



# SUSANVILLE INDIAN RANCHERIA

## ORDINANCE NO. 2006-004 AMENDMENT 1

### **ORDINANCE OF THE TRIBAL BUSINESS COUNCIL OF THE SUSANVILLE INDIAN RANCHERIA AUTHORIZING LEASES OF TRIBAL PROPERTY AND ESTABLISHING A SYSTEM FOR RECORDING AND ENFORCING LEASEHOLD MORTGAGES**

The Tribal Council of the Susanville Indian Rancheria hereby ordains as follows.

Findings:

1. Under Article VI, Section 2(f) of the Constitution of the Susanville Indian Rancheria ("Tribe"), approved by the Secretary of Interior on July 13, 2005, the Tribal Business Council ("Tribal Council") is authorized to manage, lease or otherwise use all unassigned tribal lands in accordance with applicable Federal law.
2. The Tribe has a need to increase housing opportunities for its members.
3. The Tribe is eligible for federal funds for housing under the Native American Housing Assistance and Self-Determination Act, the Indian Community Development Block Grant program, and various federally insured loans and loan guarantees.
4. To make financing available to the Tribe and tribal members for the acquisition and construction of housing on the Tribe's reservation in Lassen County, California, the Tribe must adopt tribal laws that assure lenders that they can perfect enforceable security interests in the tribal trust lands located on the Tribe's reservation, when such lands used for the construction of housing.
5. The Tribe has a land assignment ordinance under which it can authorize a tribal member to use a specifically designated parcel of tribal trust land for housing purposes.
6. The Tribe can also lease tribal trust land to the Susanville Indian Rancheria Housing Authority ("SIRHA"), individual tribal members or some other entity or individual for housing purposes.
7. This Ordinance authorizes the Tribal Business Council to lease tribal land for housing and other purposes, and establishes a system for creating, recording and enforcing leasehold mortgages.

**Section 1. Leasing Authority.**

The Tribal Business Council is hereby authorized to lease tribal land for housing and other purposes. A lease of unassigned tribal land may be approved for any purpose and for assigned tribal land for housing purposes in accordance with the Tribe's Land Assignment Ordinance. All leases shall be approved as provided in 25 C.F.R. Part 162, as it now reads or as it or any successor regulations may be amended to read in the future. The Tribal Business Council may develop or adopt a form or forms of lease for different purposes, including, but not limited to, housing developed with federal grant funds and housing financed with federally guaranteed loans.

**Section 2. Priority of liens.**

All mortgages recorded in accordance with the recording procedures set forth in this Ordinance, including Leasehold Mortgages, and including loans guaranteed or held by a governmental agency, 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.

**Section 3. Recording.**

(A) There is hereby created the office of Tribal Recording Clerk, who shall be appointed by the Tribal Business Council. The position of Tribal Recording Clerk may be combined with another position or office. The Tribal Recording Clerk shall have the authority and responsibility to administer the recording of liens on tribal trust land as authorized by the Ordinance.

(B) The Tribal Recording Clerk shall maintain a system for the recording of mortgages and such other documents as the Tribe may designate by laws or resolution.

(C) The Tribal Recording Clerk shall endorse upon any mortgage or other document received for recording:

(1) The date and time of receipt;

(2) The filing number, to be assigned by the Tribal Recording Clerk, which shall be a unique number for each mortgage or other document received; and

(3) The name of the Tribal Recording Clerk or designee receiving the mortgage or document.

Upon completion of the above cited endorsements, the Tribal Recording Clerk shall make a true and correct copy of the mortgage or other document and shall certify the copy as follows:

Susanville Indian Rancheria:

I, \_\_\_\_\_,  Tribal Recording Clerk  Deputy Recording Clerk  
[check one box], 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 \_\_\_\_\_, 20 \_\_\_\_.

(SEAL)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

The Tribal Recording Clerk shall maintain the copy in the records of the recording system and shall forward the original of the mortgage or other document to the appropriate office of the Bureau of Indian Affairs for recording in the BIA Title Plant. The BIA shall be instructed to return, after recording, the original to the person or entity that presented the same for recording.

(D) The Tribal Recording Clerk shall also maintain a log of each mortgage or other document recorded in which there shall be entered:

- (1) The name(s) of the Borrower/Mortgagor of each mortgage, identified as such;
- (2) The names(s) of the Lender/Mortgagee of each Mortgage, identified as such;
- (3) The names(s) of the grantor(s), grantee(s), or other designation of each party named in any other documents filed or recorded;
- (4) A reference to the lease and land sufficient to identify the property encumbered by the lien;
- (5) The date and time of the receipt;
- (6) The filing number assigned by the Tribal Recording Clerk; and
- (7) The name of the Tribal Recording Clerk or designee receiving the mortgage or document.

(E) The certified copies of the mortgages and other documents and the log maintained by the Tribal Recording Clerk shall be made available for public inspection and copying. Rules for copying shall be established and designated by the Tribal Recording Clerk.

The log shall be maintained in a spreadsheet or similar computer generated database that is searchable by names, dates and property location.

#### **Section 4. Foreclosure Procedures.**

(A) A borrower/Mortgagor shall be considered to be in default when he is thirty (30) days past due on his mortgage payment(s) to the Lender/Mortgagee or when he has been in breach of any other material mortgage provision for a least thirty (30) days.

(B) Before a Borrower/Mortgagor becomes ninety (90) days delinquent on his mortgage payments (90 days from the date he is considered in default) and before any foreclosure action or activity is initiated, the Lender/Mortgagee shall complete the following:

(1) Make a reasonable effort to arrange a face-to-face interview with the Borrower/Mortgagor. This shall include at least one trip to meet with the Borrower/Mortgagor at the mortgaged property.

(2) Lender/Mortgagee shall document that it has made at least one phone call to the Borrower/Mortgagor (or the nearest phone as designated by the Borrower/Mortgagor, able to receive and relay messages to the Borrower/Mortgagor) for purpose of trying to arrange a face-to-face interview specified in this subsection.

(C) Lender/Mortgagee may appoint an agent to perform the services of arranging and conducting the face-to-face interview specified in this subsection.

(D) Before the Borrower/Mortgagor has been delinquent for ninety (90) days and at least ten (10) days before initiating a foreclosure action, as authorized by this Ordinance, the Lender shall advise the Borrower/Mortgagor in writing by mail or by posting prominently on the unit, with a copy provided to the Tribe as follows:

(1) Advise the Borrower/Mortgagor that information regarding the loan and default will be given to credit bureaus.

(2) Advise the Borrower/Mortgagor of homeownership counseling opportunities/programs available through the Lender or otherwise.

(3) Advise the Borrower/Mortgagor of other available assistance regarding the mortgage/default.

(4) In addition to the preceding notification requirements, the Lender/Mortgagee shall complete the following additional notice requirements when a Leasehold Mortgage is involved: (i) notify the Borrower/Mortgagor that if the Leasehold Mortgage remains in default for more than ninety (90) days, the Lender/Mortgagee may ask the applicable governmental agency to accept assignment of the Leasehold Mortgage if this is a requirement of the governmental program; (ii) notify the Borrower/Mortgagor of the

qualifications for forbearance relief from the Lender/Mortgagee, if any, and that forbearance relief may be available from the government if the mortgage is assigned; and (iii) provide the Borrower/Mortgagor with names and address of government officials who further communications may be addressed, if any.

(E) If a Borrower/Mortgagor has been delinquent for ninety (90) days or more and the Lender/Mortgagee has complied with the procedures set forth in Subsections (B) and (D) of this Section 4, the Lender/Mortgagee may commence a foreclosure action pursuant to Section 5 and 6 or 8. In any action in the Tribal Housing Court, if the procedure under the California rules of civil procedure adopted by reference under the Tribal Housing Court Ordinance differs from the procedures contained in Sections 5 and 6, the California rule shall apply.

### **Section 5. Foreclosure Complaint and Summons**

(A) The verified complaint in a mortgage foreclosure proceeding shall contain the following:

(1) The name of the Borrower/Mortgagor and each person or entity claiming through the Borrower/Mortgagor subsequent to the recording of the mortgage loan, including each Subordinate Lienholder (except the Tribe with respect to a claim for a tribal leasehold), as a defendant;

(2) A description of the property subject to the mortgage loan;

(3) A concise statement of the facts concerning the execution of the mortgage loan and in the case of a Leasehold Mortgage the lease; the facts concerning the recording of the mortgage loan or the Leasehold Mortgage; the facts concerning the alleged default(s) of the Borrowers/Mortgagor; and such other facts as may be necessary to constitute a cause of action;

(4) True and correct copies of each promissory note, mortgage, deed of trust or other recorded real property security instrument (each a "security instrument") and any other documents relating to the property and if a Leasehold Mortgage, a copy of the lease and any assignment of any of these documents; and

(5) Any applicable allegations concerning relevant requirements and conditions prescribed in (i) federal statutes and regulations (ii) tribal codes, ordinances and regulations; and/or (iii) provisions of the promissory note, security instrument and if a Leasehold Mortgage, the lease.

The complaint shall be verified by the Tribal Court Clerk along with a summons specifying a date and time of appearance for the Defendant(s).

**Section 6. Service of Process and Procedures**

(A) Any foreclosure complaint must be in writing, and must be delivered to the Borrower/Mortgagor in the following manner:

- (1) Delivery must be made by an adult person and is effective when it is:
- (2) Personally delivered to a Borrower/Mortgagor with a copy sent by mail, or
- (3) Personally delivered to an adult living in the property with a copy sent by mail, or
- (4) Personally delivered to an adult agent or employee of the Borrower/Mortgagor with a copy sent by mail.

(B) If the notice cannot be given by means of personal delivery, or the Borrower/Mortgagor cannot be found, the notice may be delivered by means of:

- (1) Certified mail, return receipt requested, at the last known address of the Borrower/Mortgagor, or
  - (a) Securely taping a copy of the notice to the main entry door of the property in such a manner that it is not likely to blow away, and by posting a copy of the notice in some public place near the premises, including a tribal office, public store, or other commonly-frequented place and by sending a copy first class mail, postage prepaid, addressed to the Borrower/Mortgagor at the premises.
- (2) The person giving notice must keep a copy of the notice and proof of service in accordance with this section, by affidavit or other manner recognized by law.

**Section 7. Cure of Default**

Prior to the entry of a judgment of foreclosure, sale through a private power of sale or a final decision of an arbitrator, as applicable, any Borrower/Mortgagor or a Subordinate Lienholder may cure the default(s) under the Mortgage by making a full payment of the delinquency to the Lender/Mortgagee and all reasonable costs incurred in foreclosing on the property. 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 state in the note for the mortgage. There shall be no right of redemption in any Leasehold Mortgage Foreclosure proceeding.

**Section 8. Foreclosure Action.**

(A) A “foreclosure action” may consist of any of the following:

- (1) The filing of an action in state court in Lassen County to foreclose the mortgage in accordance with the laws of the State of California.
- (2) The filing of an action in the Tribal Housing Court in accordance with the laws of the Susanville Indian Rancheria, including the Susanville Indian Rancheria Tribal Court and Tribal Housing Court Ordinances.
- (3) Exercising a private power of sale contained in the leasehold mortgage signed by the Borrower.
- (4) Initiating arbitration, if foreclosure by arbitration is authorized in the leasehold mortgage signed by the Borrower.

(B) A Lender/Mortgagee may exercise any of these alternatives to the extent available.

(C) All foreclosure actions shall be subject to the following:

(1) Upon foreclosure, the Lease will be assigned to the Lender/Mortgagee or the Lender’s Designated Assignee, subject to the following provisions:

- (a) The Lender shall give the Tribe the right of first refusal on any acceptable offer to purchase the Lease or Leasehold Mortgage, which is subsequently obtained by the Lender or Lender’s Designated Assignee.
- (b) The Lender or Lender’s Designated Assignee may only transfer, sell or assign the Lease and/or Leasehold Mortgage to a Tribal member, the Tribe, or the Tribal Housing Authority.
- (c) Any other transfer, sale or assignment of the Lease or Leasehold Mortgage shall only be made to a Tribal member, the Tribe, or the Tribal Housing.

**Section 9. Foreclosure Evictions**

(A) Foreclosure evictions shall be handled according to the procedures that apply to the forum where the eviction is filed. If filed in tribal court, the following shall apply, unless the procedure specified in California law for unlawful detainer actions, which have been incorporated by reference in the Tribal Housing Court Ordinance, differ from the procedures specified below. In that case, the California rule shall be followed.

(1) Jurisdiction. The provisions of this section H. shall apply to all persons and property subject to the governing authority of the Tribe as established by the Tribal Constitution, Tribal Code, or applicable federal law.

(2) Unlawful Detainer. A Lessee, Sublessee, or other occupant of a Leasehold Estate subject to a Leasehold Mortgage shall be guilty of unlawful detainer if such person shall continue in occupancy of such Leasehold Estate without the requirement of any notice by the Lessor, after such person's Leasehold Estate has been foreclosed in a Leasehold Mortgage foreclosure proceeding in the Tribal Court;

(3) Complaint and Summons. The lender or Federal Agency (which made, guaranteed or insured the mortgage loan) as appropriate, shall commence an action for unlawful detainer by filing with the Tribal Court, in writing, the following documents:

(a) A complaint, signed by the lender or Federal Agency, or an agent or attorney on their behalf:

- (i) Citing facts alleging jurisdiction of the Tribal Court;
- (ii) Naming as defendants the mortgagors and any other record owner (including Sublessees and subordinate lienholders), of which the complainant has record notice (except the Tribe with respect to a claim for a Tribal tax on the Leasehold Estate subject to the Leasehold Mortgage);
- (iii) Describing the Leasehold Estate subject to the Leasehold Mortgage;
- (iv) Stating the facts concerning (1) the execution of the lease and the Leasehold Mortgage; (2) the recording of the Leasehold Mortgage; and (3) the facts upon which he or she seeks to recover;
- (v) Stating any claim for damages or compensation due from the persons to be evicted; and
- (vi) Otherwise satisfying the requirements of the Tribal Court.

(b) A copy of the summons, issued in accordance with established Tribal Court rules and procedures, requiring the defendants to file a response to the complaint by the date specified in the summons. The deadline specified in the summons for filing a response shall be no less than 6 nor more than 30 days from the date of service of the summons and complaint. The summons shall notify the defendants that judgment will be taken against them in accordance with the terms of the complaint unless they file a response with the court by the date specified in the summons.

(4) 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 following two methods.

(5) Procedures for Service of Notice. Notices required or authorized in the immediately preceding section shall be given in writing either by:

(a) Delivering a copy personally to the Borrower/ Mortgagor or to any other occupant under color of law, or to any adult residing on the Leasehold Estate and, if applicable, to any Sublessee; or

(b) Posting said notice in a conspicuous place near the entrance to said Leasehold Estate, and sending an additional copy to the Lessee or to any other occupant under color of law, and, if applicable, to the Sublessee, by certified mail, return receipt requested, properly addressed, postage paid.

Proof of service may be made by affidavit of any adult person stating the he has complied with the requirements of one of the above methods of service.

(6) Power of the Tribal Court. The Tribal Court shall enter an Order of Repossession if:

(a) Notice of suit is given by service of summons and complaint in accordance with the procedures provided herein; and

(b) The Tribal Court shall find during pre-trial proceedings or at trial that the Lessee, Sublessee, or other occupant under color of law of the Leasehold Estate subject to the Leasehold Mortgage is guilty of an act of unlawful detainer. Upon issuance of an Order of Repossession, the Tribal Court shall have the authority to enter a judgment against the defendants for the following, as appropriate: (1) back rent, unpaid utilities, and any charges due the Tribe, Tribal Housing Authority, other public Housing Authority, or Sublessor under any sublease or other written agreement (except for a Leasehold Mortgage); (2) any and all amounts secured by the Leasehold Mortgage that are due the lender (or Federal Agency); and (3) damages to the property caused by the defendants, other than ordinary wear and tear. The Tribal Court shall have the authority to award to the prevailing party its costs and reasonable attorney's fees in bringing suit.

(7) Enforcement. Upon issuance of an Order of Repossession by the Tribal Court, Tribal law enforcement officers shall help plaintiffs enforce same by evicting the defendants and their property from the unlawfully occupied Leasehold Estate. In all cases involving the lender or Federal Agency, the Order of Repossession shall be enforced no later than 45 days after a pre-trial proceeding or trial in which the Tribal Court finds against defendants, subject to Paragraph H7 below, and provided, that no party exercised the right to cure a default or right of first refusal as described in Paragraphs F and G above.

(8) Continuances in Cases Involving the Lender or Federal Agency (which originally made, insured or guaranteed) the mortgage loan. Except by agreement of all parties, there shall be no continuances in cases involving the lender or Federal Agency that will interfere with the requirement that the Order of Repossession be enforced not later than

45 days after a pre-trial proceeding or trial in which the Tribal Court finds against defendants, subject to the sound discretion of the Court.

**Section 10. No Merger of Estates.**

There shall be no merger of estates by reason of the execution of a Lease or a Leasehold Mortgage or the assignment or assumption of the same, including an assignment resulting from a foreclosure action, except as such merger may arise upon satisfaction of the Leasehold Mortgage.

**Section 11. Certified Mailing to Tribe**

In any foreclosure action on a Lease or Leasehold Mortgage where the Tribe or the Lessor(s) is not named as a defendant, the party initiating the foreclosure action shall mail a copy of the summons and complaint or other document initiating the foreclosure action to the Tribe and to the Lessor(s) by certified mail, return receipt requested, within five (5) days after the issuance of the summons or other initiating document. If the location of the Lessor(s) cannot be ascertained after reasonable inquiry, a copy of the summons and complaint or other initiating document shall be mailed to the Lessor(s) in care of the superintendent of the applicable agency of the Bureau of Indian Affairs.

**Section 12. Intervention**

The Tribe or any Lessor may petition to intervene in any Lease or Leasehold Mortgage foreclosure action or otherwise seek to participate therein as a party or party in interest. Neither the filing of a petition for intervention by the Tribe, nor the granting of such a petition shall operate as a waiver of the sovereign immunity of the Tribe, except as may be expressly authorized by the Tribe.

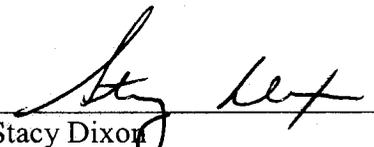
Effective Date. This Ordinance shall become effective immediately upon passage.

**CERTIFICATION**

We, the undersigned duly elected officials of the Susanville Indian Rancheria Hereby certify that on November 07, 2006, the foregoing Lease of Tribal Property and Establishing a System for Recording and Enforcing Leasehold Mortgages Ordinance was adopted at duly called meeting of the Tribal Business Council with a quorum present by a vote of 7 for, 0 against, 0 abstaining, and 0 absent.

ATTEST

  
\_\_\_\_\_  
Aaron Dixon Sr.  
Secretary/Treasurer

  
\_\_\_\_\_  
Stacy Dixon  
Tribal Chairman