shall be made available for public inspection and copying.

### **§17-3-5 Leasehold Mortgage Foreclosure Proceedings**

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

- (1) A verified complaint:
  - (a) 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 Lienholder (except the Tribe with respect to a claim for a Tribal leasehold tax), as a defendant;
  - (b) describing the property;
  - (c) stating the facts concerning the execution of the Lease and 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;
  - (d) having appended as exhibits true and correct copies of each promissory note, Lease, Leasehold Mortgage or assignment thereof relating to the property; and
  - (e) including an allegation that all relevant requirements and conditions prescribed:
    - (i) Title 38 U.S.C. §3761 et seq.;
    - (ii) the regulations promulgated thereunder by the Secretary; and
    - (iii) the provisions of the Lease, have been complied with by the Secretary.
- (2) A summons, issued as in other cases, requiring the Mortgagor(s) and each other defendant to appear for a trial upon the complaint on a date and time specified in the summons.

### **§17-3-6 Service of Process and Procedures**

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

### **§17-3-7 Cure of Default by Subordinate Lienholder**

Prior to the entry of a judgment of foreclosure, any Mortgagor or any Subordinate Lienholder may cure the default(s) under the Leasehold Mortgage. Any Subordinate Lienholder who has cured a default shall thereafter have included in its lien the amount of all payments made by such

Subordinate Lienholder to cure the default(s), plus interest on such amounts at the rate stated in the note for the Leasehold Mortgage.

**§17-3-8 Power of the Tribal Court**

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

- (1) 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 Lienholder; and
- (2) assigning such Lease to the Secretary or the Secretary's assignee.

**§17-3-9 Evictions: Unlawful Detainer**

A 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:

- (1) Without the requirement of any notice:
  - (a) after the expiration of the term of the lease or other agreement;
  - (b) if such person has entered into 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;
  - (c) after the Housing Authority or other public housing authority has terminated such person's tenancy pursuant to procedures providing such person a hearing before the housing authority involved; or
  - (d) after the interest of such person in a lease has been foreclosed in a Leasehold Mortgage Foreclosure proceeding in the Tribal Court.
- (2) After having received thirty (30) days' notice, the tenant or occupier shall remain in possession of the property contrary to the terms of the notice, as follows:
  - (a) when such person has received notice:
    - (i) that he or she is in default in the payment of rent; and
    - (ii) 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
  - (b) when the lease of the property is for an indefinite time, with rent to be paid monthly or by some other period, and the lessor has given notice of termination of the tenancy at least thirty (30) days prior to the end of such month or period;

- (c) when such person shall continue to fail to keep or perform any condition or covenant of the lease or agreement under which the property is held after he has been given notice to surrender the property; or
- (d) when such person continues to commit or to permit waste upon or maintain a nuisance upon the occupied property after having been given notice to either cease such waste or maintenance of nuisance or to surrender the property.

**§17-3-10 Evictions: Service of Notice**

Notices required or authorized in the immediately preceding section shall be given in writing by either:

- (1) delivering a copy personally to the Tenant or occupier or to any adult members of his or her family residing on the premises; or
- (2) posting said notice in a conspicuous place near the entrance to said premises, and by sending an additional copy to the Tenant or occupier by certified mail, return receipt requested, properly addressed, postage prepaid.

Proof of service by either of the above methods may be made by affidavit of any adult person stating that he or she had complied fully with the requirements of either of these two methods of service.

**§17-3-11 Evictions: 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:

- (1) A complaint, signed by the owner, lessor, the Secretary, an agent or attorney, stating:
  - (a) the facts on which he or she seeks to recover;
  - (b) describing the property so that it can be identified with reasonable certainty; and
  - (c) any claim for damages or compensation due from the persons to be evicted;
- (2) 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 be not less than six (6) nor more than thirty (30) days from the date of service of the summons and complaint. The summons must notify the defendants that the 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.

**§17-3-12 Evictions: Service of Summons and Complaint**

A copy of the summons and complaint shall be served upon the defendants in the manner 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 §17-3-10, above.

**§17-3-13 Evictions: Power of the Tribal Court**

The Tribal Court shall enter a Writ of Restitution if:

- (1) notice of suit and trial is given by service of summons and complaint in accordance with the procedures provided in this chapter; and
- (2) the Tribal Court shall find that the occupier of the real property is guilty of an act of unlawful detainer.

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, 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 his costs and reasonable attorney's fees in bringing suit.

**§17-3-14 Continuances in Cases Involving the Secretary**

Except by agreement of all parties, there shall be no continuances in the cases involving the Secretary which will interfere with the requirement that the Writ of Restitution in a case involving the Secretary be enforced no later than sixty (60) days after the date of service of the summons and complaint.

**§17-3-15 Enforcement**

Upon issuance of a Writ of Restitution by the Tribal Court, Tribal Law Enforcement Officials 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 not later than sixty (60) days after the date of service of the summons and complaints.

**§17-3-16 Alternative Remedies**

In those cases in which the persons or property are subject to the jurisdiction of the Courts of the State of Mississippi or the United States, the remedies and procedures provided by this chapter are in the alternative to the remedies and procedures provided by the laws of the State of Mississippi or the United States.

**§17-3-17 Form of Lease**

Leases entered into under this chapter shall have substantially the following form:



THIS LEASE, made and entered into between the Mississippi Band of Choctaw Indians, hereafter designated as “Lessor,” and \_\_\_\_\_, member(s) of the Mississippi Band of Choctaw Indians, who are purchasing or will be constructing or improving a housing unit under the regulations of 38 U.S.C. 3761 et seq. and 38 CFR 36.4527, and are residing upon the Choctaw Indian Reservation, hereinafter designated as “Lessee(s).”

WITNESSETH

1. SECRETARIAL APPROVAL. As used in this Lease, the term “Secretary” means the Secretary of Interior or duly authorized representative. This Lease is subject to the approval of the Secretary pursuant to the Act of August 9, 1955, 69 Stat. 539, as amended, 25 U.S.C. 415. This Lease has been prescribed by the Secretary of Veterans Affairs (“VA”) pursuant to 38 CFR 36.4527, which implements Section 8 of the Veterans Home Loan Program Amendments of 1992, 38 U.S.C. 3761 et seq., for use in connection with VA direct loans for homes on trust lands.
2. PREMISES. Lessor, as authorized by law in accordance with Tribal Ordinance No. 16-HH, hereby leases to the Lessee(s) all that tract or parcel of land situated on the Mississippi Choctaw Indian Reservation, County of \_\_\_\_\_, State of Mississippi, further described as follows, to-wit:
3. USE OF PREMISES.
  - (a) The object of this Lease is to enable the Lessee(s) to construct, improve and/or maintain a dwelling and related structures on the leased premises and otherwise to use said premises as a principal residence.
  - (b) In the event the VA denies a loan application to construct, improve and/or maintain a dwelling and related structures, the Lessor may, in its discretion, terminate the lease. Any termination invoked under this clause will be made in writing and served on the Lessee by certified mail and copy provided to the Secretary of the Interior or duly authorized representative. This provision shall not be interpreted to change or alter any other term, condition or provision of this lease.
4. TERM. Lessee shall have and hold the premises for a term of twenty-five (25) years beginning on the effective date of this Lease. This Lease shall automatically and without notice renew for an additional term of twenty-five (25) years on the same terms and conditions contained herein. This Lease may not be terminated by either or both parties during its initial or renewal term if, and as long as, the Lease and/or any improvements on the premises, or any interest therein, are mortgaged or otherwise pledged as security for any loan in accordance with the provisions hereof, unless consent in writing to such termination is given by the VA. This Lease shall not be subject to any forfeiture or reversion and shall not be otherwise terminable, if such event would adversely affect any interest in the premises, including improvements hereon, acquired in accordance with the provisions hereof by the holder of any mortgage or other lien, or of any purchaser at a foreclosure sale under such mortgage (or lien) or under any conveyance given in lieu of foreclosure or of any holder subsequent to such purchase. The Lessor shall not terminate the Lease without the written consent of the VA as long as the mortgage is in force.

5. PAYMENTS. The improvement of housing for Choctaw Families is a public purpose of the Lessor, the consideration for this Lease is (a) the said purpose; (b) the promise hereby given of Lessee(s) to pay the Lessor at the rate of \$\_\_\_\_\_ per year, for a twenty-five (25) year term, payment to be made each term in advance, the rate is the amount which has been prescribed by the Tribal Council as of the date of this lease; (c) the extinguishment, hereby agreed to by Lessee(s), of any and all use rights heretofore hold by Lessee(s) in the premises, so that Lessee(s) shall hereafter hold rights only by virtue of this Lease; and (d) other good and valuable considerations, the receipt of which is hereby acknowledged by Lessor. It is agreed that there shall be no adjustment of the payment if the Lease is terminated before its term otherwise would expire or in the event that any part of the premises is taken by condemnation for highway or other public purposes.
6. IMPROVEMENTS. All buildings or other improvements now existing or hereafter constructed on the premises shall be the leasehold property of the Lessee(s) during the term of this Lease, including any extension or renewal thereof.
7. USE RIGHT. Upon expiration of this Lease, or upon its termination in accordance with the terms hereof, unless such termination is due to default upon the part of Lessee(s), Lessee(s) or any successors in interest shall be entitled to full enjoyment of the premises. If not so eligible, Lessee(s) and any successors in interest shall, upon demand, surrender to Lessor upon expiration or other termination of this Lease complete and peaceable possession of the premises and any or all improvements thereon, which shall be the property of the Mississippi Band of Choctaw Indians.
8. FEDERAL SUPERVISION.
  - (a) Nothing contained in this Lease shall operate to delay or prevent a termination of federal responsibilities with respect to the premises by the issuance of a fee patent, the lifting of restrictions on alienation or otherwise during the term of the Lease; such termination; however, shall not serve to abrogate the Lease.
  - (b) No member of Congress or any delegate thereto or any Resident Commissioner shall be admitted to any share or part of this Lease or to any benefit that may arise herefrom.
  - (c) The Lessee(s) agree(s) not to use or cause to be used any part of said premises for any unlawful conduct or purpose.
9. QUIET ENJOYMENT. Lessor agrees to defend the title to the premises and also agrees that Lessee(s) and any successors in interest shall enjoy quiet and peaceable possession without any hindrance, interruption, ejection or molestation by Lessor or by any other persons whomsoever, as long as Lessee complies with the terms of the lease.
10. ASSIGNMENT. Except as otherwise provided herein, Lessee(s) shall not assign this Lease without the prior written consent of the Lessor and, if this Lease and/or any improvements on the premises are mortgaged or pledged as security for a loan, without the written approval of the lender. Lessee(s) may assign the Lease or deliver possession of the premises, including any improvements thereon, to the lender or its successors in interest if Lessee(s) default(s) in any mortgage or other loan agreement for which the Lease and/or improvements on the premises are pledges as security, and, in such event, the lender or its successors in interest may transfer this Lease or possession of the premises to a successor

Lessee. Nothing in the Lease shall prevent the Lessee(s) from executing and recording a mortgage, declaration of trust and/or other security instrument as may be necessary to obtain financing for the construction and/or improvement of a dwelling and related structures, or shall prevent the Department of Veterans Affairs or designee, as lender, from foreclosing or instituting other appropriate proceedings under law in the event of default on any mortgage or other loan agreement by the Lessee(s).

Notwithstanding the provisions contained above, the following additional requirements shall be applicable to a Lease which secures a loan made or held by VA:

- (a) Lessee(s) shall not sell or otherwise assign this Lease without the prior written consent of the Tribe of which the Lessee(s) is/are member(s), if the Lessor is not such Tribe.
  - (b) In the event VA acquires the Lease by foreclosure or by the assignment of the Lease by Lessee(s) (for which the approval of the Tribe is not required), then:
    - (i) VA will notify the Tribe of the availability of the Lease for sale, the sales price and other terms of sale.
    - (ii) If a purchaser is found, the lease will be transferred by VA to the purchaser, with the written consent and approval of the Tribe.
    - (iii) If a purchaser cannot be found, VA shall be entitled to sublease the leased premises to anyone wishing to sublease the same. The term of the initial sublease period and any succeeding periods shall not exceed one year each. A purchaser approved by the Tribe must wait, where the leased premises are sublet, until the expiration of any current sublease before occupying the premises.
11. **OPTION.** In the event of default by the Lessee(s) on any mortgage or other loan agreement for which this Lease or any improvements on the premises are pledged as security, the Lessor shall have the right of first refusal to acquire the Lessee's interest in the premises (subject to all valid liens and encumbrances) upon (a) payment of all sums then in arrears; and (b) either payment of the balance of the loan or assumption of the mortgage. This right of first refusal may be exercised at any time within thirty (30) days after notice in writing from the VA of the Lessee's default, which notice shall be given before the VA invokes any other remedies provided under the mortgage or by law, and shall be exercised by notice in writing from the Lessor to the Lessee(s) and the VA provided, however, that the Lessee(s) shall have fifteen (15) days from the date of the latter notice to cure the default. The estate acquired by the Lessor through exercise of the said right of first refusal shall not merge with any other estate or title held by the Mississippi Band of Choctaw Indians as long as this Lease and/or any improvements on the premises, or any interest therein, are mortgaged or otherwise pledged as security for any loan, and the estate shall remain subordinate to any valid and subsisting mortgage or other security instrument.
12. **EFFECTIVE DATE.** This lease and all its terms and provisions shall be binding upon the heirs, successors, executors, administrators and assigns of the Lessee(s), and any successor in interest to the Lessor, and shall take effect on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

13. OBLIGATIONS TO THE UNITED STATES. It is understood and agreed that while the leased premises are in trust or restricted status, all of the Lessee(s)' obligations under this Lease, and the obligation of his, her, or their sureties, are to the United States as well as the owner of the land.

Mississippi Band of Choctaw Indians  
Lessor

ATTEST:

\_\_\_\_\_

By: \_\_\_\_\_  
(Authorized Official)

WITNESS:

\_\_\_\_\_

\_\_\_\_\_  
Lessee

WITNESS:

\_\_\_\_\_

\_\_\_\_\_  
Lessee

APPROVED:

DATE:

\_\_\_\_\_

Secretary of the Interior

\_\_\_\_\_

**§17-3-18 Amendment**

Any amendments proposed to this Chapter shall be forwarded to the Department of Veterans Affairs prior to their consideration by the full Tribal Council in order to obtain concurrence from the Department as necessary.

## **CHAPTER 4. CHOCTAW BUILDING CODE**

### **§17-4-1 Purpose**

There exists a need to provide minimum standards to safeguard life and limb, health, property, and public welfare by regulating and controlling the design, construction, quality of materials, use and occupancy, location, and maintenance of all buildings and structures within the jurisdiction of the Mississippi Band of Choctaw Indians.

### **§17-4-2 Findings**

The Tribal Council, in adopting this Chapter, makes the following findings:

- (1) The Tribal Council has the inherent authority and responsibility to enact this Chapter to promote, protect and provide for public health, peace, morals, education and general welfare of the Mississippi Band of Choctaw Indians and its members.
- (2) The development and adoption of building codes that protect against inferior and dangerous construction and remodeling practices in regards to residential and nonresidential construction is in the best interests of both the Tribe and its membership.
- (3) The development of a consolidated and consistent building code will enhance the quality of residential and non-residential building on Tribal Lands.

### **§17-4-3 Applicability**

- (1) This Chapter shall apply to all persons who carry out or engage in work regulated by this Chapter on Tribal Lands.
- (2) For the purposes of this section, “persons” means natural persons, corporations, limited liability companies, partnerships, unincorporated associations, the Tribe (including its agencies, departments, and enterprises), and all other legal entities.

### **§17-4-4 Definitions**

- (1) “Building Official” means the individual charged with the administration and enforcement of this Chapter.
- (2) The “International Building Code” (“the IBC”) is a model building code developed by the International Code Council (“the ICC”). Its use applies to all commercial and non-residential building structures.
- (3) The “International Residential Code” (“the IRC”) is a model building code developed by the ICC. Its use applies to single-family houses, two-family houses (duplexes) and townhouses not more than three stories above grade plane in height.
- (4) “Office of Construction Management” means the Tribe’s Office of Construction Management.

- (5) “Tribe” means the Mississippi Band of Choctaw Indians, a federally-recognized Indian tribe.
- (6) “Tribal Chief” means the Tribal Chief of the Mississippi Band of Choctaw Indians.
- (7) “Tribal Council” means the governing body of the Mississippi Band of Choctaw Indians.
- (8) “Tribal Court” means the Tribal Court of the Mississippi Band of Choctaw Indians.
- (9) “Tribal Lands” means Mississippi Choctaw Reservation Trust Lands per § 1(a)(1) of Pub. L. 106-228, Act of June 29, 2000, 114 Stat. 462.

**§17-4-5 Adoption of International Building and Residential Codes**

- (1) Except as otherwise provided in this Chapter, the Tribe hereby adopts and incorporates as tribal law as if fully set out herein the following:
  - (a) The International Building Code, 2012 edition, published by the International Code Conference, together with the following appendices thereto:
    - (i) Appendix H, Signs;
    - (ii) Appendix E (sections 101 through 107 only), Supplementary Accessibility Requirements; and
    - (iii) Appendix J, Grading.
  - (b) The International Residential Code, 2012 edition, published by the International Code Council, except Chapter 11 and Chapters 25 through 40, together with the following appendices thereto:
    - (i) Appendix E (sections 101 through 106 only), Manufactured Homes Used as Dwellings; and
    - (ii) Appendix J, Existing Buildings and Structures.
- (2) The IBC and the IRC together shall constitute the "Choctaw Building Code."

**§17-4-6 General Provisions Related to Codes Incorporated by Reference**

- (1) For a code incorporated by reference into this Chapter, where “name of jurisdiction,” “jurisdiction,” or other similar phrase appears, insert instead “The Mississippi Band of Choctaw Indians.”
- (2) For a code incorporated by reference into this Chapter, where “chief appointing authority,” “appointing authority,” or other similar phrase appears, insert instead “Tribal Chief.”

- (3) For a code incorporated by reference into this Chapter, where “applicable governing authority,” “governing body,” or other similar phrase appears, insert instead “Tribal Council.”
- (4) Whenever the term “guideline” is used in this Chapter or an incorporated code, it shall mean that the referenced parts of the incorporated code are to be used in a flexible manner and not as a set of strict requirements. It is the intent of the Tribal Council that where code provisions are designated as guidelines, that a person using them should not ignore them but give reasonable consideration to their provisions with the goal of accomplishing the intent of the guideline.
- (5) Where there is a conflict between this Chapter and any code adopted and incorporated herein by reference as part of the Choctaw Building Code, the provisions of this Chapter shall govern.

#### **§17-4-7 Amendments to International Building Code**

- (1) IBC Section 102.2, Other Laws, is modified to read as follows: “The provisions of this code shall not be deemed to nullify any provisions of Tribal or federal law.”
- (2) The IBC, as incorporated into this Chapter, is clarified as follows:
  - (a) Chapter 5, General Building Heights and Areas, shall be treated as a guideline, not a set of absolute requirements, unless otherwise required by federal law;
  - (b) Chapter 7, Fire and Smoke Protection Features, shall be treated as a guideline, not a set of absolute requirements, unless otherwise required by federal law;
  - (c) Chapter 8, Interior Finishes, shall be treated as a guideline, not a set of absolute requirements, unless otherwise required by federal law;
  - (d) Chapter 9, Fire Protection Systems, specifically the provisions related to sprinkler systems, shall only apply to buildings of 10,000 square feet or more. Section 907, Fire Alarm and Detection Systems, shall be modified as follows: “For buildings of less than 15,000 square feet, the provisions of Section 907 will not apply; for buildings over 15,000 square feet, the provisions of Section 907, as written, shall apply”;
  - (e) Chapter 11, Accessibility, shall be used as a guideline, and not a set of absolute standards, unless otherwise required by federal law;
  - (f) Chapter 13, Energy Efficiency, shall be used as a guideline, and not a set of absolute standards, unless otherwise required by federal law;
  - (g) Chapter 16, Structural Design, shall be used as a guideline, and not a set of absolute standards, unless otherwise required by federal law;
  - (h) Chapter 17, Special Inspections and Tests, shall be treated as a guideline and not a set of absolute requirements;

- (i) Chapter 18, Soils and Foundations, shall be used as a guideline, a not as a set of absolute requirements, unless otherwise required by federal law; and
- (j) Chapter 34, Existing Buildings and Structures, shall be used as a guideline, and not as a set of absolute standards, unless otherwise required by federal law.

**§17-4-8 Amendments to the International Residential Code**

- (1) IRC Section R102.2, Other Laws, is modified to read as follows: “The provisions of this code shall not be deemed to nullify any provisions of Tribal or federal law.”
- (2) IRC Section R103.2, Appointment, is modified to read as follows: “The building official shall be appointed by the Tribal Chief.”
- (3) IRC Section R105.2, Work Exempt from Permit, is partially modified to read as follows:

**Building:**

- 1. One story detached accessory building used as a tool or storage shed, play house or similar use, provided that:
  - 1.1 the building is not used for sleeping purposes;
  - 1.2 only one such building is allowed on any parcel;
  - 1.3 the building’s floor area does not exceed two hundred (200) square feet; and
  - 1.4 the building is separated from all other structures by not less than eight feet.
- (4) IRC Section R313.2, One- and Two-Family Dwellings Automatic Fire Systems, is modified to read as follows: “An automatic residential fire sprinkler system shall not be required in one- and two-family dwellings.”
- (5) The provisions of the IRC related to wind design criteria shall be used as a guideline, and not as a set of absolute standards, unless otherwise required by federal law.

**§17-4-9 Requirement that Contractor Be Licensed When Valuation Exceeds \$50,000**

- (1) Residential and nonresidential construction or improvement whose valuation exceeds fifty thousand dollars (\$50,000) shall be performed only by persons holding an active license issued by the Mississippi State Board of Contractors.
- (2) For the purposes of this section, “valuation” means the total value of the work to be performed, including, but not limited to: electrical, gas, mechanical, plumbing equipment and other permanent systems, materials, taxes, and labor.

**§17-4-10 Violation and Civil Penalties**



- (1) The Tribe may impose reasonable penalties, not to exceed five thousand dollars (\$5,000.00) per day, for the violation of a stop work order or conditions of a notice of violation issued pursuant to this Chapter. The penalties shall be paid by the individual or entity actually violating the stop work order or conditions of a notice of violation, not by the individual or entity at whose request the work is being done, unless the requesting individual or entity knowingly requests that the action be taken in violation of a stop work order or notice of violation.
- (2) Any use or action which violates the provisions of this Chapter shall be subject to a court injunction prohibiting such violation.

#### **§17-4-11 Administrative and Judicial Appeals**

All appeals arising from decisions issued by a code inspector or other authorized official of the Tribe acting under this Chapter shall be classified as either administrative appeals or judicial appeals. Administrative appeals shall be made as provided for in this Chapter. All administrative appeals must be exhausted before judicial appeals are sought by an Applicant.

#### **§17-4-12 Administrative Appeal Process**

- (1) Any action of a code inspector with respect to this Chapter shall be reviewable exclusively by the Building Official. Such review may be obtained by the submission of a written complaint to the Building Official no more than thirty (30) days after the action complained of. Such complaint shall describe the action complained of in sufficient factual detail to permit the Building Official to make a final decision based upon its content, and shall include in short and concise terms the reasons the code inspector's actions are challenged. The Building Official may, in his or her sole discretion, decide the complaint on the basis of the written submission submitted by the complainant. The Building Official shall issue a written decision on such complaint not more than forty-five (45) days after the written complaint is received by the Building Official.
- (2) Final decisions issued by the Building Official shall be considered as an exhaustion of administrative remedies. Any further appeals will be to the Tribal Court and shall be classified as judicial appeals.

#### **§17-4-13 Judicial Appeal Process**

- (1) Appeals of administrative decisions issued by the Building Official must be filed within 14 calendar days from the date the written decision was mailed, hand-delivered, or otherwise served on the Applicant.
- (2) An application for appeal shall be based on a claim that the true intent of this Chapter or implemented regulations have been incorrectly interpreted, the provisions of this Chapter or implemented regulations do not fully apply, or an equally good or better form of construction is proposed. The Tribal Court shall have no authority to waive the requirements of this Chapter.

#### **§17-4-14 Severability**

If any provision of this Chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Chapter which can be given effect without the invalid provision or application, and to this end the provisions of this Chapter are severable.

#### **§17-4-15 Waiver of Building Code Compliance by Resident**

Prior to the commencement of residential construction or improvement, a resident may waive compliance with the requirements of this Chapter if:

- (1) tribal funds are not used to pay for the requested residential construction or improvement;
- (2) the requested residential construction or improvement is not financed by a loan obtained from a tribal program or federal agency;
- (3) the residence where the requested construction or improvement will occur is not presently financed by a loan obtained from a tribal program or federal agency;
- (4) the residence where the requested construction or improvement will occur is not presently in Choctaw Housing Authority's inventory; and
- (5) the resident signs a form issued by the Office of Construction Management which certifies that:
  - (a) the resident will not request that tribal funds be used to pay for the requested residential construction or improvement;
  - (b) the resident will not obtain a loan from a tribal program or federal agency to finance the requested residential construction or improvement;
  - (c) the residence where the requested construction or improvement will occur is not presently financed by a loan obtained from a tribal program or federal agency;
  - (d) the residence where the requested construction or improvement will occur is not presently in Choctaw Housing Authority's inventory; and
  - (e) the resident understands that waiver of compliance with the requirements of this Chapter may result in denial of homeowner's insurance coverage.