

MODEL TRIBAL LENDING PROCEDURES FOR:
LIEN PRIORITY, EVICTION AND FORECLOSURE
AND LEASING**I. OVERVIEW**

This document highlights roles and responsibilities of the Indian tribe for the participation in mortgage loan guarantee and insurance programs sponsored by the U. S. Department of Housing and Urban Development (HUD), U. S. Department of Agriculture's Rural Housing Service (RHS) and U. S. Department of Veterans Affairs (VA). The Federal Agencies noted have prepared this document as a guide to aid Indian tribes in obtaining the approval of the Agencies for participation in each of their programs.

- a. General.** Due to the unique legal status of Indian trust land and restricted land, it has been difficult for Native Americans to achieve homeownership utilizing financing provided by private lending institutions. In general, trust land means land in which the title is held in trust by the United States for the benefit of an Indian or Indian tribe, and it is inalienable. Trust lands also include lands to which the title is held by an Indian tribe subject to a restriction against alienation imposed by the United States. Because of the difficulty in obtaining a security interest in individual plots, conventional mortgage lending practices have not traditionally operated in this forum. This has resulted in a reluctance of financial institutions to offer their mortgage loan products where Indian trust land is involved. This same reluctance has also applied to restricted land where the title is held by an individual Indian or tribe and which can only be alienated or encumbered by the owner with the approval of the Secretary of the Interior.
- b. Legal and Administrative Framework.** For tribal members to participate in the federal government sponsored mortgage loan programs, the tribe must demonstrate that a legal and administrative framework exists that is sufficient to protect the interests of the borrower, the lender, and the federal agency which will guarantee or insure the mortgage loan. To establish this legal and

administrative framework, tribes must have adopted foreclosure, eviction, and priority of lien procedures that will apply to these loans whenever the tribal court has legal jurisdiction. The legal and administrative framework addresses four key procedures: (1) foreclosures, (2) evictions, (3) priority of lien procedures, and (4) leasing procedures for tribal trust land. Attachment 1 provides model tribal mortgage lending ordinances which may be utilized by a tribe or may serve as a guide. Use of this model will be deemed acceptable for program compliance by all of the federal agencies noted above. If a tribe adopts a legal and administrative framework which differs from these model documents, it will be necessary for the tribe to seek approval, in a separate process, from each of the Federal agencies noted.

- c. Tribal Commitment to Enforcement.** A tribe with tribal court jurisdiction must also demonstrate its support of one (or more) of these programs by notifying at least one of these federal agencies, that the tribe has enacted the required legal procedures and that it will enforce these procedures. (See Paragraph II.a. below.)

II. FORECLOSURE AND EVICTION PROCEDURES

Foreclosures and evictions will be processed through the legal system having jurisdiction over the mortgage loans. This may include federal, state, local, or tribal courts.

- a. Enactment of Tribal Procedures.** A tribe may enact foreclosure and eviction procedures via tribal council resolution or any other recognized legislative action. To be considered valid, these procedures must be legally enforceable.
- b. Required Provisions.** To preserve tribal autonomy in the governing process, the federal agencies noted above will not prescribe a format or specific wording for foreclosure and eviction procedures. However, all foreclosure procedures must enable the lender and/or the Federal agency which has made, insured or guaranteed the mortgage loan, to take possession of the property in the event that three or more complete

monthly mortgage installments are due and unpaid, or the Borrower has failed to perform any obligation under the Mortgage. All eviction procedures must allow for expedited removal of the delinquent household residents from occupancy.

- c. **Sample Documents.** A tribe that does not currently have foreclosure and eviction procedures may utilize the model language which is attached, or may contact other tribes to obtain procedural options.
- d. **Failure to Enforce.** Each of the Federal Agencies noted above has different authority to take action in the case of a Tribe which does not enforce its established eviction and foreclosure requirements. For information on the action to be taken, contact the appropriate Federal Agency directly.

III. LIEN PROCEDURES

Mortgages guaranteed under the following programs must have a first lien position on the property. Those programs are: HUD Section 184, HUD Section 248, and USDA Section 502 Guaranteed. Under the USDA Section 502 Direct program, the loan may be subordinated under certain circumstances (contact the USDA's Rural Housing representative for further information.) enforcement will be processed through the appropriate federal, state, local or tribal system. The lender responsibility is only to verify that the Tribe has adopted the model procedures and is approved by the Federal Agency guaranteeing or insuring the mortgage.

- a. **Enactment of Tribal Lien Procedures.** To ensure that each direct, guaranteed or insured mortgage holds a first lien position, each tribal government must enact a law that provides either:
 - (1) For the satisfaction of HUD , VA, or USDA direct, guaranteed or insured mortgages before other obligations (except tribal leasehold taxes assessed after the property is mortgaged); or

(2) That state law shall determine the priority of liens against the property. If a reservation spans two or more states, the state in which the property is located is the applicable state law.

- b. **Format.** The federal agencies noted above will not prescribe a specific format for adopting lien requirements.
- c. **Failure to Enforce.** If any of the Federal Agencies issuing loans, guarantees or insurance within the jurisdiction of an approved tribes determines that the tribe does not enforce adopted lien enforcement or eviction procedures, that Agency will notify the other Federal Agencies of such non-enforcement. Each Federal Agency will take appropriate action in accordance with paragraph II.d., above.
- d. **Recordation.** On tribal trust or other federally restricted land, liens shall be recorded by filing with the Land Titles and Records Office at the BIA and may also be recorded with the tribe in accordance with local ordinances/resolutions if appropriate. Section 248 requires recording with the State_(if available). On fee simple land, liens shall be filed with the State or County recording system having jurisdiction over the property.

IV. LEASING TRIBAL TRUST LAND

To receive a loan guarantee/insurance on tribal trust lands, the borrower must establish a leasehold interest in the land on which the home will be located.

- a. **Leasehold Documents.** Appendix 2 provides a standard lease form that has been approved by the BIA, HUD, USDA and VA for use on tribal trust land. This sample lease form contains certain provisions that are required to be included in leases for trust and restricted land used as collateral for the loan programs administered by these agencies.

- b. Lease Modifications.** The standard lease form may be modified by the mutual consent of the tribe and the borrower. Modifications to the standard lease form are made by rider and require the approval of BIA and the federal agency which is proposed to make, guarantee, or insure the loan. No lease modification may serve to obstruct the right of any of the Federal Agencies or the lender to evict the borrower or foreclose on or sell the property in the event of default.
- c. Parties to the Lease.** The lease must be executed by the tribe (Lessor) and borrower (Lessee) and approved by the Secretary of the Interior prior to issuance of a firm commitment/lender approval.
- d. Leasehold Payments.** The amount of the lease rental is negotiable between the Indian tribe (Lessor) and borrower (Lessee) subject to the approval of the Secretary of the Interior.
- (1) The lease rental and provisions for increases in the rent will be a consideration of the lender in determining the mortgage amount for which the borrower qualifies.
- (2) The tribe must notify the lender of lease rental payments and/or taxes. Except for mortgages insured under 248, the lender may require that the lease payments be made through the lender, as is typically done with local property taxes. If the tribe wishes, tribal tax liens resulting from that portion of the unpaid leasehold payments applicable to tribal taxes may be recorded in the state recording system. The tribe may also intervene in any foreclosure proceeding to ask that the taxes be paid.
- e. Lease Transfers and Assignments.** The tribe must approve all transfers or assignments of the leasehold interest, except at foreclosure and as otherwise provided in the lease.

- f. Lease Status at Foreclosure.** The Federal Agency which made, insured or guaranteed the mortgage loan, or the lender may assume title to the leasehold interest without tribal approval of such transfer. However, anyone who subsequently purchases or rents the leasehold property must be approved by the tribe except as otherwise provided in the lease.
- g. Termination.** The lease may not be terminated while the federal loan, guarantee or insurance is in effect without the approval of the applicable Federal Agency. Likewise, in the event of foreclosure, the lease will not be subject to any forfeiture or reversion and will not be otherwise subject to termination.

V. MORTGAGING ALLOTTED TRUST LANDS

- a. General.** Unless otherwise approved by the applicable Federal Agency, owners of undivided interests cannot mortgage trust property.
- b. Mortgages on Allotted Trust Land.** The allottee or owner of the individual trust may choose to mortgage the land and consequently risk permanent loss of the land in the case of default and subsequent foreclosure. Allottees or owners of an individual trust are permitted to mortgage properties with the approval of BIA. If foreclosure occurs on mortgaged allotted trust land, the title to the land is removed from trust status. In general, Deeds of Trust must be approved by the BIA, and should include a 483b rider. The HUD Section 248 program is not available on allotted trust lands.
- c. Fractionated Ownership.** It is common for allotted trust lands to be owned by several individuals. If a prospective borrower proposes to use trust or restricted land in which he or she owns an interest, he or she must acquire a lease from all of the co-owners (this action may require the individual to pay a rental to the co-owners) and approval of the lease by the Secretary of the Interior.

VI. TRIBAL APPLICATION AND APPROVAL

Before a lender may process a mortgage loan application where a guarantee/insurance is proposed under a program sponsored by either HUD, USDA or VA, or a Federal Agency may process a direct loan application, a tribe with tribal court jurisdiction over that property must provide the applicable Federal Agency with a copy of its foreclosure, eviction and priority of lien ordinances and its lease. If an Agency approves the tribe's ordinances and lease, it will execute a Memorandum of Understanding (MOU) with the tribe (Attachment 3). A copy of this MOU will be furnished to the other agencies. If a tribe's documents do not follow the basic intent and requirements of the model documents which are attached to this guide, the tribe will need to seek approval of HUD, VA and USDA individually, in order to participate in each of their mortgage loan programs.

a. Notice Content. Appendix 4 includes a checklist of those items necessary in order to receive Agency approval. To obtain approval, the tribe's submission must provide evidence that it:

- (1) Will ensure that the Federal Agencies and private lenders have access to tribal lands for the purpose of servicing and evaluating properties securing direct, guaranteed or insured mortgages.
- (2) Has enacted foreclosure procedures.
- (3) Has enacted eviction procedures.
- (4) Understands that if eviction and foreclosure procedures are not enforced, all of the Departments noted may cease making, guaranteeing or insuring new loans within their area of jurisdiction pursuant to paragraph II.d.

- (5) Has adopted procedures giving the Federal Agency first lien priority (where applicable) or otherwise ensuring that the direct, guaranteed, or insured loan will be satisfied before all other property debts (excepting tribal taxes); or has adopted legislation stating that it will abide by applicable state or local laws with respect to lien priority.

b. Notification Process:

- (1) Tribe sends to either HUD, USDA or VA, the items noted in the checklist at Appendix 4.
- (2) It is not necessary for a tribe to obtain approval from the applicable Federal Agency for each new direct, guaranteed or insured loan once a tribe has executed a Memorandum of Understanding (MOU) with that Federal Agency. Any Federal Agency initially approving a tribe will provide copies of the executed MOU to the other Federal Agencies. The tribe's executed MOU will be kept on file by each of the Agencies.
- (3) Upon receipt of a borrower application, lenders may call the appropriate Federal Agency to determine whether a given tribe is ready to participate in the loan program(s). The lender may also ask the borrower to submit a land status form which will provide the lender and Department with confirmation of the land status (tribal trust, allotted trust or fee simple within the tribe's jurisdiction).

Attachment 1

Model Tribal Mortgage Lending Code

Commentary: This Attachment sets forth general procedures for mortgages and foreclosures. It is designed to meet the needs of mortgage loan guarantee, insurance and direct loan programs sponsored by the U. S. Departments of Housing and Urban Development, Agriculture (Rural Housing) and Veterans Affairs. These Federal Agencies offer various mortgage loan programs which are designed to provide homeownership opportunities to Native Americans wishing to live on an Indian reservation or within an Indian area (as defined within each Agency's program requirements).

A. Lien Priority

All mortgage loans recorded in accordance with the recording procedures set forth in this Attachment, including Leasehold Mortgages, and including loans made, guaranteed, insured or held by a governmental agency, shall have priority over any lien not perfected at the time of such recording and any subsequent lien or claim excepting a lien or claim arising from a tribal leasehold tax assessed after the recording of the mortgage. (In those cases where the government direct, guaranteed or insured mortgage is created as a second mortgage, the loan shall assume that position.)

B. Recording of Mortgage Loan Documents

- (1) The Tribal Recording Clerk shall maintain in the Tribal Real Estate program a system for the recording of mortgage loans and such other documents as the Tribe may designate by laws or resolution.
- (2) The Tribal Recording Clerk shall endorse upon any mortgage loan or other document received for recording:
 - (a) The date and time of receipt of the mortgage or other document;
 - (b) The filing number, to be assigned by the Tribal Recording Clerk, which shall be a unique number for each mortgage or other document received and;
 - (c) The name of the Tribal Recording Clerk or designee receiving the mortgage or document.

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

_____ Tribe)
) ss.
Indian Reservation)

I certify that this is a true and correct copy of a document received for recording this date.

Given under my hand and seal this _____ day of _____.

(SEAL)

(Signature)

(Date)

The Tribal Recording clerk shall maintain the copy in the records of the recording system and shall return the original of the mortgage loan or other document to the person or entity that presented the same for recording.

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

- (a) The name(s) of the Borrower/Mortgagor of each mortgage loan, identified as such;
- (b) The name(s) of the Lender/Mortgagee of each mortgage loan, identified as such;
- (c) The name(s) of the grantor(s), grantee(s) or other designation of each party named in any other documents filed or recorded;
- (d) The date and time of the receipt;
- (e) The filing number assigned by the Tribal Recording Clerk; and
- (f) The name of the Tribal Recording Clerk or designee receiving the mortgage or document.

(4) The certified copies of the mortgage loan and other documents and the log maintained by the Tribal Recording Clerk shall be made available for public inspection and copying. Rules for copying shall be established and disseminated by the Tribal Recording Clerk.

(5) All mortgages will be recorded with the BIA in addition to any Tribal recording provisions.

Commentary: The federal agencies noted above recognize that Indian tribes are required to have mortgages filed with the Bureau of Indian Affairs (BIA). It is optional whether or not the tribe houses its Recording department within a "Tribal Real Estate" program. The tribe is free to place the Recording function in any tribal department it wishes.

(c) Foreclosure Procedures

(1) A Borrower/Mortgagor shall be considered to be in default when he or she is thirty (30) days past due on his or her mortgage payment(s) or is in violation of any covenant under the mortgage for more than 30 days to the Lender/Mortgagee (i.e. the 31st day from the payment due date).

(2) When a Borrower/Mortgagor is thirty days past due on his or her mortgage and before any foreclosure action or activity is initiated, the Lender/Mortgagee shall complete the following:

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

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

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

(4) When the Borrower/Mortgagor is past due on three installment payments and at least ten (10) days before initiating a foreclosure action in Tribal Court, the Lender shall advise the Borrower/Mortgagor in writing by mail or by posting prominently on the unit, with a copy provided to the Tribe, as follows:

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

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

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

- (d) In addition to the preceding notification requirements, the Lender/Mortgagee shall complete the following additional notice requirements (i) notify the Borrower/Mortgagor that if the Leasehold Mortgage remains past due on three installment payments, the Lender/Mortgagee may ask the applicable governmental agency to accept assignment of the Leasehold Mortgage if this is an option of the governmental program; (ii) notify the Borrower/Mortgagor of the qualifications for forbearance relief from the Lender/Mortgagee, if any, and that forbearance relief may be available from the government; and (iii) provide the Borrower/Mortgagor with names and addresses of government officials to whom further communications may be addressed, if any.
- (5) If a Borrower/Mortgagor is past due on three or more installment payments and the Lender/Mortgagee has complied with the procedures set forth in the first part of this Section, the Lender/Mortgagee may commence a foreclosure proceeding in the Tribal Court by filing a verified complaint as set forth in Section D. of this Code.

Commentary: The proceeding Section C sets forth foreclosure procedures designed to meet all of the foreclosure procedure requirements currently established under the mortgage loan programs sponsored by the U.S. Departments of Housing and Urban Development, Agriculture and Veterans Affairs (collectively referred to as Federal Agency). However, under HUD's Section 248 mortgage insurance program, lenders have the option of assigning the mortgage to HUD rather than initiating foreclosure. If the lender exercises its option to assign the mortgage to HUD, it must comply with the requirements of the regulations at 24 CFR part 203.

D. Foreclosure Complaint and Summons

- (1) The verified complaint in a mortgage foreclosure proceeding shall contain the following:
- (a) The name of the Borrower/Mortgagor and each person or entity claiming through the Borrower/Mortgagor subsequent to the recording of the mortgage loan, including each Subordinate Lienholder (except the Tribe with respect to a claim for a tribal leasehold), as a defendant;
 - (b) A description of the property subject to the mortgage loan;
 - (c) A concise statement of the facts concerning the execution of the mortgage loan and in the case of a Leasehold Mortgage the lease; the facts concerning the recording of the mortgage loan or the Leasehold Mortgage; the facts concerning the alleged default(s) of the Borrowers/Mortgagor; and such other facts as may be necessary to constitute a cause of action;

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

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

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

E. Service of Process and Procedures. Any foreclosure complaint must be in writing, and must be delivered to the Borrower/Mortgagor in the following manner:

(1) Delivery must be made by an adult person and is effective when it is:

(a) Personally delivered to a Borrower/Mortgagor with a copy sent by mail, or

(b) Personally delivered to an adult living in the property with a copy sent by mail, or

(c) Personally delivered to an adult agent or employee of the Borrower/Mortgagor with a copy sent by mail.

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

(a) Certified mail, return receipt requested, at the last known address of the Borrower/Mortgagor, or

(b) Securely taping a copy of the notice to the main entry door of the property in such a manner that it is not likely to blow away, and by posting a copy of the notice in some public place near the premises, including a tribal office, public store, or other commonly-frequented place and by sending a copy first class mail, postage prepaid, addressed to the Borrower/Mortgagor at the premises.

(3) The person giving notice must keep a copy of the notice and proof of service in accordance with this section, by affidavit or other manner recognized by law.

F. Cure of Default

Prior to the entry of a judgment of foreclosure, any Borrower/Mortgagor or a Subordinate Lienholder may cure the default(s) under the Mortgage by making a full payment of the delinquency to the Lender/Mortgagee and all reasonable legal and Court costs incurred in foreclosing on the property. Any subordinate Lienholder who has cured a default shall thereafter have included in its lien the amount of all payments made by such Subordinate Lienholder to cure the default(s), plus interest on such amounts at the rate stated in the note for the mortgage. There shall be no right of redemption in any Leasehold Mortgage Foreclosure proceeding.

Commentary: This Section F. does not allow for a "right of redemption." The "right of redemption" if provided in a Foreclosure Code allows a Borrower/Mortgagor to redeem (purchase) his/her foreclosed property after it has been sold at a foreclosure sale. Most state foreclosure laws have very strict time limits on how long a Borrower/Mortgagor has to redeem his/her property after a foreclosure sale, when the right to redeem will be allowed, and notice requirements that must be given the Borrower/Mortgagor following the sale of his/her foreclosed property. Because the right of redemption can be very specialized the drafters of this model Code will leave to the discretion of the tribe whether or not to incorporate a "right of redemption" and under what terms. If a "right of redemption" is included, it will be necessary for the tribe to seek approval in a separate process from each of the Federal Agencies noted.

G. Judgment and Remedy

This matter shall be heard and decided by the Tribal Court in a prompt and reasonable time period not to exceed sixty (60) days from the date of service of the Complaint on the Borrower/Mortgagor. If the alleged default has not been cured at the time of trial and the Tribal Court finds for the Lender/Mortgagee, the Tribal Court shall enter judgment:

- (1) Foreclosing the interest of the Borrower/Mortgagor and each other defendant, including Subordinate Lienholder, in the mortgaged property and
- (2) Granting title to the property to the Lender/Mortgagee or the Lender's Designated Assignee; in the case of a Leasehold Mortgage, the Lease and the Leasehold Estate will be assigned to the Lender/Mortgagee or the Lender's Designated Assignee, subject to the following provisions

(a) The lender shall give the Tribe the right of first refusal on any acceptable offer to purchase the Lease and the Lessee's leasehold interest in the property described in the lease which is subsequently obtained by the Lender or Lender's Designated Assignee.

(b) The Lender or Lender's Designated Assignee may only transfer, sell or assign the Lease and Lessee's leasehold interest in the property described in the Lease to a Tribal member, the Tribe, or the Tribal Housing Authority;

(c) The mortgagee has the right to convey the leasehold interest to the Secretary of HUD without providing the right of first refusal to the Tribe for Section 248.

H. Foreclosure Evictions

Foreclosure evictions shall be handled according to the general eviction process set forth below.

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

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

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

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

(i) Citing facts alleging jurisdiction of the Tribal Court;

(ii) Naming as defendants the mortgagors and any other record owner (including Sublessees and subordinate lienholders), of which the complainant has record notice (except the Tribe with respect to a claim for a Tribal tax on the Leasehold Estate subject to the Leasehold Mortgage);

(iii) Describing the Leasehold Estate subject to the Leasehold Mortgage;

(iv) Stating the facts concerning (1) the execution of the lease and the Leasehold Mortgage; (2) the recording of the Leasehold Mortgage; and (3) the facts upon which he or she seeks to recover;

(v) Stating any claim for damages or compensation due from the persons to be evicted; and

(vi) Otherwise satisfying the requirements of the Tribal Court.

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

(4) Service of Summons and Complaint. A copy of the summons and complaint shall be served upon the defendants in the manner provided by the Tribal Court rules for service of process in civil matters. In the absence of such Tribal Court rules, the summons and complaint shall be served by one of the following two methods.

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

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

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

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

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

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

(b) The Tribal Court shall find during pre-trial proceedings or at trial that the Lessee, Sublessee, or other occupant under color of law of the Leasehold Estate subject to the Leasehold Mortgage is guilty of an act of unlawful detainer.

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

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

(8) Continuances in Cases Involving the Lender or Federal Agency. (which originally made, insured or guaranteed) the mortgage loan. Except by agreement of all parties, there shall be no continuances in cases involving the lender or Federal Agency that will interfere with the requirement that the Order of Repossession be enforced not later than 45 days after a pre-trial proceeding or trial in which the Tribal Court finds against defendants, subject to the sound discretion of the Court.

I. No Merger of Estates.

There shall be no merger of estates by reason of the execution of a Lease or a Leasehold Mortgage or the assignment or assumption of the same, including an assignment adjudged by the Tribal Court, or by operation of law, except as such merger may arise upon satisfaction of the Leasehold Mortgage.

J. Certified Mailing to Tribe

In any foreclosure proceedings on a Leasehold Mortgage where the Tribe is not named as a defendant, a copy of the summons and complaint shall be mailed to the Tribe by certified mail, return receipt requested, within five (5) days after the issuance of the summons. If the lessor is not the tribe, this notice will also be mailed to the lessor at the same time the notice is mailed to the tribe. If the location of the lessor cannot be ascertained after reasonable inquiry, a copy of the summons and complaint shall be mailed to the lessor in care of the Superintendent of the applicable agency of the Bureau of Indian Affairs.

K. Intervention

The Tribe or any Lessor may petition the Tribal Court to intervene in any Lease or Leasehold Mortgage foreclosure proceeding under this Code. Neither the filing of a petition for intervention by the Tribe, nor the granting of such petition by the Tribal Court shall operate as a waiver of the sovereign immunity of the Tribe, except as may be expressly authorized by the Tribe.

L. Appeals

Appeals under this Code shall be handled in accordance with the general tribal appellate provisions.

CERTIFICATION

The foregoing _____ (name of Tribe) Leasehold Mortgaging Code was enacted by the Tribal Council of the _____ Tribe on the ____ day of _____, 2000, by a vote of ____ for, _____ opposed, and _____ abstaining, at a dully called meeting at which a quorum of the Tribal Council was present.

Tribal President

ATTEST:

Tribal Secretary

CERTIFICATION

_____Tribe)
) ss.
)

I certify that this is a true and correct copy of a document received for recording this date. Given under my hand and seal this ____ day of _____.

(SEAL)

Signature

Title

oOo

RESIDENTIAL LEASE OF TRIBAL OWNED LAND

Lease No. _____.
Contract No. _____.

THIS Lease is made and entered into by and between _____
for and on behalf of _____ Tribe of Indians, hereinafter designated
as "Lessor," and _____, members of the
_____ Tribe and residing upon the _____ Indian
Reservation, hereinafter designated as "Lessee."

WITNESSETH

1. SECRETARIAL APPROVAL; FEDERAL AGENCY APPROVAL; DEFINITIONS OF FEDERAL AGENCY, TRIBE, and LENDER. As used in this Lease, the term "Secretary" means the Secretary of the Interior or his or her duly authorized representative. This Lease is subject to the approval of the Secretary pursuant to the Act of August 9, 1955, 69 Stat. 539, as amended, 25 U.S.C. § 415, as implemented by Title 25, Code of Federal Regulations, Part 162. The form of this Lease has been accepted by the Secretary of Housing and Urban Development (HUD) pursuant to 24 C.F.R. § 203.43h(c), which implements Section 248 of the National Housing Act, 12 U.S.C. § 1715z-13, for use in connection with Federal Housing Administration (FHA) insurance of a mortgage on the interest created by this Lease, and pursuant to 24 C.F.R. § 1005.107, which implements Section 184 of the Housing and Community Development Act of 1992 (Pub. L.102-550) for use in connection with HUD's issuance of a loan guarantee of a mortgage on the interest created by this Lease. The form of this Lease has also been accepted by the Secretary of the United States Department of Agriculture (USDA) for use in connection with the issuance by USDA or its Rural Housing Service (RHS) of a direct or guaranteed loan pursuant to section 502 of the Housing Act of 1949 as amended, 42 U.S.C. § 1472, and accepted by the Secretary of the Veterans Affairs (VA) for use in connection with the issuance by VA of a direct or guaranteed loan pursuant to chapter 37 of Title 38, United States Code, secured by the interest created by this Lease. As used in the context of this Lease, the term "Tribe or Tribal" refers to the respective Tribe who enters into this Lease as the "Lessor". For future reference, "Federal Agency" refers to HUD, VA, and - USDA. When used in this Lease, the "lender" is any mortgagee that a Federal Agency has approved or a Federal Agency which makes a direct loan. With respect to mortgages which are insured under Section 248 of the National Housing Act, the lender must be

approved by the Federal Housing Administration. The term "lender" also includes any of the lender's successors or assigns of the lender's right, title to, or interest in, the Mortgage and any subsequent noteholder secured by the Mortgage. The assignment of the mortgage or any interest therein does not require the consent of the Tribe.

2. PREMISES. Lessor hereby Leases to the Lessee all that tract or parcel of land situated on the _____ Indian Reservation, County of _____, State of _____, and described as follows (the Leased Premises):

[description], _____ County, _____ Indian Reservation, _____, approximately _____ acres.

3. USE OF PREMISES. The purpose of this Lease is to enable the Lessee to construct, improve, and maintain a dwelling and related structures on the Leased Premises, and otherwise to use said premises as a principal residence. The Lessee agrees not to use any part of the Leased Premises for any unlawful conduct or purposes and will comply with all applicable Federal Laws.

4. TERM. Lessee shall have and hold the Leased Premises for a term of ____ years beginning on the effective date of this Lease. This Lease may not be terminated by either or both parties during its term if, and as long as, the Lease and/or any improvements on the premises, or any interest therein, is mortgaged or otherwise pledged as security for any loan in accordance with the provisions hereof, unless consent in writing to such termination is given by the lender and, if the loan is guaranteed, insured, or made by a Federal Agency, a written consent of that agency is also required. This Lease shall not be subject to any forfeiture or reversion and shall not be otherwise terminable, if such event would adversely affect any interest in the Leased Premises, including improvements thereon, acquired in accordance with the provisions hereof by the holder of any mortgage or other lien, or of any purchaser at a foreclosure sale under such mortgage (or lien) or under any conveyance given in lieu of foreclosure, or of any holder subsequent to such purchase. In the event a Federal Agency acquires a mortgage on the interest created by this Lease by assignment from a lender, the Lessor shall not terminate the Lease without the written consent of the respective Federal Agency, as long as the mortgage is in force.

5. RENT. The improvement of housing for Tribal families is a public purpose of the Lessor. The consideration for this Lease is (1) the obligation of Lessee to further said purpose, (2) the promise hereby given by Lessee to pay the Lessor rent at the rate of \$_____per _____, (3) the extinguishment, hereby agreed to by Lessee, of any and all use rights heretofore held by Lessee in the Leased Premises, so that Lessee shall hereafter hold rights only by virtue of this Lease, and (4) other good and valuable considerations, the receipt of which is hereby acknowledged by Lessor. Rent may be subject to adjustment pursuant to 25 CFR 162.

6. IMPROVEMENTS. All buildings or other improvements now existing or hereafter constructed on the Leased Premises shall be the leasehold property of the Lessee during the term of this Lease, including any extension or renewal thereof. During the term of this Lease, Lessee shall obtain any necessary governmental permits, approvals or authorization required for the construction and use of all improvements he or she (they) places or cause(s) to be placed on the Leased Premises, and shall comply with all laws applicable to the construction and use of improvements.

7. USE RIGHT. Upon expiration of this Lease, or upon its termination in accordance with the terms hereof, unless such termination is due to default upon the part of Lessee, Lessee or any successors in interest shall be entitled to use rights in the Leased Premises if qualified under the laws of the Tribe. If not so eligible, Lessee, his or her (their) subLessee and any successors in interest shall, upon demand, surrender to Lessor upon expiration or other termination of this Lease complete and peaceable possession of the Leased Premises and all improvements thereon which have not been relocated as permitted under Paragraph 23 of this Lease, which shall be the property of the Tribe.

8. FEDERAL SUPERVISION.

- (a) Nothing contained in this Lease shall operate to delay or prevent a termination of Federal responsibilities with respect to the Leased Premises by the issuance of a fee patent, the lifting of restrictions on alienation, or otherwise during the term of the Lease; such termination, however, shall not serve to abrogate the Lease.
- (b) No member of Congress or any delegate thereto or any Resident Commissioner shall be admitted to any share or part of this Lease or to any benefit that may arise herefrom.

9. QUIET ENJOYMENT. Lessor agrees to defend the title to the Leased Premises and also agrees that Lessee and any successors in interest shall peaceably and quietly hold, enjoy and occupy the Leased Premises for the duration of this Lease without any hindrance, interruption, ejection or molestation by Lessor or by any other persons whomsoever, except if the requirements of any part of this Lease are not kept by the Lessee. Notwithstanding the foregoing, Lessee and his or her (their) assigns is (are) subject to all the laws of the Tribe to the same extent as any other Tribal member or resident.

10. ASSIGNMENT AND SUBLEASE. (a) Except as otherwise provided herein, Lessee shall not assign or sublet this Lease without the prior written consent of the Lessor and sureties (as found in 25 CFR 162), and approval of the Secretary of the Interior. If this Lease and/or any improvements on the Leased Premises are mortgaged or pledged as security for a loan, Lessee shall not assign or sublet this Lease without the written approval of the lender and the respective Federal Agency. Lessee may assign the Lease and deliver possession of the Leased Premises, including any improvements thereon, to the lender or its successors, or Federal Agency guaranteeing or insuring the loan, if Lessee default(s) in any mortgage or other loan agreement for which the Lease and/or improvements on the Leased Premises are pledged as security, and, in such event, the lender or its successors in interest may transfer this Lease or possession of the Leased Premises to a successor Lessee; provided, however, that the Lease may only be transferred to another member of the Tribe or tribal entity. Nothing in this Lease shall prevent the Lessee, with the approval of the Secretary of the Interior and the Secretary of HUD (for Section 248 insured loans), from executing and recording a mortgage, declaration of trust and/or other security instrument as may be necessary to obtain financing for the purchase of a dwelling, refinancing of an existing mortgage, construction and/or improvement of a dwelling and related structures, or shall prevent the mortgagee or other lender from foreclosing or instituting other appropriate proceedings under law in the event of default of any mortgage or other loan agreement by the Lessee, or assigns. Except in cases involving loans for home construction or home improvement by a bank, recognized lending institution, or a lending agency of the United States Government, where no such consent or approval of Lessor shall be required, Lessee may not execute a mortgage, declaration of trust or other security instrument pledging their interest in this Lease or any improvements on the Leased Premises without the prior written consent of Lessor and the approval of the Secretary.

Notwithstanding the provisions contained above, the following additional requirements shall be applicable to a Lease which secures a mortgage insured, guaranteed or held by a Federal Agency:

(b) Notwithstanding that the term sublease is used herein, the Lessee shall not sublease the premises if the Lease is the security for a mortgage insured under Section 248. The lessee may assign the lease in accordance with the terms hereunder.

In the event a Federal Agency is the lender or acquires the mortgage secured by this Lease, and subsequently acquires said Lease by foreclosure, or by the assignment of said Lease by Lessee, his or her (their) Lessees or assigns (for which the approval of the Tribe is not required), then:

(1) The appropriate Federal Agency, (the Agency involved in this transaction) will notify the Tribe of the availability of the Lease for sale, the sales price of the home and other terms of sale.

(2) The Lease may only be assigned to another tribal member or tribal entity, except that the appropriate Federal Agency may lease the Leased Premises to a non-member under the conditions specified herein. Any such sublease or assignment shall be executed consistent with tribal law and Federal law.

(3) If a purchaser is found, the Lease will be transferred by the Federal Agency, to the purchaser, with the prior written consent of the appropriate Tribe.

(4) If a purchaser cannot be found, the appropriate Federal Agency, shall be entitled to sublease the Leased Premises and improvements without the prior written approval of the Tribe. Such sublease shall be to a member of the Tribe, unless a tribal member Lessee cannot be found, in which case the Federal Agency may sub-Lease to any individual. The term of the initial Lease period and any succeeding period shall not exceed one year each. Any purchase of the Lease shall be subject to any sublease by the Federal Agency pursuant to this subsection.

(5) No mortgagee (except a Federal Agency as mortgagee or assignee of a mortgagee) may obtain title to the interest created by this Lease without the prior written consent of the Tribe.

In the event that the lender is the entity responsible for acquiring the Lease and the leasehold estate by foreclosure, the lender shall have the rights of the Federal Agency who had insured or guaranteed the foreclosed mortgage under subparagraphs (1) through (5) above, provided this sentence does not apply to loans insured under HUD/FHA's Section 248 program.

11. OPTION. Subsequent to Lessee's breach of any covenant or agreement under a mortgage or other security instrument for which the Lease or any improvements on the Leased Premises are pledged as security, and upon the expiration of any applicable cure period, the Lessor shall have an option (the "option" herein) to acquire the Lessee's Leasehold interest, (subject to all valid liens and encumbrances) upon either payment in full of all sums secured by the mortgage or assumption of the loan with the approval of the lender or the applicable Federal Agency as evidenced by the note and mortgage and execution of an assumption agreement acceptable in all respects to the Lender. Such option is subject to the following conditions:

- (a) If the Lessee or any assignee of Lessee fails to cure the default, The lender shall give written notice to the Lessor and any applicable Tribal housing authority of Lessee's of its assignee's failure.
- (b) If the Lessee fails to cure the default, and said notice shall be given before the lender or successor invokes any other remedies provided under the mortgage or by law. Thereafter, the lender may issue an acceleration notice to the Lessee, its Lessees or assigns, under the mortgage or other security instrument, requiring the Lessee, its Lessees or assigns to pay all sums secured by the mortgage or other security instrument. If the Lessee, its Lessees or assigns fail to cure the default in accordance with the terms of the lender's acceleration notice, the lender shall give the Lessor written notice of said failure to cure. The Lessor may exercise its option at any time within thirty (30) days of the date of the lender's written notice to the Tribe of said failure to cure. This option shall be exercised by notice in writing from the Lessor to the Lessee and the lender.
- (c) Notwithstanding the Lessor's option to acquire the Lessee's interest in the Leased Premises, such option shall be subject to any right the Lessee may have under the mortgage or by law to reinstatement after the acceleration, and the right to bring appropriate court action to assert the non-existence of a default or any other defense to acceleration and sale or foreclosure.

- (d) The estate acquired by the Lessor through the exercise of the option shall not merge with any other estate or title held by the Lessor as long as the leasehold interest or any improvements on the Leased Premises, or any interest therein, are mortgaged or otherwise pledged as security for any loan, and the leasehold interest shall remain subject to any valid and subsisting mortgage or other security instrument.

12. RESERVATIONS: Lessee shall use the premises exclusively for residential purposes, except as otherwise agreed to by the parties. Any rights not expressly provided are reserved by the Lessor.

Minerals: The Lessor reserves all rights, as owned by the Lessor, to all mineral rights, including but not limited to oil, gas, or hydrocarbon substances. The Lessor shall not exercise surface entry in connection with reserved mineral rights without prior consent of the Lessee and sureties (as found in 25 CFR 162).

Timber: The Lessor reserves all rights, as owned by the Lessor to timber and forest products on the premises.

Water: The Lessor reserves all rights, as owned by the Lessor, to water on the premises, except that which is needed for residential purposes.

13. EFFECTIVE DATE. This Lease and all its terms and provisions shall be binding upon the successors, and assigns of the Lessee and any successor in interest to the Lessor, and shall take effect on the ____ day of _____, _____, or upon the date of approval by the Secretary, whichever is later.

14. OBLIGATION TO THE UNITED STATES. It is understood and agreed that while the Leased Premises are in trust or restricted status, all of the Lessee's obligations under this Lease, and the obligation of his, hers (theirs) sureties, are to the United States as well as to the owner of the land.

15. ASSENT NOT WAIVER OF FUTURE BREACH OF COVENANTS. No assent, express or implied, to any breach of any of the Lessee's covenants, shall be deemed to be a waiver of any succeeding breach of any covenants.

16. VIOLATIONS OF Lease. It is understood and agreed that violations of this Lease shall be acted upon in accordance with the regulations in 25 C.F.R. Part 162.

17. CARE OF PREMISES. It is understood and agreed that the Lessee is to keep the premises covered by this lease in good repair. Lessee shall not commit or permit to be committed any waste whatever on said premises and shall not remove or tear down any building or other improvements thereto, but shall keep the same in good repair. Lessee shall not destroy or permit to be destroyed any trees, except with the consent of the Lessor and the approval of the Secretary, and shall not permit the premises to become unsightly. The Lessee will be held financially responsible for all unrepaired damages to buildings, fences, improvements or appearance, except for the usual wear and decay.

18. FORCE MAJEURE. Whenever under this instrument a time is stated within which or by which original construction, repairs or re-construction of said improvements shall be completed, and if during such period any cause reasonably beyond the Lessee's power to control occurs, the period of delay so caused shall be added to the period allowed herein for the completion of such work.

19. INSPECTION OF THE PREMISES. The Secretary, lender, applicable Federal Agency, and the Lessor and their authorized representative shall have the rights, at any reasonable times during the term of this lease, and with reasonable notice, to enter upon the leased premises, or any part thereof, to inspect the same and all buildings and other improvements erected and placed thereon.

20. INDEMNIFICATION. Neither the Lessor nor the United States, nor their officers, agents, and employees shall be liable for any loss, damage, or injury of any kind whatsoever to the person or property of the Lessee or sublessees or any other person whomsoever, caused by any use of the leased premises, or by any defect in any structure erected thereon, or arising from any accident, fire, or other casualty on said premises or from any other cause whatsoever; and Lessee, as a material part of the consideration for this lease, hereby waives on Lessee's behalf all claims against Lessor and/or the United States and agrees to hold Lessor and/or the United States free and harmless from liability for all claims for any loss, damage, or injury arising from the use for the premises by Lessee, together with all costs and expenses in connection therewith.

21. UTILITIES. Neither the Lessor nor the United States shall have any obligation to provide utilities as of the commencement of this Lease. In the event that the Lessee requires utilities, the installation and maintenance thereof shall be the Lessee's sole obligation, provided that such installation shall be subject to the written consent of the Lessor, which the Lessor will not unreasonably withhold. The Lessee shall pay, as they become due, all bills for electricity and other utilities that are furnished to the leased premises.

22. LATE PAYMENT INTEREST. It is understood and agreed between the parties hereto that, if any installment of rental is not paid within 30 days after becoming due, interest will be assessed at the existing prime rate, plus three (3) percent, times the amount owed for the period during which payments are delinquent. Interest will become due and payable from the date such rental becomes due and will run until said rental is paid. The interest rate formula is Interest = (Prime rate + 3%) times (x) amount due.

23 RIGHT OF REMOVAL. Upon the termination of the lease, the Lessee of a one-unit single family dwelling shall be entitled, within _____ days, to remove the dwelling and related structures from the leased premises and relocate such improvements to an alternative site, not located on the leased premises. Any Lessee who exercises such a right shall be required to pay all costs related to the relocation of the dwelling unit. Lessee shall leave the land in good order and condition. All other improvements shall become the property of the Lessor at the expiration of this lease. This paragraph does not apply to Section 248 insured mortgage loans

24. INSURANCE. The Lessee agrees, so long as this lease is in effect, to keep buildings and improvements on the leased premises insured against loss or damage by fire with extended coverage endorsements in an amount equal to the full insurable value of the buildings and improvements insured. Said policy is to be made payable to the Bureau of Indian Affairs for the benefit of the Lessor. Said policy or policies shall be deposited with the Secretary and Lessee shall pay all premiums and other charges payable in respect to such insurance and shall deposit with the Secretary the receipt for each premium or other charge as paid or satisfactory evidence thereof. Except, during such time that a mortgage is in effect against this Leasehold interest, that said policy is to be made jointly payable to the Lessee and the Lender, and premium payments provided for per specific requirements of the Lender.

25. ADDITIONS. Prior to execution of this Lease, provision (s) number (s) has (have) been added hereto and by reference is (are) made a part hereof.

WITNESS: _____, Lessor

WITNESS: _____
_____, Lessee

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Exhibit A
Attachment 2
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APPROVED:

SECRETARY OF THE INTERIOR

BY:

Date

This lease is approved pursuant to the authority delegated by

Approving Official

Date

oOo