

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MOU") is entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between Fannie Mae and the \_\_\_\_\_ (the "Tribe").

### RECITALS

1. Fannie Mae's Native American Conventional Lending Initiative ("NACLI") is an initiative in which Fannie Mae purchases first-lien mortgage loans (the "Mortgages") made by lenders to borrowers for the purchase of one- to four-family residences located on either Trust Land or Restricted Land.

2. Fannie Mae's willingness to purchase such Mortgages is subject to the following: (i) the Designated Lender and the Mortgages comply with Fannie Mae's guidelines as set forth in Fannie Mae's Selling and Servicing Guide, as amended from time to time, and with the contract terms negotiated between Fannie Mae and the Designated Lender; (ii) the Tribe enters into this MOU with Fannie Mae; and (iii) Fannie Mae finds acceptable for NACLI (a) the Tribal ordinances or statutes establishing the Legal Standards (defined below), (b) the organizational documents of the Tribe through which NACLI will be implemented, (c) the note and mortgage instruments evidencing the Mortgages and (d) the borrower's real property interest in the Trust Land or Restricted Land, as applicable.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree to the following:

#### 1. DEFINITIONS

(A) Legal Standards shall mean the minimum requirements for legal standards and procedures established by the Tribe and acceptable in all respects to Fannie Mae relating to

- (i) Conveyances of beneficial interests in Trust Land or Restricted Land to lenders as security for Mortgages to borrowers,
- (ii) Creation and regulation of Assignment Rights and Assignment Mortgages, if the Tribe has a land assignment law,
- (iii) Manufactured Housing Titling, if applicable,
- (iv) Recording of Mortgages,
- (v) Mortgage foreclosure proceedings,
- (vi) Evictions, and
- (vii) Transfer/resale restrictions.

(B) Tribe shall mean the \_\_\_\_\_ Tribe, an Indian tribe, band, nation, village or other organization or community of Indians federally recognized as

eligible for the services provided to Indian Tribes by the Secretary of the Interior because of its status as an Indian Tribe, according to standards published annually in the FEDERAL REGISTER pursuant to the Act of November 2, 1994 (108 Stat. 4791).

- (C) Native American shall mean a person who is a member of the Tribe.
- (D) Designated Lender shall mean one or more Fannie Mae-approved lenders that are approved as NACLI lenders and are selected by the Tribe to make loans to qualifying borrowers for the purchase of one- to four-family residences located on Trust Land or Restricted Land subject to such terms and conditions as may be established by the Designated Lender (in consultation with Fannie Mae) under NACLI. "Designated Lender" shall also include a successor to, or assign of, such entity.
- (E) Restricted Land or land in restricted status shall mean land the title to which is owned by a tribe or an individual Native American and is subject to restrictions against alienation imposed by a federal statute. Generally, the restrictions are set forth in the patent or deed to the lands, except restricted lands held by the heirs of the allottees of the five Civilized Tribes in Oklahoma where such federal restrictions arise by virtue of limitations contained in the conveyance instrument pursuant to federal law or because of federal law directly imposing such limitations.
- (F) Trust Land or land in trust shall mean land the title to which is held in trust by the United States for an individual Native American or the Tribe.
- (G) Eligible Borrower shall be any one of the following:
  - (i) An individual Native American,
  - (ii) The Indian Housing Authority affiliated with the Tribe ("IHA"),
  - (iii) The "Tribally Designated Housing Entity" ("TDHE") affiliated with the Tribe,  
or
  - (iv) The Tribe, provided, however, the Tribe may not act as Borrower where the subject of a Mortgage is a leasehold estate and there are no parties to the subject ground lease other than the Tribe and/or an IHA or Tribally designated entity.
- (H) Residential Ground Lease is any lease of Restricted Land or Trust Land to an Eligible Borrower which is acceptable to Fannie Mae after review by its counsel. The "Residential Lease of Tribal Owned Land," which is attached to the "One-Stop Mortgage Center Initiative in Indian Country" issued in October 2000 by the U.S. Department of Housing and Urban Development and the U.S. Department of the Treasury (attached hereto as Exhibit 1), as amended by the "Fannie Mae Rider to Residential Lease of Tribal Owned Land" (attached hereto as Exhibit 2) is a form of residential ground lease which is satisfactory to Fannie Mae under this agreement without the need for further review.

- (I) Assignment is any transfer of rights to occupy, control, build on, or otherwise exercise dominion over Restricted Land or Trust Land pursuant to a tribal Assignment law which has received the approval of the BIA.

2. SUPPORT FOR MORTGAGE LENDING

- (A) The Tribe shall consult with Fannie Mae to identify one or more Fannie Mae-approved lenders to act as “Designated Lenders.”
- (B) The Tribe agrees to the establishment and maintenance of Legal Standards as long as Fannie Mae is the holder of any Mortgage originated pursuant to this MOU.
- (C) The Tribe may satisfy the Legal Standards by adopting by ordinance, either
  - (i) The laws of the state where the mortgaged properties are located relating to such standards and procedures;
  - (ii) The “Model Tribal Lending Code” which is attached to the “One-Stop Mortgage Center Initiative in Indian Country” (issued in October 2000 by the U.S. Department of Housing and Urban Development and the U.S. Department of the Treasury); or
  - (iii) Enacting conveyance, recordation, foreclosure and eviction laws which are specifically reviewed and approved by Fannie Mae’s counsel, and by adopting appropriate ordinances governing Manufactured Housing Titling and Land Assignments, as necessary.
- (D) The Tribe shall ensure that each Eligible Borrower to whom a loan is made in connection with this MOU holds or possesses, at the time of such financing, either (i) a leasehold estate on Trust Land or Restricted Land pursuant to a Residential Ground Lease satisfactory to Fannie Mae that is entered into between the Tribe (or TDHE or IHA) and the Eligible Borrower (provided, however, the lessor and the lessee may not be the same entity; for example, if a TDHE or IHA is the lessor, that same TDHE or IHA may not be the lessee); (ii) a valid Assignment of Trust Land or Restricted Land pursuant to the Tribe’s Land Assignment Law; or (iii) a sole beneficial interest in individual Trust Land or Restricted Land (as evidenced by a deed of allotment), and that such Borrower will acquire, construct or rehabilitate a dwelling on such property with the proceeds of the Mortgage.
- (E) The Tribe shall ensure that each Eligible Borrower to whom a loan is made in connection with this MOU shall convey to the Designated Lender a security interest in the applicable real property interest described in Section 2(D) above, by an appropriate instrument satisfactory to the Designated Lender, Fannie Mae and the Tribe, as security for a Mortgage made pursuant to NACLI.

- (F) The Tribe, and the Eligible Borrower who applies for a Mortgage, will permit the Designated Lender or Fannie Mae, and their respective successors or assigns, to enter upon the Trust Land or Restricted Land, as applicable, for the purpose of carrying out such actions as the Designated Lender and Fannie Mae determine are necessary to evaluate the advisability of providing the Mortgage, to service the Mortgage after origination, and to otherwise carry out or enforce the terms of the Mortgage.
- (G) The Tribe will, to the maximum extent possible, assist the Designated Lender and Fannie Mae, and their successors and assigns, in their efforts to facilitate the continued availability of conventional mortgage financing on the Trust Land or Restricted Land. Such assistance shall include:
- (i) Assisting the Designated Lender and Fannie Mae in finding a qualified substitute purchaser of the mortgaged property if the initial borrower is unable to fulfill the obligations under the Mortgage;
  - (ii) Assisting the Designated Lender and Fannie Mae with the proper recordation of Mortgages and other legal instruments; and
  - (iii) Supporting enforcement of foreclosures and evictions in connection with any default under a Mortgage in accordance with the Legal Standards.
- (H) The Tribe and Fannie Mae acknowledge and agree that Mortgages made pursuant to NACLI shall be recorded in (i) the appropriate Bureau of Indian Affairs Area Land Titles and Records Office, (ii) the county recorder's office in the state in which the mortgaged properties are located, and (iii) the following recording office established under Tribal law that are designated by the Tribe for the recording of Mortgages: *[Insert applicable Tribal recording offices]*.
- (I) With respect to any leasehold estate or Assignment financed by a Mortgage, the Tribe, as lessor, agrees that it shall not attempt to cancel, modify, amend, terminate, surrender or forfeit any Residential Ground Lease, leasehold estate, or Assignment without the prior written consent of the Designated Lender and Fannie Mae, or their successors or assigns, as long as such Mortgage remains outstanding and the Designated Lender or Fannie Mae, or their successors or assigns, otherwise has an interest in such leasehold estate or Assignment.

**[NOTE: ADD ANY ADDITIONAL TRIBAL REQUIREMENTS TO THIS SECTION BY ADDENDUM—BUT SUCH ADDITIONS MUST BE APPROVED IN ADVANCE BY THE PARTIES TO THIS MOU.]**

### 3. FANNIE MAE PURCHASE OF MORTGAGES

In consideration of the foregoing, Fannie Mae stands ready to purchase from the Designated Lender qualifying loans made to Eligible Borrowers secured by a Mortgage or Deed of Trust on Trust Land or Restricted Land, a leasehold interest thereon, or an Assignment thereof, to the extent permitted by applicable law.

4. CONSENT TO JURISDICTION

The Tribe and Fannie Mae hereby expressly consents to the jurisdiction of the *[insert identification of the applicable court, which may be limited to the particular Tribal court as appropriate]* with respect to any action brought to enforce the obligations owed by it to another party under this MOU.

5. TERMINATION

In the event that either party wishes to terminate the relationship established hereunder, this MOU shall terminate 30 days following receipt of written notice of such termination from either party. Provided, however, such termination shall not affect the Tribe's commitments under Sections 2(B), (F), (G), and (I) above, as long as Fannie Mae is the holder of any Mortgage originated pursuant to this MOU.

6. COUNTERPARTS

This MOU may be executed in multiple counterparts, each of which is deemed an original and all of which together constitute one and the same document.

IN WITNESS WHEREOF, the parties hereto have executed this MOU on the dates provided below.

**FANNIE MAE**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
  
Date: \_\_\_\_\_

**[TRIBE]**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
  
Date: \_\_\_\_\_

**CERTIFICATION OF THE [NAME OF TRIBE]**

I, the undersigned, as Chairman/Governor/Principal Chief of the [Name of Tribe] do hereby certify that the foregoing Memorandum of Understanding was considered and approved by the Tribal Council at a duly called meeting on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, at which a quorum was present, that the same was adopted by a vote of \_\_\_ in favor and \_\_\_ opposed, and that \_\_\_\_\_ as Chairman/Governor, was authorized to sign the Memorandum of Understanding on behalf of [Name of Tribe].

**Attest:**

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Chairman/Governor

Unless the following Certificate of Approval is executed by the U.S. Department of the Interior’s Bureau of Indian Affairs, the Tribe represents that it has the constitutional authority to execute this Memorandum of Understanding without such approval. Entry of “Not Applicable” on the line below noted “Authorized Representative” shall evidence the Tribe’s representation that it has such constitutional authority.

**CERTIFICATE OF APPROVAL**

The foregoing Memorandum of Understanding is hereby approved on behalf of the Secretary of the Interior. Approval of the Memorandum of Understanding shall not be construed to be an agreement or assurance that any land covered by the Memorandum of Understanding will remain in a trust or restricted status during the period of the Memorandum of Understanding.

Date: \_\_\_\_\_

\_\_\_\_\_  
Authorized Representative

EXHIBIT 1

[This“Residential Lease of Tribal Owned Land” which is attached to the “One-Stop Mortgage Center Initiative in Indian Country” issued in October 2000 by the U.S. Department of Housing and Urban Development and the U.S. Department of the Treasury”]

**RESIDENTIAL LEASE OF TRIBAL OWNED LAND**

Lease No. \_\_\_\_\_  
Contract No. \_\_\_\_\_  
**(FILE NUMBER)**  
**Tribal Enrollment No.** \_\_\_\_\_  
**File No.** \_\_\_\_\_

THIS Lease is made and entered into by and between the \_\_\_\_\_  
[Name of Tribe or Nation], a Federally recognized Indian Tribe, hereinafter designated as "Lessor," and **(NAME, STATUS)**, member(s) of the \_\_\_\_\_ [Name of Tribe or Nation] whose address is **(ADDRESS)** and 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 note holder secured by the Mortgage. The assignment of the mortgage or any interest therein does not require the consent of the Tribe.

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2. PREMISES. Lessor hereby Leases to the Lessee all that tract or parcel of land situated in the

### (LEGAL DESCRIPTION)

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 premises for a term of fifty (50) years, 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 \$0 (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

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shall obtain any necessary governmental permits, approvals or authorizations 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) sub lessee 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 here from.

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

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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.

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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. This provision 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:

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.

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.

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.

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

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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. 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.

14. 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.

15. 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. The Lessor and the BIA may, at their discretion, separately or cooperatively, treat as a lease violation any failure by the Lessee to cooperate with a Lessor and/or BIA request to make appropriate records, reports or information available for Lessor and/or BIA inspection and duplication.

16. 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.

17. 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.

18. 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.

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19. 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 sub lessees 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.

20. 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.

21. 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.

22. RIGHT OF REMOVAL. Upon the termination of the lease, the Lessee of a one-unit single family dwelling shall be entitled, within 60 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.

23. INSURANCE. The Lessee agrees, so long as this lease is in effect, the Tribe may require the Lessee 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.

24. REPORT OF HISTORICAL OR CULTURAL RESOURCES. If historic properties, archeological resources, human remains, or other cultural items not previously reported

EXHIBIT 1

are encountered during the course of any activity associated with this lease, all activity in the immediate vicinity of the properties, resources, remains, or items will cease and the lessee will contact BIA and the tribe with jurisdiction to determine how to proceed and appropriate disposition.

25. HAZARDOUS MATERIALS. The Lessee indemnifies the United States and the Lessor, against all liabilities or costs relating to use handling, treatment, removal, storage, transportation, or disposal of hazardous materials, or release or discharge of any hazardous material from the leased premises that occurs during the lease term, regardless of fault, with the exception that the Lessee is not required to indemnify the Lessor for liability or cost arising from the Lessor's negligence or willful misconduct.

26. GOVERNING LAW. The Lessor, Lessee and Lender expressly agree that any and all disputes under this lease shall be adjudicated in the [Name of Tribe or Nation] [Tribal or Nation] Court.

27. 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.

[28. Lessee acknowledges that this Lease is entered into in conjunction with a Trust-Unit Sales Contract and is attached to the same. In the event of default as defined by the Trust-Unit Sales Contract, this Lease is deemed to be in default.]

WITNESS:

Subscribed and Sworn to before me on \_\_\_\_\_,  
By \_\_\_\_\_,[Tribal or Nation Chairperson]; \_\_\_\_\_, Lessor  
and \_\_\_\_\_, Treasurer; on behalf of the  
[Name of Tribe or Nation] Indians. \_\_\_\_\_, Lessor  
\_\_\_\_\_, Notary Public

WITNESS:

Subscribed and sworn to before me on \_\_\_\_\_, by (LESSEE NAME), Lessee(s). \_\_\_\_\_, Lessee  
(LESSEE NAME) \_\_\_\_\_, Lessee  
\_\_\_\_\_, Notary Public

EXHIBIT 1

APPROVED:  
SECRETARY OF THE INTERIOR

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BY:  
Date

This lease is approved pursuant to the authority delegated by

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Approving Official

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Date

EXHIBIT 2

[For use as an amendment to the “Residential Lease of Tribal Owned Land” which is attached to the “One-Stop Mortgage Center Initiative in Indian Country” issued in October 2000 by the U.S. Department of Housing and Urban Development and the U.S. Department of the Treasury”]

**FANNIE MAE RIDER  
TO RESIDENTIAL LEASE OF TRIBAL OWNED LAND**

THIS FANNIE MAE RIDER TO RESIDENTIAL LEASE OF TRIBAL OWNED LAND (“Rider”) is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, and is incorporated into and shall be deemed to amend and supplement the Residential Lease of Tribal Owned Land (“Lease”) between \_\_\_\_\_ for and on behalf of \_\_\_\_\_ Tribe of Indians (“Tribe”), as “Lessor,” and \_\_\_\_\_, members of the Tribe and residing upon the \_\_\_\_\_ Indian Reservation, as “Lessee.”

**ADDITIONAL COVENANTS.** In addition to the covenants and agreements made in the Lease, Lessor and Lessee further covenant and agree as follows:

- 1. Definition of Lender.** The term “Lender” as defined in the Lease shall also mean any conventional mortgage lender, whether or not approved by a Federal Agency, that is approved by the Federal National Mortgage Association (“Fannie Mae”) to sell mortgage loans to Fannie Mae and that has secured a lien against the Leased Premises, whether by mortgage, deed of trust, security deed or otherwise, as collateral for the repayment of a conventional mortgage loan (i.e., a loan not made, insured or guaranteed by a Federal Agency), to finance the purchase or refinancing of a leasehold interest and related improvements on the Leased Premises (“Mortgage”). “Lender” also shall include any of Lender’s successors or assigns, including any note holder or mortgagee in possession of the Leased Premises, and shall also mean “mortgagee,” as such term is used in the Lease.
- 2. Federal Supervision.** Lessor shall provide notice to Lender and to Lessee, including any successors or assigns of Lessee, upon the occurrence of any 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 as provided in Section 8 of the Lease.
- 3. Assignment and Sublease.**
  - (a)** Notwithstanding anything to the contrary in Section 10(a) of the Lease, Lessee shall not be required to obtain Lessor’s consent, or the consent of any Federal Agency, other than the Secretary of Interior, in connection with any pledge of the Leased Premises by Lessee to Lender as collateral for a Mortgage loan from Lender.
  - (b)** Notwithstanding anything to the contrary in Section 10 of the Lease, Lender’s acquisition of the Leased Premises by foreclosure or assignment in lieu of foreclosure shall not require consent of the Lessor or Tribe, and Lender shall be entitled to all rights and privileges of a Federal Agency under Section 10.



EXHIBIT 2

4. **Indemnification.** Lender shall be entitled to all rights of indemnification by Lessee to Lessor and/or the United States, as provided in Section 19 of the Lease.
5. **Utilities.** Lender shall be entitled to all rights of and protections afforded to Lessor and/or the United States as provided in Section 20 of the Lease.
6. **Insurance.** For properties located in Special Flood Hazard Areas, Lessee shall maintain flood insurance with coverage amounts and deductible levels as required by Lender.
7. **Modification/Forfeiture of Lease.** There shall be no modification, amendment, surrender or forfeiture of the Lease or Leased Premises without the prior written consent of Lender and Secretary.

BY SIGNING BELOW, the Lessor and Lessee accept and agree to the terms and provisions contained in this Rider to Residential Lease of Tribal Owned Land.

WITNESS: \_\_\_\_\_, Lessor

WITNESS: \_\_\_\_\_, Lessee

WITNESS: \_\_\_\_\_, Lessee

APPROVED:

SECRETARY OF THE INTERIOR

By: \_\_\_\_\_ Date: \_\_\_\_\_

This Lease is approved pursuant to the authority delegated by

\_\_\_\_\_  
Approving Official Date: \_\_\_\_\_