

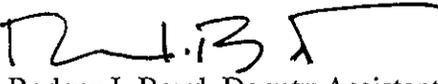


NHHBG 2013-03
Date: July 26, 2013

PROGRAM GUIDANCE

PROGRAM: Native Hawaiian Housing Block Grant (NHHBG)

FOR: Department of Hawaiian Home Lands (DHHL)

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

TOPIC: Useful Life and Binding Commitments for the NHHBG program

Purpose: This guidance gives DHHL information about maintaining NHHBG-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 (attached) to document the useful life/affordability period for housing units assisted with NHHBG funds.

Background: Section 813(a)(2) of the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA), requires that, in order for housing to qualify as affordable housing, each dwelling unit in the housing must remain affordable, according to binding commitments satisfactory to the Secretary, for either (1) the remaining useful life of the property (as determined by the Secretary), without regard to the term of the mortgage or to transfer of ownership; 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 NAHASDA. Useful life is the time period during which a NAHASDA-assisted property must remain affordable, that is, the period of time it must remain available for occupancy by a low-income family.

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 DHHL shall describe its determination of the useful life/affordability period of NAHASDA-assisted housing units in the “Other Submission Items” section of the Native Hawaiian Housing Plan (NHHP). By finding the NHHP to be in compliance with the NAHASDA, HUD would be determining the useful life/affordability period to be in accordance with NAHASDA.

NAHASDA also requires 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. In order for the binding commitment to be satisfactory to the Secretary (HUD), a written use restriction must be placed on the assisted property and must run with the land. The binding commitment must be recorded against the property in the Department of Hawaiian Home Lands' recording system.¹

Affordability Period: The first primary objective under Title VIII of NAHASDA, as stated in Section 809(a)(1), is: "...to develop, maintain, and operate affordable housing...for occupancy by low-income Native Hawaiian families." The use of NHHBG funds on a property is an investment made for low-income families in the community. The return on that investment is the period of continued future use during which the property is available for use by low-income families. That period of future use is the affordability period or useful life for that property. A useful life/affordability period must be established for housing units that are constructed, developed, acquired and/or rehabilitated using NHHBG funds to ensure that the property will remain available exclusively 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, DHHL could use a tiered schedule similar to that used in HUD'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 NHHBG funds being invested in the property per occurrence. For example:

<u>NHHBG Funds Invested</u>	<u>Affordability Period</u>
Less than \$5,000	6 months
\$5,000 to \$15,000	5 years
\$15,001 to \$40,000	10 years
More than \$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 restriction for purposes of giving notice to subsequent purchasers. The dollar ranges and/or the corresponding number of years may differ from those shown, depending upon local geographic conditions (climate/terrain).

¹ As of the date of this Program Guidance, all Hawaiian home land property recordings are filed in the Department of Hawaiian Home Lands recordation system.

DHHL 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 DHHL chooses to use some other method of assigning the affordability period, the NHHP 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 NHHBG funding.

HUD has determined that pursuant to Section 813(a)(2)(B) of NAHASDA, DHHL may make the determination in its useful life/affordability period calculations that the affordability period for the NHHBG-assisted housing unit may end upon a lessee/homeowner’s death. Such a determination would allow a successor of the deceased lessee/homeowner to succeed to the lessee/homeowner’s interest in the lease, lot, and improvements thereon without income restrictions to the extent permitted by the Hawaiian Homes Commission Act. However, if there is no successor to the deceased lessee/homeowner, and the lease resumes its status as unleased Hawaiian home lands, DHHL must continue to enforce the affordability restriction placed on the unit when issuing a new homestead lease for such lot to a new lessee. It is DHHL’s discretion to determine if a successor of the deceased lessee/homeowner must repay (a portion or the full amount of) the NHHBG assistance invested in the unit for reimbursement to DHHL’s NHHBG program. See “Acceptable Binding Commitments,” below.

Reporting Useful Life/Affordability Period: A description of DHHL’s plan or system for determining the useful life/affordability period of the housing it assists with NHHBG funds shall be provided in the NHHP. A record of the current, specific useful life/affordability period for housing units assisted with NHHBG funds must be maintained in DHHL’s files and available for review.

Types of Properties and Assistance Covered: The useful life/affordability period provisions apply to all housing units assisted with NHHBG funds. 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 assigned to it, the new buyer must qualify as an eligible family, in accordance with the requirements of Section 809(a)(2) of NAHASDA, at the time of his or her purchase. Any subsequent transfer of the property is 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 an eligible family, and funds are not repaid to the NHHBG program in accordance with its useful life/affordability period plan, the Secretary will take appropriate action against DHHL, including requiring the repayment of grant funds or reducing future grant payments pursuant to Section 815 of NAHASDA.

Similarly, low-income owner/occupants of privately owned housing that receive NHHBG 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 and provides for remedies for the breach of 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 NHHBG funds.

Record of Use Restrictions: Records must be kept for all use restrictions. Attached is a sample Record of Use Restrictions form (see Attachment A) that can be used by DHHL to record (i.e., track) both NAHASDA and other affordability or use restrictions. Restrictions can vary both in how they are imposed and their length. Since DHHL may have properties that are subject to other use restrictions, this sample record keeping form is designed to be a registry of all of the various use restrictions that are placed on such 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 NHHBG 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 DHHL and the individual who is being assisted with the NHHBG funds. These written agreements must include provisions for DHHL’s useful life/affordability period restrictions as specified in its NHHP. 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, and the action recognizes certain contractual or legal rights to take an action that would avoid termination of low-income affordability (see Section 813(a)(2)). The written agreement may contain a schedule outlining a payback (also known as recovery) of a decreasing balance of assistance or percentage equity over the useful life/affordability period that would have to be reimbursed to DHHL’s NHHBG program if a subsequent occupant does not meet the NHHBG eligibility requirements.

In accordance with Section 819 of NAHASDA, DHHL must also ensure the long-term compliance with NHHBG program requirements through binding commitments with owners of housing, and other authorized entities. Such binding commitments must authorize DHHL and the Secretary to enforce NHHBG program requirements, and provide for remedies for breach of the terms of binding commitments.

Types of Binding Commitments: There are a number of different ways to place both NAHASDA and other affordability or use restrictions on assisted properties. Attached are two samples of Useful Life/Affordability Period/Use Restriction Agreements, which were created for the Indian Housing Block Grant Program, and are provided here for demonstration purposes. When restrictions are placed on trust land, a lease amendment or addendum to the lease is used to enforce the restriction. See the samples in Attachments B and C.

The first sample (Attachment B) demonstrates a Lease Addendum/Amendment with a single recovery amount. This lease document requires in all cases of default that the full amount of NAHASDA funds invested in the property be recovered.

The second sample (Attachment C) demonstrates a Lease Addendum/Amendment with a 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 recovered.

Attachment D provides HUD-approved language to enforce an NHHBG binding commitment within a Department of Hawaiian Home Lands Lease Addendum. Any form of binding commitment used must be properly recorded against the property in the Department of Hawaiian Home Lands' recording system. Additional use restrictions may be imposed on such properties as long as they do not contradict the NAHASDA useful life/affordability period restrictions.

If you have any questions regarding the information provided in this guidance, please contact Claudine Allen, Native Hawaiian Program Specialist at (808) 457-4674, or by email at claudine.c.allen@hud.gov.

Attachments

Attachment B

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 Exhibit 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 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.

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 less than what is acceptable to HUD for this property and the nature of the NAHASDA assistance given.

5.0 MISCELLANEOUS

- 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: _____

EXHIBIT A

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

Attachment C

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 Exhibit 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.

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 additionally warrants that the Term is not less than what is acceptable to 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: _____

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

Attachment D

HUD-Approved Language for a NHHBG Binding Commitment Enforced Within a Department of Hawaiian Home Lands Lease Addendum

1. **Native Hawaiian Housing Block Grant.** Lessee acknowledges and agrees as follows:

- a. The Department using funds from Native Hawaiian Housing Block Grant Number _____, as authorized by Title VIII of the Native American Housing Assistance and Self-Determination Act, hereinafter "NHHBG", provided Lessee a subsidy of \$ _____ towards the purchase of a home, which subsidy must be repaid if the Lessee fails to own and occupy the dwelling unit for a period of at least _____ years (the "Retention Period"). The Department is required by the terms of its NHHBG to impose income eligibility and affordability restrictions on property benefiting from the subsidy to ensure that such property remains affordable to low-income families for a specified period of time and has chosen to do so through this addendum to the Lease.
- b. During the Retention Period, Lessee may not transfer an interest in the Lease without the Department's approval and to any person who has not been found by the Department to be an eligible low-income Native Hawaiian purchaser or transferee (with a household income that does not exceed 80% of the area median income).
- c. If, during the Retention Period, Lessee fails to occupy the dwelling unit as his/her principal residence or Lessee fails to convey, sell or transfer any interest in the Lease to an eligible low-income Native Hawaiian purchaser or transferee, Lessee shall repay the subsidy according to the following formula. Such failure by Lessee will also result in the Department repaying a prorated amount of NHHBG funds used for any infrastructure development costs for the Lot.

The Retention Period shall be for a full _____ months from the date of Lease recordation.

The number of months the Lessee holds title to the Lease after the date of Lease recordation up to the month of transfer, surrender, sale or refinancing, shall be subtracted from _____ months. The remaining months is then divided by _____ months. The resultant quotient is then multiplied by the NHHBG subsidy amount to determine the pro rata share amount due. For example:

$$\frac{\text{months} - \text{months Lessee owns unit}}{\text{months}} \times \text{subsidy} = \text{pro rata share}$$

The income eligibility and affordability restrictions placed on this Lot shall automatically terminate upon repayment of the subsidy in accordance with paragraph 1c. However, Lessee's covenant to occupy the home as a principal residence continues.

- d. Lessee's obligation to sell or convey the property only to an eligible low-income Native Hawaiian person, and to repay the subsidy to the Department shall

automatically terminate upon any foreclosure, deed-in-lieu of foreclosure, or assignment of Lessee's mortgage to HUD. The income eligibility and affordability restrictions applicable to the Lot shall terminate upon a foreclosure sale or cancellation of this Lease by the Department.

- e. Notwithstanding paragraph 1d above, Lessee's obligation to sell or convey the property only to an eligible low-income Native Hawaiian person and to repay the subsidy to the Department shall be revived in the event surrender of the Lease to the Department or assignment of the Lessee's mortgage by HUD to the Department does not result in cancellation of the Lease by the Department.
- f. In the case of refinancing prior to the end of the Retention Period, an amount equal to a pro rata share of the NHHBG subsidy reduced for the period the Lessee owned and occupied the dwelling unit, as determined by using the formula in paragraph 2c, shall be repaid by the Lessee to the Department from any net gain realized upon the refinancing, unless the net gain is used for capital improvements to the mortgaged property.
- g. Notwithstanding any other provision of this Addendum, upon the death of the Lessee, the income eligibility and affordability restrictions placed on this Lot shall automatically terminate and a non-low-income Native Hawaiian successor may inherit the home, consistent with the Act. If there is no successor to the decedent and the Lease resumes its status as unleased Hawaiian home lands, the Department must continue to enforce the income eligibility and affordability restrictions placed on this Lot.