

COQUILLE INDIAN TRIBAL CODE

Chapter 420

Part 4 – Community Development

Private Homeownership Land Leasing

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Chapter 420
Private Homeownership Land Leasing Ordinance

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420.010 General

This Ordinance shall be known as the Coquille Indian Tribe Private Homeownership Land Leasing Ordinance.

(1) Purpose – The purpose of this Ordinance is to establish uniform policies, procedures and standards for the leasing of certain specified Tribal trust lands by the Tribe or any Subordinate Tribal entity to individual Tribal Members for the purpose of constructing a private residence on such land. Further, the purpose of this Ordinance is to define the rights so granted by the Tribe to Tribal Members with respect to such leases, including, but not limited to, the right to pledge a security interest in the same pursuant to a Loan Program.

(2) Background and Intent

- (a) The Tribal Council is the governing body of the Coquille Indian Tribe. The responsibility to organize all efforts of Tribal government rests in the Tribal Council. Article VI, Section 1 of the Tribal Constitution vests the Tribal Council with the authority to enact legislation to address issues involving Tribal lands. The Tribal Council considers these authorities to be necessary to achieve Tribal goals and visions.
- (b) The Tribe would like to provide encouragement and means for Tribal members to settle on the lands of the Tribe. The Tribe owns reservation and other lands held in trust that it desires to make available to Tribal members for the purposes of constructing dwellings for use by Tribal members as their primary residences.
- (c) It is the intent of the Tribal Council to clearly set forth the policies, procedures, and standards for the leasing of Tribal lands to individual Tribal members for the purposes of constructing private homes.
- (d) It is the policy of the Tribe to ensure that all lands under the sovereign authority and jurisdiction of the Tribe be managed in such a way that preserves and protects the long term interests of the Tribe and its Tribal Members, and that the lease of lands to individual Tribal Members and the vesting in such Tribal Members of certain limited rights of pledge and transfer as hereafter provided will promote the interests of the Tribe and its Tribal Members.

(3) Definitions – In construing the provisions of this Ordinance, the following words and phrases shall have the meanings designated in this section unless a different meaning is expressly provided or the context provides otherwise.

“Conditions, Covenants, and Restrictions” or “CCRs” shall mean any Conditions, Covenants and Restrictions adopted by the Tribe or the Coquille Indian Housing

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Authority to govern the development, construction, maintenance, modification, and/or occupancy of lands and/or dwelling units on the Reservation, or any portion of the Reservation.

“Coquille Indian Housing Authority” or “CIHA” shall mean the Coquille Indian Housing Authority, an instrumentality of the Tribe established pursuant to Chapter 130 of the Coquille Tribal Code.

“Drug-related criminal activity” means the illegal manufacture, sale, distribution, use, or possession with intent to manufacture, sell, distribute, or use, of a controlled substance (as such term is defined in section 102 of the Federal Controlled Substances Act).

“Dwelling” shall mean a single family residential unit intended and used for residential purposes located on the Tribe’s Reservation or other Tribal Trust lands. The term “dwelling” shall not include the underlying real estate.

“Eligible Tribal Member” has the meaning as set forth in Section 420.100(2) of this Ordinance.

“Housing Program” means any program heretofore established or authorized by the Tribal Council or CIHA for the purpose of providing Tribal Members an opportunity to occupy and enjoy a Dwelling and, pursuant to the terms of such Program, to qualify for a Certificate of Conveyance upon the discharge of certain financial and other obligations.

“Instrument” shall mean any writing or document evidencing or affecting:

- (A) The rights of a Tribal Member in and to a Dwelling that is not a Lease, including, but not limited to, an Occupancy Agreement;
- (B) The rights of a Loan Program Lender in and to a Leasehold interest including, but not limited to, a Leasehold Mortgage; or,
- (C) The rights of the Tribe in and to a Lease or Dwelling.

“Lessee” shall mean an individual Tribal Member or Tribal Members with whom a Lease is executed in accordance with the provisions of this Ordinance.

“Leased Parcel” shall mean the real property located on the Tribe’s Reservation or other Tribal Trust land subject to a Private Homeownership Lease pursuant to the provisions of this Ordinance.

“Leasehold Mortgage” shall mean a mortgage or other Instrument executed by a Lessee to the benefit of a Loan Program Lender, granting to such Lender a security interest in a Leasehold. Any mortgage or other Instrument purporting to grant a security interest in a

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Lease or in a Dwelling that is not made pursuant to the terms of a Loan Program as defined in this Ordinance shall be deemed null, void, and of no effect.

“Leasehold Rights” means those rights appurtenant to a Private Homeownership Lease as specified in Section 420.100(3) of this Ordinance.

“Loan Program” shall mean any loan program that would use a dwelling and/or leasehold interest in the underlying real estate as security, including but not limited to Housing and Urban Development (“HUD”) Section 184 or Fannie Mae Loan Guarantee programs and the Veteran’s Administration Native American Direct Loan program.

“Loan Program Lender” shall mean any lender making a loan to a Lessee secured by a Leasehold Mortgage, as provided for by the terms of the Loan Program pursuant to which such loan is made.

“Private Homeownership Lease” shall mean a lease of a specifically identified parcel of land pursuant to the provisions of this Ordinance, for the purpose of constructing, possessing, and living in a private dwelling as a primary residence.

“Primary Residence” or “Principal Residence” shall mean a residence that a person occupies at least six months over the course of a year. The sixth month period need not be consecutive, but can be cumulative.

“Recording”, “Record”, and “Recorded” shall mean the act of recording an Instrument as a public document where there is a mechanism for such recording.

“Reservation” means the Coquille Indian Tribe Reservation, which shall include all lands held in trust by the United States of America for the benefit of the Coquille Indian Tribe, provided that the lands that comprise the Coquille Forest shall not be leased under this Ordinance.

“Subordinate Tribal Entity” shall mean entities created by and wholly owned and controlled by the Tribe to carry out the purposes of the Tribe, and shall include but not be limited to the Coquille Economic Development Corporation (“CEDCO”) and the CIHA.

"Tribal Council" shall mean the Tribal Council of the Coquille Indian Tribe.

"Tribal Court" shall mean the Coquille Indian Tribal Court.

“Tribal Law” shall mean the Coquille Indian Tribe Constitution, all laws, resolutions, regulations, ordinances or other form of action by the Tribal Council or the General Council, and such regulations and policies as are duly adopted by a department or instrumentality of the Tribe in accordance with Tribal Law.

“Tribal Member” shall mean an individual who is an enrolled member of the Tribe.

"Tribe" shall mean the Coquille Indian Tribe. This term shall include any person or entity acting with the delegated authority of the Tribe pursuant to this Ordinance.

420.100 LEASING, ELIGIBILITY, AND RIGHTS

(1) Private Homeownership Lease Authority – The Tribe is hereby authorized to identify certain parcels of land on the Reservation that it may lease to Eligible Tribal Members pursuant to this Ordinance. The Tribe shall develop a Private Homeownership Lease form for use in leasing such parcels pursuant to this Ordinance, which it may from time to time amend, and which shall contain reasonable terms that are not inconsistent with the provisions of this Ordinance and other applicable law.

(2) Eligible Tribal Members – Private Homeownership Leases of the identified parcels may only be made to Eligible Tribal Members. An Eligible Tribal Member is a person who:

- (a) Is an enrolled Tribal Member of the Coquille Indian Tribe pursuant to Tribal Law (and remains enrolled for the duration of the term of any Lease), provided that the Tribe, on a case-by-case basis, may waive this requirement if the Tribe deems that there is a compelling reason for the applicant to reside on Tribal lands, such as being the surviving spouse or surviving child of an enrolled member, or is providing essential services to Tribal members on the Reservation;
- (b) Is at least 18 years of age;
- (c) Is not currently a Lessee or the spouse of a Lessee under a prior Private Homeownership Lease;
- (d) Was not a party to any prior Private Homeownership Lease that was terminated or foreclosed upon through enforcement by a Loan Program Lender of its rights under a Leasehold Mortgage;
- (e) Intends to construct or inhabit a Dwelling on the parcel for use as his or her primary residence;
- (f) Must submit to a criminal background check;
- (g) Must not have been found guilty of or entered a plea of guilty, no contest, or nolo contendere to any Tribal, federal, or state offense involving a crime of violence, sexual assault, sexual molestation, child exploitation, sexual contact, prostitution, crimes against persons, any offense involving a child victim, any sex crime, or any drug felony. If an applicant has been charged with an offense listed in this subsection, but the charge is still pending, the application will be denied until the charge has been resolved;

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- (h) Must not be a registered sex offender in any jurisdiction;
- (i) Must be willing to submit to a credit check and be financially capable as determined by the Tribe; and,
- (j) Must submit a criminal background check on any and all adult members of the household that would be occupying the land, and if any of those adult members has been found guilty of or entered a plea of guilty, no contest, or nolo contendere to any Tribal, federal, or state offense involving a crime of violence, sexual assault, sexual molestation, child exploitation, sexual contact, prostitution, crimes against persons, any offense involving a child victim, any sex crime, or any drug felony, the application will be denied. If any adult member of the household has been charged with an offense listed in this subsection, but the charge is still pending, the application will be denied until the charge has been resolved.

(3) Leasing Fee – The Tribe shall establish and charge a leasing fee that must be paid by the Eligible Tribal Member as a condition of entering into the Private Homeownership Lease for the parcel.

(4) Rights Conveyed by Private Homeownership Lease

(a) The due execution, delivery, and, if necessary, approval by the Bureau of Indian Affairs of a Private Homeownership Lease shall vest in the Lessee therein named, the right to occupy and exercise control over the Leased Parcel therein identified to the exclusion of the rights of all other persons or entities subject to the following:

- (i) The rights of the United States of America as trust title owner of the Reservation for the benefit of the Tribe and the rights of the Tribe as beneficial owner;
- (ii) The rights of the Tribe to assert its inherent police power with respect to Lessees, Leaseholds, Dwellings and the uses thereof including, but not limited to, the adoption of Tribal Laws relating to land use control, building codes, and similar Tribal Laws whether of general application to the Reservation or to specific areas of the same;
- (iii) The rights of the Tribe to tax Lessees, Leased Parcels and/or Dwellings;
- (iv) The rights of the Tribe to terminate a Private Homeownership Lease for cause pursuant to Section 420.200 of this Ordinance;
- (v) The rights of a Loan Program Lender arising under a Leasehold Mortgage;
- (vi) The rights of the Tribe or any Subordinate Tribal Entity for access over, under, into, and upon any Leased Parcel or Dwelling as may be necessary for governmental activities of the Tribe including, but not limited to, the provision of utilities for the benefit of Tribal Members;

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- (vii) The rights of the Tribe in and to all timber, water, water courses, minerals, sand, gravel, and other natural resources located on the Reservation, which rights are reserved to the Tribe to be managed in accordance with Tribal Laws; and
- (viii) The rights of the Tribe in and to all ceremonial, burial, and sacred grounds, as they may be identified by the Tribal Council from time to time.
- (ix). The right of the Tribe to adopt and enforce laws to protect the health, welfare and safety of the Tribe and its members, employees, visitors and residents.
- (x) The right of the Tribe to adopt and enforce laws to protect and manage environmental values, water quality, air quality, view corridors, natural resources, and fish and wildlife, including but not limited to culturally significant species, and endangered or threatened species.
- (xi) The right of the Tribe to regulate traffic and to provide for the maintenance, development and improvement of roads, utilities, sidewalks and tribal or public rights of way.
- (xii) The right of the Tribe to approve subleases as provided below.
- (xiii) The rights or obligations of the Tribe or the Federal government under applicable provisions of Tribal or Federal laws.

(b) The Private Homeownership Lease Rights of a Lessee shall include the joint use and occupancy of the Leased Parcel by the spouse and children or step-children of the Lessee, constituting the Lessee's immediate family, and such other persons as may from time to time be permitted by the Tribe. Unless the Tribe determines otherwise under 420.100(2)(a), the joint use and occupancy of the Leased Parcel by any non-Tribal Member or of any such other persons shall at all times be deemed derivative of the rights of the Lessee under the Private Homeownership Lease.

(c) The foregoing rights, as so limited, constitute the Private Homeownership Lease Rights of a Lessee when conveyed by a Private Homeownership Lease.

(5) Certain Security Interests Null and Void – Any purported security interest granted in a Leased Parcel or a Dwelling to the benefit of other than a Loan Program Lender pursuant to a Loan Program shall be deemed null, void, and of no effect.

(6) Conveyance of Private Homeownership Lease

(a) A Lessee shall have no right to convey, grant, assign, transfer, pledge, or encumber the Lessee's Private Homeownership Lease, except as follows:

- (i) Conveyance by a Lessee to another Eligible Tribal Member or Eligible Tribal Members of such Lessee's Private Homeownership Lease Rights in and to a Private Homeownership Lease, whether for value received or by

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gift, provided that such conveyance is permitted only if the original Lessee has constructed a habitable dwelling on the leased parcel;

(ii) Naming another Eligible Tribal Member or surviving spouse or surviving child to be the successor to the Lease as one of the agreed upon terms of the Lease itself, which would permit the Lease to be conveyed to the named successor upon the death of the Lessee without going through probate;

(A) If the surviving spouse named as successor to the Lease is not a member of the Coquille Indian Tribe, then the Lease may be assigned to the non-Tribal member, if they meet the following criteria (1) they do not marry or cohabit with a non-Tribal member; (2) they have been, and remain, an active member of the Tribal community for a reasonable period of time, and (3) they agree to all other provisions of the original lease signed by the deceased Tribal member spouse

(iii) Conveyance of a deceased Lessee's Private Homeownership Lease to an Eligible Tribal Member or Eligible Tribal Members pursuant to the terms of such deceased Lessee's will as probated in the Tribal Courts or otherwise by operation of the intestacy laws of the Tribe as determined by the Tribal Court;

(iv) Conveyance of a deceased Lessee's Private Homeownership Lease by will or intestacy to a surviving spouse or surviving child to the extent permitted by Tribal Law, and subject to 420,100(6)(a)(ii)(A);

(v) In accordance with an order of the Tribal Court, conveyance of a Lessee's Private Homeownership Lease to a guardian or conservator for an Eligible Tribal Member or Eligible Tribal Members who are incapable or have not reached the age of majority;

(vi) Granting of a security interest in a Private Homeownership Lease to a Loan Program Lender pursuant to the terms of Leasehold Mortgage; or

(vii) Sublease, temporary license, or other grant by a Lessee of less than all of such Lessee's Private Homeownership Lease Rights, including, but not limited to, rights to occupy a Leased Parcel provided such sublease, temporary license or other grant is evidenced by an Instrument countersigned by the Tribe indicating its approval prior to the date such grantee is entitled to exercise such rights, and the Tribe may impose any conditions it deems necessary as a condition of granting such approval. Any proposed sublessee and all adult members of the household must

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submit to a criminal background check and must meet the same eligibility requirement set out in Section 420.100(2)(h) of this Ordinance. The Tribal Council shall adopt a policy to be applied by Tribal staff that would set out the process and standards for granting sublease approval by the Tribe.

(b) Unless expressly permitted above or as otherwise may be permitted by Tribal Law, any purported conveyance, grant, assignment, transfer, pledge, or encumbrance of a Lessee's rights, arising under a Private Homeownership Lease held by such Lessee, shall be null, void, and unenforceable.

(c) Upon Executing and Recording an Instrument evidencing a permitted conveyance of a Private Homeownership Lease, the Eligible Tribal Member to whom the Private Homeownership Lease is conveyed shall be the Lessee for all purposes of this Ordinance.

(d) Except as expressly permitted under this Law with respect to the rights of a Loan Program Lender, any purported assignment to a corporation, limited liability company, limited partnership, or entity other than a natural person, whether the same is wholly owned or controlled by an Eligible Tribal Member or Eligible Tribal Members and whether or not the same is chartered or created under Tribal Law, shall be null, void and of no effect.

(7) Terms and Conditions of Private Homeownership Lease

(a) Private Homeownership Leases executed pursuant to this Ordinance will be for the longest term permitted under applicable law; *provided*, that permissible lease terms may be shorter when the terms of a Loan require otherwise.

(b) Private Homeownership Leases executed pursuant to this Ordinance shall contain the requirement that the Lessee and any successors or assigns must comply with any Covenants, Conditions, and Restrictions adopted by the Tribe or the Coquille Indian Housing Authority applicable to development on such lands, including any subsequent amendments or changes to such CCRs.

(c) Private Homeownership Leases executed pursuant to this Ordinance shall contain such other requirements as the Tribal Council deems necessary to protect and preserve the well-being and quiet enjoyment of other residents of the Reservation as well as protecting and preserving the property, cultural and natural resources, fish, and wildlife of the Tribe, including but not limited to prohibitions against committing acts that are a nuisance or that are criminal activity, and against possession, use, sale, or manufacture of controlled substances.

(d) Private Homeownership Leases executed pursuant to this Ordinance shall contain a requirement that if the Lessee executes a Leasehold Mortgage using that

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Lease as security for a loan, that the Tribe shall have the option – but not the obligation – to assume the terms of the Loan if the Lease is terminated or if the Lessee is otherwise in default of the Loan.

(8) General Provisions – The following general provisions are applicable to this Ordinance.

(a) Conflict. In the event of a conflict between the provisions of this Ordinance and the provisions of any other Tribal Laws affecting the subject matter hereof, the provisions of this Ordinance shall control.

(b) Tribal Court Jurisdiction. The Tribal Court shall have exclusive jurisdiction over any civil matter, claim, or dispute arising out of, or in any way related to, a Private Homeownership Lease, a Dwelling, an Occupancy Agreement, or otherwise related in any way to the rights and obligations of any person relative to a Private Homeownership Lease or a Dwelling. The Tribal Court shall have the authority to direct the use of a Private Homeownership Lease and occupancy of a Dwelling by other than the Lessee to the extent necessary for the enforcement of Tribal Law in harmony with the purposes and intent of this Ordinance.

(c) Insurance. Any person holding a Private Homeownership Lease shall be required to carry the following insurance:

- (i) General liability insurance in the amount that the Tribe deems appropriate in order to cover any damages or harm to any party resulting from that person's use of the land that is the subject of the Private Homeownership Lease;
- (ii) Fire, casualty, and loss insurance for the full replacement value of the Dwelling constructed on the Leased Parcel.

420.200 ENFORCEMENT; TERMINATION OF PRIVATE HOMEOWNERSHIP LEASE

(1) Enforcement of Lessee's Obligations by the Tribe - The Tribe may seek in Tribal Court the enforcement of any provision of this Ordinance and enforcement of the terms of any Instrument in which the Tribe has an interest including, but not limited to, a Private Homeownership Lease.

(a) The foregoing notwithstanding, unless pursuant to the rights of the Tribe arising under the terms of any Loan Program pursuant to which a Leasehold Mortgage is made, only the Loan Program Lender or permitted successor or assign of a Loan Program Lender shall be entitled to enforce its security interest arising under a Leasehold Mortgage under the Coquille Tribal Residential Mortgage Lending Ordinance (CITC Chapter 425).

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(b) The Tribal Court shall have jurisdiction and authority to hear and adjudicate any enforcement action brought pursuant to this Section, provided that nothing in this section shall be deemed to be a waiver of the Tribe's sovereign immunity.

(c) The Tribal Court shall specifically be authorized to award monetary damages and to impose such equitable orders as the Tribal Court may deem necessary for the enforcement of Tribal Law in harmony with the purposes and intent of this Ordinance.

(d) Prior to the commencement of an enforcement action, the Tribe must provide written notice to the Lessee of any violation and provide a period of not less than 30 and not more than 180 days to cure the violation or violations. If the violation is not cured within the time period stated in such written notice, then the Tribe may commence an enforcement action seeking such remedies as the Tribe may request. The election by Tribe to seek any one or more than one remedy in an enforcement action shall not preclude the Tribe from pursuing any other remedy allowed by Tribal Law including, but not limited to, the termination of a Private Homeownership Lease in accordance with this Chapter.

(e) A copy of any notice required under the prior subsection of this Section also shall be sent to any Loan Program Lender or permitted successor or assign as then holds of Record a security interest in the Lessee's Private Homeownership Lease.

(2) Termination of a Private Homeownership Lease by Lessee – The Lessee may terminate a lease for convenience at any time by providing 30 days' notice to the Tribe, provided that if Lessee has granted a Leasehold Mortgage or other Security Interest in the Lease to a Loan Program Lender, Lessee will be bound by the terms of the Leasehold Mortgage or other Security interest and may not terminate for convenience unless otherwise permitted to do so. However, where the lease has been terminated for convenience, the Lessee will not be reimbursed for any expenditures for improvements or any other work on the parcel.

(3) Termination of Private Homeownership Lease by the Tribe - In addition to the rights set forth in the prior two Subsections, and subject to the provisions of this Chapter, the Tribe shall have the right, but not the obligation, to terminate the Private Homeownership Lease of any Lessee upon a determination by the Tribe of good cause shown as that term is defined in this Section. The following shall constitute good cause for the termination and divestiture of the Private Homeownership Lease Rights of a Lessee in and to a Leased Parcel:

(a) An attempt by a Lessee to convey, assign, pledge, mortgage or otherwise transfer Lessee's interest in a Private Homeownership Lease except as expressly provided for in this Ordinance;

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- (b) The failure of any Lessee to use and occupy a Dwelling located on a Leased Parcel as such Lessee's principal residence for a cumulative period of six or more months in any calendar year, without prior written authorization of the Tribe;
- (c) The banishment and/or exclusion of a Lessee from the Tribe or from the Reservation under Tribal Law and custom;
- (d) The failure of Lessee to materially abide by Tribal Law as it relates to Leased Parcels, Dwellings, and the public health and safety of persons occupying Leased Parcels or Dwellings;
- (e) Serious or repeated violation of the terms of the Private Homeownership Lease; and
- (f) The failure of a Lessee to commence and/or complete construction of a Dwelling within the time periods or otherwise according to the standards provided in Section 420.500(3) of this Ordinance.

(4) Procedure for Termination - The Tribe shall exercise its rights to terminate Private Homeownership Lease Rights only in accordance with the following procedure:

(a) The Tribe shall give written notice to the Lessee, and a copy to any Leasehold Mortgagee, of the violations constituting good cause for termination of Private Homeownership Lease Rights and the Tribe's intent to seek termination of Private Homeownership Lease Rights, which notice shall contain at a minimum, the following:

- (i) The action(s) that must be taken by the Lessee to effect a cure in order to avoid the termination, provided a cure is practicable given the stated grounds for termination and the time allowed for such cure pursuant to subsection (b), below, or a statement that no cure period shall be afforded the Lessee if the Tribe determines a cure is not practicable given the stated grounds for termination;
- (ii) The specific good cause reason for the intended termination;
- (iii) The date on which the termination will be effective and a summary of the consequences of such termination;
- (iv) The name, phone number, and address of the person or persons in the Tribe that may be contacted for further information concerning the termination; and
- (v) A statement certifying that a copy of this notice has been sent by the Tribe to any Loan Program Lender who has a security interest in the Lease affected by notice of intent to seek termination.

(b) Provided the Tribe reasonably concludes a cure is practicable given the stated grounds for termination, the Tribe shall allow the Lessee a period of not less than

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30 days and not more than 180 days to cure or otherwise remedy the condition or conditions constituting the stated grounds for termination.

(c) If the cure period so noticed to the Lessee has expired, and the Lessee has not cured the violations supporting the good cause reason for termination, then the Tribe may terminate the Lessee's Private Homeownership Lease.

(d) The Tribal Council may by resolution terminate a Private Homeownership Lease provided such resolution also authorizes the expenditure of any monies reasonably determined by the Tribal Council to be payable to any Loan Program Lender with an interest in such Lease or to the successors of the Lessee subject to termination, if any, all as provided for in subsections (4) and (5) of this Section. If the Tribal Council fails to so terminate said Private Homeownership Lease within the time provided for in this subsection (4), whether by affirmative act or by failure to act for any reason, such Lease shall not be terminated.

(e) The Tribe shall determine, on a case-by-case basis, considering the specific circumstances leading to the termination, including the presence of any mitigating factors, whether the Tribe will pay any funds to a Lessee whose Private Homeownership Lease has been terminated for the reasons set out herein. Such determination shall be at the sole discretion of the Tribal Council and not subject to appeal or legal challenge. The amount of such payment shall be based on the fair market value of such improvements, using the same process for calculating fair market value that is set out in 420.200(6) of this Ordinance.

(5) Payment to Loan Program Lenders in Event of Termination – If the Tribe terminates a Private Homeownership Lease pursuant to the terms of this Chapter, the Tribe may, in its sole discretion, assume the terms of any financing obtained by Lessee that is secured by a Leasehold Mortgage on the property. In the event that the Tribe determines not to assume the terms of the financing, the Tribe will make payments to Loan Program Lenders with security interests in the property in the following circumstances and only under the terms and conditions set out herein:

(a) The Tribe shall pay to any Loan Program Lender, or permitted successor or assign of a Loan Program Lender, all then unpaid sums secured by a Leasehold Mortgage of Record encumbering such Leased Parcel. For purposes of this Chapter, such holder of a Leasehold Mortgage shall not be entitled to collect from the Tribe any extraordinary sum, fee, or penalty otherwise due by virtue of prepayment as a condition to releasing the lien of such Leasehold Mortgage.

(b) If the value of any improvements made to the Leased Parcel, including any Dwelling thereon located, exceeds the sums due a Loan Program Lender pursuant to paragraph (a) of this Subection, said value shall revert to the Tribe and shall not be paid to the Lender or the Lessee.

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(c) Any compensation as may be due directly to a Loan Program Lender pursuant to this Subsection shall be subject to the right of set off exercisable by the Tribe for sums due the Tribe by the Lessee.

(d) Any claim for compensation pursuant to this Subsection must be presented to the Tribe within two years of the termination of the Private Homeownership Lease, otherwise such claim is null and void and may not be enforced by the Tribal Court or any other court of competent jurisdiction.

(6) Payment to Successors in Event of Termination Due to Death or Mental or Physical Incapacity – If a Private Homeownership Lease is terminated due to the death or mental or physical incapacity of the Lessee, and the lawful successor is unable to assume the responsibilities under the Private Homeownership Lease, the Tribe may make payments to such successor in the following circumstances and under the terms and conditions set out herein:

(a) If the Leased Parcel is not encumbered by a Leasehold Mortgage of Record, the Tribe shall pay the successor the fair market value of the improvements to the Leased Parcel, minus any such sums that are due to the Tribe, as described in the next subsection.

(b) Any compensation as may be due directly to a successor pursuant to this Section shall be subject to the right of set off exercisable by the Tribe for sums due the Tribe by the Lessee or the successor.

(c) For purposes of this Section, the value of any improvements made to a Leased Parcel shall mean the fair market value of all improvements made to such Leased Parcel as of the date of the death or incapacity of the Lessee, including any Dwelling thereon located but excluding any value of the land component of the Leased Parcel, as determined in accordance with the valuation procedure set forth in subsection (d) of this Section.

(d) The fair market value of the improvements shall be determined by an appraisal process as follows:

(i) The Tribe shall engage an appraiser licensed in the State of Oregon to provide a written appraisal of the value of the improvements to the Leased Parcel subject to the termination process. The cost of the appraisal shall be deducted from any sum to be paid to the successor.

(ii) To the maximum extent the appraiser shall determine is appropriate, comparables used in calculating value shall be derived from the values of improvements located on the Reservation. If in the exercise of the appraiser's professional judgment the use of such comparables are not warranted, the appraiser may use comparable sales information from real estate transfers occurring outside the Reservation. If in the exercise of the

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appraiser's professional judgment the use of comparables is not warranted, the appraiser shall use such other basis for determining value as the appraiser may deem appropriate.

(iii) If the Tribe determines that the initial appraisal is substantially divergent from what the Tribe had assumed to be the market value, the Tribe may engage a second appraiser, under the same terms as the first, to conduct another appraisal, which it may use in determining the market value.

(e) Nothing contained in this Section shall preclude the Tribe from offsetting against any sum due the successor the amount of any obligation of such Lessee to the Tribe or CIHA, whether or not such obligation has matured or is otherwise then due and payable.

(f) Any claim for compensation pursuant to this Section must be presented to the Tribe within two years of the termination of the Private Homeownership Lease through death or incapacity, otherwise such claim is null and void and may not be enforced by the Tribal Court or any other court of competent jurisdiction.

(7) Payment to Tribe for Damage to Land – Notwithstanding the previous subsections of this Ordinance, if the Lessee has undertaken activities on the land that have impaired its value and/or that require the Tribe to expend funds to remedy, including but not limited to activities intended as improvements, the Lessee shall be obligated to reimburse the Tribe for such impairment of value and/or such costs.

420.300 DELEGATION OF AUTHORITY

(1) Option of Delegation of Authority to CIHA – The Tribal Council may, by resolution, delegate authority to CIHA to oversee and administer the application of this Ordinance, and, on behalf of the Tribe, to execute and enforce the terms of Private Homeownership Leases with Eligible Tribal Members in accordance with this Ordinance, and the Tribal Council shall appropriate such funds as are necessary for CIHA to carry out the responsibilities of such delegation of authority.

(2) Powers That May be Delegated – The delegation of such authority to CIHA may include any and all powers of the Tribe set out elsewhere in this Ordinance, including, but not limited to:

- (a) The acceptance of applications for Private Homeownership Leases;
- (b) The issuance of certifications of eligibility for Private Homeownership Leases;
- (c) The processing and selection of Applications pursuant to Section 420.500(1) of this Ordinance;
- (d) The determination and issuance of corrective actions to address deficiencies in Private Homeownership Leases;

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- (e) The issuance of notices of violations of the laws, regulations, and/or rules governing Private Homeownership Leases and Dwellings;
- (f) The issuance of notices of intent to terminate a Private Homeownership Lease, and the filing of any and all documents to request such a termination by Tribal Council;
- (g) The responsibility and authority to represent the Tribe in actions before the Tribal Court concerning this Ordinance; and
- (h) The power to assess and collect payments in lieu of taxes from lessees in order to make such payments to any governmental entities providing services to Tribal lands.

(3) Develop, Promulgate, and Enforce Policies – The Tribe shall develop, adopt, and promulgate such policies as the Tribe determines are needed for the orderly operation and the administration of this Ordinance. CIHA may be delegated the authority to develop, adopt, promulgate, and enforce such policies.

420.400 RECORDING

(1) Applicability – Any Instrument evidencing any interest in a Private Homeownership Lease or a Dwelling shall be recorded as provided by this Ordinance.

(2) Effect of Recording – An Instrument affecting a Dwelling and/or a Private Homeownership Lease in accordance with this Ordinance shall be notice to all persons and entities of the existence of the transaction or transfer, and of any rights, interests, or liabilities created thereby.

(3) Priority – Any Instrument affecting any interest in Lease or Dwelling recorded in accordance with this Ordinance shall be presumed to have priority over any instrument, lien, or claim not recorded at the time of such recording. No lease executed by or on behalf of the Tribe prior to the enactment of this Ordinance shall be rendered invalid or unenforceable for failure to Record, provided record of its execution is on file in the records of the Tribe. Any unrecorded Instrument shall be presumed to have priority over any unrecorded Instrument executed thereafter. Any unrecorded Instrument executed by or on behalf of the Tribe shall be presumed to be dated as of the date so executed by the Tribe.

(4) Recording with Bureau of Indian Affairs – Any Private Homeownership Lease, and any Instrument evidencing any interest in a Private Homeownership Lease or a Dwelling under this Ordinance, to the extent permitted under existing law and procedures, shall be recorded with the United States Department of Interior – Bureau of Indian Affairs, in the appropriate local office of the Bureau.

(5) Recoding with the Tribe – Any Private Homeownership Lease, and any Instrument evidencing any interest in a Private Homeownership Lease or a Dwelling under this

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Ordinance shall also be recorded with the entity or officer designated by the Tribe for such purposes, who shall maintain a searchable and accessible database of such records.

420.500 SELECTION AND REQUIREMENTS

(1) Processing and Selection of Applications – Applications for Private Homeownership Leases shall be processed and selected by the Tribe in the following manner:

- (a) The Tribe shall be responsible for accepting and processing all Applications for Private Homeownership Leases.
- (b) Only Applications made by Eligible Tribal Members shall be considered.
- (c) Only Applications that set forth all the information required by the Tribe shall be considered.
- (d) The Tribe shall notify any applicant within 30 calendar days of receipt of a timely Application if the Application is deficient in any way. Any applicant notified of deficiencies in his or her Application must resubmit a corrected Application.
- (e) The Tribe will maintain the completed and valid Applications on an application registry. Obtaining a spot on the application registry is not a guarantee that an applicant will be selected to receive a lot, and no rights are thereby created.
- (f) As lands are made available for Private Homeownership Leases, the Tribe will conduct a lottery to select at random an applicant from the application registry for the available lot. The lottery will be structured so that each applicant on the application registry has an equal chance at being selected through the lottery; there shall be no preferences granted to any applicant. The Tribe shall conduct the lottery in any manner at its discretion to ensure that the process is random and gives each applicant on the application registry an equal opportunity to be selected.
- (g) If the applicant selected through the lottery process refuses to execute a Private Homeownership Lease for that parcel within 90 days of being notified of selection, that applicant will be removed from the application registry and will not be eligible to reapply for a period of one year. The Tribe will then conduct another lottery to select an applicant for the available lot.

(2) Issuance of Private Homeownership Leases - Upon completion of the process described above in subsection (1) of this Section, the Tribal Council Chairperson or the Chairperson's authorized designee is hereby authorized and directed by the Tribal

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Council by operation of law and without any further action by the Tribal Council to execute a Private Homeownership Lease identifying the land to be leased and naming the successful applicant as Lessee.

(3) Construction Requirements - Because the policy underlying this Ordinance is to encourage the development of private residences on the Reservation and other Trust lands of the Tribe, the following requirements shall apply to Lessees receiving a Private Homeownership Lease:

- (a) A Lessee must construct a Dwelling (as defined in this Ordinance) on the leased parcel within the timelines set out herein. Failure to do so will be deemed conclusive evidence of good cause for termination of the Private Homeownership Lease under Section 420.200 of this Ordinance.
- (b) The Dwelling and the construction thereof must be in compliance with all applicable Tribal laws, regulations, policies, and building codes. Failure to do so will be deemed conclusive evidence of good cause for termination of the Private Homeownership Lease under Section 420.200 of this Ordinance.
- (c) A Lessee shall have one year from the date of the Execution of the Private Homeownership Lease to commence construction of a residential structure in accordance with all applicable Tribal Laws and building codes. The Tribe may issue extensions for up to an additional six months for completion upon a showing of good cause. The failure of Lessee to install a complete cellar or foundation in accordance with Tribal Law will be deemed conclusive evidence of good cause for termination of the Private Homeownership Lease under Section 420.200 of this Ordinance.
- (d) A Lessee shall have completed construction of such structure within two years of the date of the Execution of the Private Homeownership Lease. The Tribe may issue extensions for up to an additional six months for completion upon a showing of good cause. The failure of Lessee to timely obtain certification from the Tribe that such structure complies with applicable Tribal Laws and is fit for human habitation shall create a presumption of the Lessee's violation of this subsection for purposes of the application of Section 420.200 of this Ordinance.
- (e) If any marketable timber or other marketable resources are removed from the property and sold or exchanged for other goods and services (whether by the Lessee or any other person or entity), the revenues or other goods and services obtained from the sale of such timber or other resources are immediately due and payable to the Tribe, minus the reasonable and actual cost of removal or extraction. Failure to make such payment to the Tribe will be deemed conclusive evidence of good cause for termination of the Private Homeownership Lease under Section 420.200 of this Ordinance.

420.600 CONVERSION OF EXISTING TRANSACTIONS

(1) Long Term Leases for Construction of Dwellings – The Tribe and/or CIHA have leased some parcels of Reservation lands to Tribal members for the purposes of construction of private residences. Where CIHA or the Tribe and the Tribal Member have entered into a long term lease for the parcel, that lease will be subject to the terms and conditions set out in this Ordinance, subject to the requirements of this subsection.

(a) Within five years of the enactment of this Ordinance, the Tribal Member must have commenced construction of a Dwelling on the parcel, as that phrase is defined in Section 420.500(3) of this Ordinance.

(b) Within six years of the enactment of this Ordinance, the Tribal Member must have completed construction of a Dwelling on the parcel, as that phrase is defined in Section 420.500(3) of this Ordinance.

(c) If construction has not commenced within one year of the enactment of this Ordinance or if construction has not been completed within two years, CIHA or the Tribe (whichever is the Lessor) may terminate the lease, provided that CIHA or the Tribe will reimburse the Tribal Member any funds paid for the lease if the Tribal member can show documentation of such payment. Termination of the lease pursuant to this subsection will extinguish all rights of the Tribal Member to use and occupancy of the parcel, as well as any and all rights arising under the lease.

(d) The Tribe directs the Coquille Indian Housing Authority to strictly enforce the terms of any existing long term leases for construction of dwellings, and to terminate such leases if the terms of the leases have not been complied with, provided, that the Coquille Indian Housing Authority may give the leaseholder the option to convert the lease to a Private Homeownership Lease and to comply with the terms, conditions, and requirements of such Lease as set out in the Lease and in the provisions of this Ordinance. Upon execution of a Private Homeownership Lease, all rights arising under the prior lease shall be deemed extinguished and thenceforth the provisions of this Ordinance shall exclusively control and determine the rights of the Tribal Member in and to the Leased Parcel.

(2) Parcels Reserved for Long Term Leases But Not Yet Developed – CIHA and/or the Tribe has also accepted money deposits from Tribal Members for individual parcels of Reservation lands, which CIHA and/or the Tribe has agreed to set aside for the exclusive use and occupancy of the Tribal Member, and by which deposit the Tribal Member has committed to constructing and inhabiting a Dwelling on that parcel. These parcels will be subject to all terms and conditions set out in this Ordinance, subject to the requirements of this subsection.

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(a) Within five years of the enactment of this Ordinance, the Tribal Member must execute a Private Homeownership Lease for the parcel. If the Tribal Member fails to do so, CIHA and/or the Tribe (whichever is appropriate) may terminate the Private Homeownership Lease (if any) or any other agreement with or commitment to the Tribal Member regarding future rights to and use of the parcel, provided that the Tribal Member will be reimbursed for any funds paid for such agreement or commitment if the Tribal Member can show the documentation for such payment. Termination of the agreement or commitment pursuant to this subsection will extinguish all rights of the Tribal Member to use and occupancy of the parcel, as well as any and all other rights arising under the agreement or commitment.

(b) Within one year of the execution of the Private Homeownership Lease, the Tribal Member must have commenced construction of a Dwelling on the parcel, as that phrase is defined in Section 420.500(3) of this Ordinance.

(c) Within two years of the execution of the Private Homeownership Lease, the Tribal Member must have completed construction of a Dwelling on the parcel, as that phrase is defined in Section 420.500(3) of this Ordinance.

(d) If construction has not commenced within one year of the execution of the Private Homeownership Lease, or if construction has not been completed within two years of the execution of the Private Homeownership Lease, CIHA and/or the Tribe (whichever is appropriate) may terminate the Private Homeownership Lease. Termination of the Private Homeownership Lease pursuant to this subsection will extinguish all rights of the Tribal Member to use and occupancy of the parcel, as well as any and all other rights arising under the agreement or commitment.

(e) Upon execution of a Private Homeownership Lease, all rights arising under the agreement or commitment shall be deemed extinguished and thenceforth the provisions of this Ordinance shall exclusively control and determine the rights of the Tribal Member in and to the Leased Parcel.

(3) Conversion of Long Term Leases on Parcels with Conveyed Dwellings – Pursuant to several homeownership programs, including but not limited to the Mutual Help and Occupancy Program and the Home Grant and Occupancy Program, CIHA has conveyed Dwellings to Tribal Members, and either CIHA or the Tribe has entered into a long term lease with the Tribal Member for the parcel of real property on which the Dwelling has been constructed. The provisions of this Ordinance shall exclusively control and determine the rights of the Tribal Member in and to the parcel as described in the lease.

420.700 CONSTRUCTION OF ORDINANCE

Nothing in this Ordinance shall be construed:

(1) To grant or establish any rights in any Reservation resources, property, or assets that may be held for the benefit of the Tribe or any individual member of the Tribe.

(2) As establishing any individual rights of any Tribal Member beyond those recognized by Tribal Law.

(3) As establishing any rights of any Loan Program Lender beyond those recognized by Tribal Law.

(4) As establishing jurisdiction in any agency, court, or government that is not recognized by Tribal Law.

420.800 [Reserved]

420.900 Severability

If any provision of this Ordinance is held to be invalid, the remainder of this Ordinance shall not be affected.

420.999 Sovereign Immunity

Nothing in this Ordinance shall be construed to waive the sovereign immunity of the Coquille Indian Tribe or the sovereign immunity possessed by any of its Subordinate Tribal Entities.

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History of Amendments to Chapter 420 Private Homeownership Land Leasing Ordinance:

Approved March 12, 2009 CY0940
Adopted May 21, 2009 CY 0985
Approved April 12, 2012 CY1235
Adopted June 7, 2012 CY1254
Approved March 8, 2018 CY18023
Adopted May 10, 2018 CY18044
Approved July 14, 2018 CY18071
Adopted September 13, 2018 CY18092