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RECIPIENT GUIDANCE

PROGRAM: Indian Housing Block Grant (IHBG) AND TITLE VI

FOR: Tribal Government Leaders and Tribally Designated Housing Entities

RJ.B.

FROM: Rodger J. Boyd, Deputy Assistant Secretary for Native American Programs, PN

TOPIC: Useful Life and Binding Commitments

Purpose: The intent of this guidance is to give IHBG and/or Title VI recipient's information about maintaining IHBG and/or Title VI assisted housing for the useful life/affordability period of the property. It will clarify (1) what will be considered "satisfactory to the Secretary;" and (2) what constitutes an acceptable binding commitment. This Program Guidance also transmits samples to document useful life/affordability period for housing units assisted with IHBG and/or Title VI funds. This guidance replaces Program Guidance 2007-07 and 2005-10.

Background: The regulation at 24 CFR § 1000.205(a) (2), requires that housing units remain affordable for either (1) the remaining useful life/affordability period of the property (as determined by the Secretary) or (2) for such other period that the Secretary determines is the longest feasible period of time consistent with sound economics and the purpose of the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA). Useful life/affordability period is the time period during which an assisted property must remain affordable.

NAHASDA gives the Secretary the authority to determine the housing units' useful life/affordability period or other period of time during which the units must remain affordable. The IHBG and/or Title VI regulation at 24 CFR § 1000.142, states that to the extent required in the Indian Housing Plan (IHP), each IHBG and/or Title VI recipient shall describe its determination of the useful life/affordability period of the assisted housing units in its developments in accordance with the local conditions of the Indian area of the recipient. By finding the IHP to be in compliance with the statute, the Department would be determining the useful life/affordability period to be in accordance with NAHASDA.

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The NAHASDA statute and regulations also require that this affordability period be secured through binding commitments satisfactory to the Secretary. The purpose and intent of requiring binding commitments is to guarantee that the housing will remain affordable for its useful life/affordability period. The binding commitment requirement under NAHASDA not only applies to the parties, but it also applies to the property. The purpose and intent of requiring binding commitments is to guarantee that the housing will remain affordable for its useful life/affordability period regardless of who may have entered into a contractual agreement or who may be in possession. The binding commitment requirement cannot be satisfied solely with a contract between the parties. Pursuant to 24 CFR § 1000.144, in order for it to be satisfactory to HUD, a written use restriction must be placed on the assisted property and must run with the land. The binding commitments must be recorded with the appropriate land office.

Affordability Period: The first primary objective of NAHASDA, as stated in 24 CFR § 1000.201(a) (1), is: "...to develop, maintain, and operate affordable housing...for occupancy by low-income Indian families." Every time IHBG and/or Title VI funds are spent on a property an investment is made for low-income families in the community. The return on that investment is the period of continued future use during which the property will be available for use by low-income families. That period of future use is the affordability period or useful life/affordability period for that property. A useful life/affordability period must be established for housing units that are constructed, developed, acquired and/or rehabilitated using IHBG and/or Title VI funds to ensure the property will remain available only to low-income families for a specified period of time.

Determination of Affordability Period: Generally, the affordability period is the period of time during which the property will be available for use by low-income families. It should be the remaining useful life/affordability period of the property, as approved by HUD, or the longest feasible period of time consistent with sound economics and the purposes of NAHASDA, as approved by HUD.

In determining a property's affordability period or useful life/affordability period, a recipient could use a tiered schedule similar to that used in the Department's HOME program to determine the affordability period. This would specify a number of years during which the housing must remain affordable, dependent upon the amount of IHBG and/or Title VI funds being invested in the property per occurrence. For example:

IHBG AND/OR TITLE VI FUNDS INVESTED/AFFORDABILITY PERIOD

Under \$5,000	6 months
\$5,000 to \$15,000	5 years
\$15,001 to \$40,000	10 years
Over \$40,000	15 years
New construction or acquisition of newly constructed housing	20 years

For relatively minor investments, the designated affordability period can be some nominal period of time, but NAHASDA requires that some period be designated and that it be secured with a binding commitment. If the reasonable affordability period is less than one year, a binding commitment is required but it is not necessary to record the written use restriction for purposes of complying with NAHASDA. However, it is good business practice to record the written use

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restriction for purposes of giving notice to subsequent purchasers. The dollar ranges and/or the corresponding number of years may differ from those shown above depending upon local geographic conditions (climate/terrain). The recipient may choose to assign a longer affordability period in order to ensure the availability of a larger continuing affordable housing supply for low-income families.

If the recipient chooses to use some other method of assigning the affordability period, the IHP should describe how the method provides for an affordability period with appropriate consideration given to any unique local geographic conditions (climate/terrain). In setting a useful life/affordability period, a specific number of years should be given for the affordability period, not a range of years (e.g., 30 to 40 years) or a general statement. The number of years should also be without ambiguous qualification (e.g. “about,” “approximate,” “if properly maintained,” “planned,” “expected,” “estimated,” etc.). Similarly, the designated affordability period should in no way be contingent upon the continuation of IHBG and/or Title VI funding.

Reporting Useful life/affordability period: A description of the recipient’s plan or system for determining the useful life/affordability period of the housing it assists with IHBG and/or Title VI funds must be provided in the IHP. A record of the current, specific useful life/affordability period for housing units assisted with IHBG and Title VI funds must be maintained in the recipient’s files and available for review for the useful life/affordability period.

Types of Properties and Assistance Covered: The useful life/affordability period provisions apply to all housing units assisted with IHBG and or Title VI funds except for Mutual Help homes developed under the U.S. Housing Act of 1937 (see 24 CFR § 1000.145). The initial homebuyer, and any subsequent owners that purchase the property during the period of its useful life/affordability period, need only qualify as low-income at the time of their purchase.

In other words, if the initial owner seeks to sell the property while it still has a remaining useful life/affordability period or affordability period assigned to it, the new buyer must qualify as an eligible family at the time of his or her purchase under 24 CFR § 1000.201(b). However, the transfer of a homeownership unit to a family member or household member is not subject to a binding commitment for the remaining useful life/affordability period of the property. Any subsequent transfer by the family member or household member to a third party (not a family member or household member) would be subject to any remaining useful life/affordability period under a recorded binding commitment. Should the home be sold during its useful life/affordability period to a new purchaser that does not qualify as a family member, household member, or an eligible family and funds are not repaid to the recipient’s IHBG and/or Title VI program in accordance with its useful life/affordability period plan, the Secretary shall take appropriate action against the IHBG and/or Title VI recipient in accordance with 24 CFR § 1000.401(a).

Similarly, low-income owner/occupants of privately owned housing that receive IHBG and/or Title VI funded assistance, whether in the form of a loan or a grant, for moderate or substantial rehabilitation, need only be low-income at the time the assistance is provided. However, there must be a binding commitment accompanying the assistance that guarantees an appropriate useful life/affordability period or affordability period and provides for remedies for the breach of

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such useful life/affordability period provision upon transfer of ownership during the assigned useful life/affordability period.

The useful life/affordability period and binding commitment requirements apply to all housing units assisted with IHBG and or Title VI funds, including units developed through the Title VI Loan Guarantee program.

Record of Use Restrictions: Records must be kept for all use restrictions. Attached is a sample Record of Use Restrictions (see Attachment A) form that can be used by recipients to record both NAHASDA and other affordability or use restrictions. Restrictions can vary both in how they are imposed and their length. Since recipients may have properties that are subject to other use restrictions, this model recording form is designed to be the registry of all of the various use restrictions that are placed on recipient properties.

Acceptable Binding Commitments: As mentioned above, NAHASDA requires that there be “binding commitments” satisfactory to the Secretary in place to ensure that a housing unit will remain affordable for its “useful life/affordability period.” When IHBG and/or Title VI funds are used, either in the form of a grant or a loan, to purchase, construct, or rehabilitate a residence, there must be a written agreement in place between the IHBG and/or Title VI recipient and the individual who is being assisted with the IHBG and/or Title VI funds. These written agreements must include provisions for the IHBG and/or Title VI recipient’s useful life/affordability period restrictions as specified in its IHP. The provisions must be imposed by recorded deed restrictions, covenants running with the land, or other mechanisms approved by HUD, except that the useful life/affordability period restrictions may terminate upon foreclosure by a lender (or transfer in lieu of foreclosure) as long as the action is not for the purpose of avoiding low-income affordability restrictions. The written agreement may contain a schedule outlining a payback of a decreasing balance of assistance or percentage equity over the useful life/affordability period or affordability period that would have to be reimbursed to the recipient’s program if a subsequent occupant does not meet the IHBG and/or Title VI eligibility requirements.

Types of Binding Commitments: There are a number of different ways to place both NAHASDA and other affordability or use restrictions on assisted properties. The four attached samples of Useful life/affordability period/Use Restriction Agreements (two for fee land and two for trust land) can be used for this purpose. Any form used must be properly recorded with the appropriate land records offices. Additional use restrictions may be imposed on such properties as long as they do not contradict the NAHASDA useful life/affordability period restrictions.

Useful life/affordability period/Use Restriction Agreements for Use on Fee Land. When a restriction is placed on fee land, a covenant running with the land is imposed on the property to enforce the restriction, see Attachments B & C:

- NATIVE AMERICAN HOUSING ASSISTANCE AND SELF-DETERMINATION ACT USEFUL LIFE/USE RESTRICTION (Indian Housing on Fee Land with Single Recovery Amount). This covenant requires that the full amount of NAHASDA funds invested in the property be refunded in all cases of default.

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- NATIVE AMERICAN HOUSING ASSISTANCE AND SELF-DETERMINATION ACT USEFUL LIFE/USE RESTRICTION (Indian Housing on Fee Land with Prorated Recovery Amount). This covenant requires that the amount of NAHASDA funds invested in the property be prorated over the life of the restriction. In the event of a default, only the current prorated amount must be refunded.

Useful life/affordability period/Use Restriction Agreements for Use on Trust Land. When restrictions are placed on trust land, a lease amendment or addendum to the lease is used to enforce the restriction, see Attachments D & E:

- NATIVE AMERICAN HOUSING ASSISTANCE AND SELF-DETERMINATION ACT USEFUL LIFE/USE RESTRICTION LEASE ADDENDUM/AMENDMENT (Trust Land with Single Recovery Amount). This lease document requires in all cases of default that the full amount of NAHASDA funds invested in the property be refunded.
- NATIVE AMERICAN HOUSING ASSISTANCE AND SELF-DETERMINATION ACT USEFUL LIFE/USE RESTRICTION LEASE ADDENDUM/AMENDMENT (Trust Land with Prorated Recovery Amount). This lease document requires that the amount of NAHASDA funds invested in the property be prorated over the life of the restriction. In the event of a default, only the current prorated amount must be refunded.

If you have any questions, please contact your Area Office of Native American Programs.

Attachments

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NATIVE AMERICAN HOUSING ASSISTANCE AND SELF-DETERMINATION ACT USEFUL LIFE/AFFORDABILITY PERIOD/USE RESTRICTION, (Indian Housing on Fee Land with Single Recovery Amount)

THE FOLLOWING PROPERTY (HEREIN AFTER THE **Property**) IS HEREBY MADE SUBJECT TO A LIEN AND COVENANT RUNNING WITH THE LAND:

Address: _____

Located at: _____

Lot _____, in the subdivision known as _____, shown by map on file in Book No. _____, pages _____ through _____ of Maps _____, Records of County of _____, and State of _____.

or

Legal description: _____

This Useful life/affordability period/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 **Owner**), who is the owner(s) of the Property. The Land Restriction is imposed because Indian Housing Block Grant (IHBG AND/OR TITLE VI) 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. DEED RESTRICTED

1.1 Use Restrictions. 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" are as defined in the Native American Housing Assistance and Self-Determination Act (hereinafter **NAHASDA**), 25 U.S.C. §§ 4101, et seq.

1.2 Subsequent Owners. Family or household members who take Subsequent Ownership will not be subject to the binding agreement. However the binding commitment will not terminate upon subsequent family/household ownership, 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.

1.2 Restricting Owners. All of the rights, restrictions and agreements in this Land Restriction shall be deemed to be covenants and a deed restriction placed on the Property and Owner and binding and enforceable against the Owner and other subsequent owners of the Property; however,

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subsequent Owners that are family members or household members are not subject to this Land Restriction.

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

1.4 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 this amount in its entirety for any violation of the Land Restriction agreement during the Term of the 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 Owner, and any subsequent owner of the Property, is 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. This Notice shall be given no less than sixty (60) days prior to the Owner binding itself to such action(s).

3.2 Confirmation of Compliance with Land Restrictions. After receipt of the Notice, the Owner 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 Owner and subsequent owners in finding individuals eligible under this Land Restriction agreement to occupy, rent, lease, purchase, or obtain title to 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.

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4.0 USEFUL LIFE/AFFORDABILITY PERIOD.

4.1 Term of Land Restriction Should Meet HUD Requirements. NAHASDA requires that the Secretary of the U.S. Department of Housing and Urban Development determine that the Property is minimally restricted for a period of time acceptable to its Secretary, 25 U.S.C. § 4135(a)(2). In section 1.4 of this Land Restriction agreement, a Term has been set for this Land Restriction and that Term should not be less than what is acceptable to the Secretary of HUD based on the nature and the amount of IHBG AND/OR TITLE VI funds to this Property. The Tribe should ensure that a Land Restriction has been obtained for a Term that meets HUD's standards.

5.0 MISCELLANEOUS

5.1 Amendment. Any amendment to this Land Restriction by an Owner of the Property shall require the approval and consent of the Tribe and be recorded in the same manner as this Land Restriction agreement. However, other use restrictions may be placed on the Property so long as they do not conflict or contravene this Land Restriction agreement.

5.2 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.

5.3 Homestead Waiver. This Land Restriction is prior and superior to any Owner right to a homestead exemption under applicable law. Owners of the Property waive their homestead rights to extent that they are in conflict with the rights and remedies set out in this Land Restriction.

Executed as of the date first written above.

OWNER:

CONCURRED IN BY THE TRIBE (IF DIFFERENT FROM OWNER)

Tribe: _____

Signature: _____

Name & Title: _____

Date: _____

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NATIVE AMERICAN HOUSING ASSISTANCE AND SELF-DETERMINATION ACT USEFUL LIFE/AFFORDABILITY PERIOD/USE RESTRICTION (Indian Housing on Fee Land with Pro-rated Recovery Amount)

THE FOLLOWING PROPERTY (HEREIN AFTER THE **Property**) IS HEREBY MADE SUBJECT TO A LIEN AND COVENANT RUNNING WITH THE LAND:

Address: _____
Located at: _____
Lot _____, in the subdivision known as _____,
shown by map on file in Book No. _____, pages _____ through
_____ of Maps _____, Records of County of _____,
and State of _____.

or

Legal description: _____

This Useful life/affordability period/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 **Owner**), who is the owner(s) of the Property. The Land Restriction is imposed because Indian Housing Block Grant (IHBG AND/OR TITLE VI) 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. DEED RESTRICTED

- 1.1 Use Restrictions. 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" are as defined in the Native American Housing Assistance and Self-Determination Act (hereinafter **NAHASDA**), 25 U.S.C. §§ 4101, et seq.
- 1.2 Subsequent Owners. Family or household members who take Subsequent Ownership will not be subject to the binding agreement. However the binding commitment will not terminate upon subsequent family/household ownership, 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.
- 1.2 Restricting Owners. All of the rights, restrictions and agreements in this Land Restriction shall be deemed to be covenants and a deed restriction placed on the Property and Owner and binding and enforceable against the Owner and other subsequent owners of the Property; however, subsequent Owners that are family members or household members are not subject to this Land

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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.

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

1.4 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 this entire 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 Owner, and any subsequent owner of the Property, is 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. This Notice shall be given no less than sixty (60) days prior to the Owner binding itself to such action(s).

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- 3.2 Confirmation of Compliance with Land Restrictions. After receipt of the Notice, the Owner 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 Owner and subsequent owners in finding individuals eligible under this Land Restriction agreement to occupy, rent, lease, purchase, or obtain title to 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/AFFORDABILITY PERIOD

- 4.1 Term of Land Restriction Should Meet HUD Requirements. NAHASDA requires that the Secretary of the U.S. Department of Housing and Urban Development determine that the Property is minimally restricted for a period of time acceptable to its Secretary, 25 U.S.C. § 4135(a)(2). In section 1.4 of this Land Restriction agreement, a Term has been set for this Land Restriction and that Term should not be less than what is acceptable to the Secretary of HUD based on the nature and the amount of IHBG AND/OR TITLE VI funds to this Property. The Tribe should ensure that a Land Restriction has been obtained for a Term that meets HUD's standards.

5.0 MISCELLANEOUS

- 5.1 Amendment. Any amendment to this Land Restriction by an Owner of the Property shall require the approval and consent of the Tribe and be recorded in the same manner as this Land Restriction agreement. However, other use restrictions may be placed on the Property so long as they do not conflict or contravene this Land Restriction agreement.
- 5.2 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.
- 5.3 Homestead Waiver. This Land Restriction is prior and superior to any Owner right to a homestead exemption under applicable law. Owners of the Property waive their homestead rights to extent that they are in conflict with the rights and remedies set out in this Land Restriction.

Executed as of the date first written above.

OWNER:

CONCURRED IN BY THE TRIBE (IF DIFFERENT FROM OWNER)

Tribe: _____
Signature: _____
Name & Title: _____
Date: _____

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

This Useful life/affordability period/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 AND/OR TITLE VI) 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 who are low-income. The terms “federally 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 Lessess. 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, that 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

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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 or Recover Damages. The Lessor and the Tribe have 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 a federally recognized tribe use restrictions, invalidating any conveyance which violates the terms of this Land Restriction. The Tribe also has the option of levying upon the Property to recover in full the money expended, advanced or loaned either on the Property or to the Lessor, or to the Lessee, 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 Lessor or Lessee or Property and shall be entitled to recover this amount in its entirety for any violation of the Land restriction agreement during the Term of the Land Restriction.

2.3 Rights to Recover Other Costs by the Tribe. The Lessor and Lessee, as well as subsequent Lessors and Lessees of the Property, individually or together, shall be additionally 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/AFFORDABILITY PERIOD.

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

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- 5.1 Amendment. Any 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)

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

This Useful life/affordability period/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 AND/OR TITLE VI) 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, that 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.

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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/AFFORDABILITY PERIOD.

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

RECIPIENT GUIDANCE 2013-06 (R)

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)