

NATIVE AMERICAN HOUSING ASSISTANCE AND SELF-
DETERMINATION ACT
USEFUL LIFE/USE RESTRICTION
LEASE ADDENDUM/AMENDMENT
(Trust Land with Pro-rated Recovery Amount)

This Useful Life/Use Restriction, a covenant running with the land (hereinafter the **Land Restriction**), dated this _____ day of _____, 20__, for good and valuable consideration, is hereby declared, covenanted and made by _____ (hereinafter the **Lessee**), and _____ (hereinafter the **Lessor**), by adding to/amending a land lease between the same parties dated _____, Lease No. _____, Contract No. _____, and the portion of the leased property being restricted is described in Attachment A to this Land Restriction and is also imposed on any dwelling unit and other improvements thereon, (hereinafter the **Property**).

The Land Restriction is imposed because Indian Housing Block Grant (IHBG) funds to benefit the Property have been granted or loaned by _____, an Indian Tribe or an Indian or Alaska Native tribally designated housing entity (hereinafter the **Tribe**), to assist or facilitate low-income Indian housing.

1. LEASE RESTRICTED

1.1 Use Restrictions. Each dwelling unit in or on the Property shall be used only for residential purposes and that residential occupancy shall only be by individuals or families who are members of, or are headed by a member of, a federally recognized tribe or an eligible State recognized tribe who are low-income. The terms “federally recognized tribe,” “State recognized tribe” and “low-income” as used herein are as defined in the Native American Housing Assistance and Self-Determination Act (hereinafter **NAHASDA**), 25 U.S.C. §§ 4101, et seq.

1.2 Restricting Lessee and Subsequent Lessees. Family or household members who take Subsequent Lease will not be subject to the binding agreement. However, the binding commitment will not terminate upon subsequent family/household lease, the binding commitment will not apply to the family/household. Any subsequent transfer by the family member or household member to a third party (not a family member or household member) is subject to this Land Restriction for the remaining affordability period.

1.3 Restricting Lessee and Subsequent Lessees. All of the rights, restrictions and agreements in this Land Restriction shall be deemed to be added to the lease and binding and enforceable against the Tribe, the Lessee, and any successor, heir, or sublessee of the Property; however, subsequent Lessees that are family members or household members are not subject to this Land Restriction. Any subsequent transfer by the family member or household member to a third party (not a family member or household member) is subject to this Land Restriction.

1.4 Covenant Running with the Land. The Lessor declares and covenants on behalf of itself that this Land Restriction and all accompanying enforcement rights run with the land until the Termination Date.

1.5 Term. This Land Restriction, including all of its rights, restrictions, covenants and agreements, shall expire () years from the date of this Land Restriction agreement (hereinafter the **Term**), which shall be the ____ day of _____, 20____ (hereinafter the **Termination Date**). As of the Termination Date, this Land Restriction shall expire by its own terms and this Land Restriction shall have no further force or effect and shall be extinguished and released without the execution or recording of any further documents.

2.0 ENFORCEMENT

2.1 Right to Enforce. The Tribe has all the rights and remedies necessary to enforce the use restrictions contained in this Land Restriction. This includes, but is not limited to enforcing compliance with the low-income and members of federally recognized tribe use restrictions, invalidating any conveyance which violates the terms of this Land Restriction, and levying upon the Property to recover in full the money expended, advanced or loaned either on the Property or to the Owner by the Tribe under its low-income Native American housing programs.

2.2 Recovery of Amounts Contributed by the Tribe. The Tribe has contributed through loan(s) or grant(s) the sum of (\$ _____) to the Owner or Property and shall be entitled to recover some or all of this amount as follows:

(a) If the Property consists of a single family unit, the Tribe shall be entitled to recover the following declining amounts for any violation of the Land Restriction agreement during the duration of this Land Restriction: 100% until expiration of seventy-five percent of the Term, then 75% until expiration of fifty percent of the Term, 50% until expiration of twenty-five percent of the Term and 25% until expiration of the Term.

(b) If the property is not a single-family unit, the Tribe shall be entitled to recover the full amount contributed for any violation of the Land Restriction agreement during the duration of this Land Restriction

2.3 Rights to Recover Other Costs by the Tribe. The Owner, as well as subsequent owners of the Property, shall also be liable to the Tribe for any and all reasonable attorney fees, costs and court expenses that the Tribe may incur in any enforcement actions it takes under this Land Restriction agreement.

3.0 NOTICE OF PENDING SALE, RENTAL OR CONVEYANCE

3.1 Notice. The Lessor and Lessee, and any subsequent Lessor and Lessee of the Property, are each obligated to notify the Tribe in writing, delivery of which shall be evidenced with a written receipt, at the following address:, that they intend to change occupancy, lease, sell, or convey the Property. Such Notice(s) shall be given no less than sixty (60) days prior to the Lessor or Lessee binding itself to such action(s).

3.2 Confirmation of Compliance with Land Restrictions. After receipt of the Notice, the Lessor and Lessee of the Property must provide any and all information it has and that the Tribe requests and deems necessary to ascertain that the Property shall remain in compliance with this Land Restriction agreement.

3.3 Assistance in Conveying to Low Income Native Americans. The Tribe may offer to assist the Lessor and Lessee and subsequent Lessors and Lessees in finding individuals eligible under this Land Restriction agreement to occupy, rent, or lease the property.

3.4 Delivery of Notice Has No Effect on Land Restriction. The Notice is for information purposes only. Any Tribe inactions or actions taken pursuant to such a Notice do not constitute Tribe approval of any particular use and are not a waiver by the Tribe of any rights it has to enforce compliance with this Land Restriction.

4.0 USEFUL LIFE.

4.1 Term of Land Restriction Should Meet HUD Requirements. NAHASDA requires that the U.S. Department of Housing and Urban Development determine that the Property is minimally restricted for a period of time acceptable to HUD, 25 U.S.C. § 4135(a)(2). In section 1.5 of this Land Restriction agreement, a Term has been set for this Land Restriction and the Tribe has determined and additionally warrants that the Term is not be less than what is acceptable to the HUD for this property and the nature of the NAHASDA assistance given.

5.0 MISCELLANEOUS

5.1 Termination, Transfer or Amendment. Any transfer of the subject Property, termination of or amendment to this Land Restriction by a Lessor or Lessee of the Property shall require the approval and consent of the Tribe and be recorded in the same manner as this Land Restriction agreement.

5.2 Other Use Restrictions. Other use restrictions may be placed on the Property so long as they do not conflict or contravene this Land Restriction agreement and its terms.

5.3 Severability. If any provision of this Land Restriction is held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions shall survive and their validity, legality and enforceability shall not in any way be affected or impaired.

5.4 Notice of Foreclosure. A lender shall give the Tribe sixty (60) days' notice of its intent to foreclose upon its mortgage or to accept a conveyance of the Property in lieu of foreclosure. During the sixty (60) day period, the Tribe, its successors or assigns, shall have the right, but not the obligation, to purchase the mortgage for the amount due hereunder (including applicable expenses), and in such event the lender shall deliver to the purchaser such assignments and other evidentiary documents as the purchaser shall reasonably request.

5.5 Termination of Land Restriction. If a lender acquires the Property by foreclosure or by deed in lieu of foreclosure under its mortgage, after giving the Tribe the required sixty (60) days' notice, the right and restrictions contained in this Land Restriction shall terminate, and the Property shall become free from the rights and restrictions in this Land Restriction. Notwithstanding the foregoing, nothing shall prevent a lender from selling the Property subject to this Land Restriction to an eligible buyer in any foreclosure proceeding or after acquisition of title to the Property. The Tribe shall, upon request, provide a determination as to a purchaser's qualifications as an eligible buyer. In such case, the lease shall indicate that the Property is being conveyed subject to this Land Restriction. In addition, if the Tribe, or its successors or assigns, purchases the Property at a foreclosure sale or from a lender, the Tribe, or its successors or assigns may resubject the Property to this Land Restriction by supplemental recording.

Executed as of the date first written above.

LESSOR:

LESSEE:

CONCURRED IN BY THE TRIBE (IF DIFFERENT FROM OWNER)

Tribe: _____

Signature: _____

Name & Title: _____

Date _____

APPROVED:

SECRETARY OF THE INTERIOR

BY:

ATTACHMENT A

Legal Description of Portion of the Property Covered by Land Restriction
(which includes any dwelling and other improvements thereon)