

RESOLUTION OF THE
RESOURCES AND DEVELOPMENT COMMITTEE

Of the 23rd Navajo Nation Council---First Year 2015

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT; APPROVING THE AMENDMENT OF THE MASTER LEASE ML-11-02 BETWEEN THE NAVAJO NATION AND CHINLE HOSPITAL HOUSING, LLC, CONCERNING 15.5459 ACRES, MORE OR LESS, WITHIN THE CHINLE CHAPTER, NAVAJO NATION (APACHE COUNTY, ARIZONA)

BE IT ENACTED:

Section One. Findings

- A. Pursuant to 2 N.N.C. §500, the Resources and Development Committee is established as a Standing Committee of the Navajo Nation Council; and
- B. Pursuant to 2 N.N.C. §501 (B)(2)(a), the Resources and Development Committee is authorized to grant final approval for non-mineral leases, and permits; and
- C. Lease Number ML-11-02, attached as Exhibit E; is a master lease between the Navajo Nation and the Chinle Hospital Housing, LLC, concerning 15.5459 acres, more or less, within the Chinle Chapter (Apache County, Arizona). The land is more particularly described on page 2 of the ML-11-02 Master Lease; and
- D. Exhibits B and C provide Chinle Hospital Housing, LLC, background and a brief history of the housing project; and
- E. The Naabik'íyáti Committee through Resolution Number NABIAP-19-11, attached as Exhibit D, approved Master Lease ML-11-02. The purpose of the Master Lease ML-11-02 is to develop, use and operate the leased premises to provide a residential development and ancillary facilities for health care employees. By providing housing opportunities to the Chinle Indian Health Hospital, the quality of the

healthcare in the central part of the Navajo Nation will be improved; and

- F. Master Lease ML-11-02 is structured such that the employee residents of the residential development are to become members of a Homeowner's Association with an opportunity to obtain a Conditional Use Permit for a portion of the Lease; ML-11-02 Section 3(B); and
- G. The Chinle Hospital Housing, LLC has been informed that the Housing and Urban Development (HUD) Section 184 Program would not accept the Conditional Use Permits concept; however the HUD Section 184 Program would accept Homesite Leases as adequate security for Section 184 Loan Guarantees for Native American homebuyers; and
- H. The Chinle Hospital Housing, LLC, requests amendments to MJ-11-02 such that Homesite Leases may be obtained for Class A members of the Homeowner's Association. "Class A Members means Class A members of the Homeowners Association who, except for the Lessee, will be restricted to current or retired employees of the Indian Health Service of the U.S. Department of Health and Human Services ... or their spouses and/or heirs, or to individuals with similar other professional, administrative or managerial skills beneficial to the Navajo Nation and who are either (a) Navajo Nation enrolled members, (b)enrolled members of another Federally recognized Tribe who are likely to remain on the Navajo Nation for a indefinite duration, or (c) non-Indians who are likely to remain on the Navajo Nation for an indefinite duration and who provide, or have provided, services beneficial to the Navajo Nation as defined in the Declarations of Covenants, Conditions and Restrictions," attached as Exhibit F, "that will be recorded after this Lease is recorded, and which will govern Homesite leases for the duration of the lease;" and
- I. The Resources Committee (predecessor to the Resources and Development Committee) approved the Homesite Lease Policy and Procedures in 1993. RCD-289-93. The Homesite Lease Policy and Procedures states that an eligible applicant must be 18 years old and an enrolled member of the Navajo Nation. A non-Navajo "is eligible under this section if the Resources [and Development] Committee finds that: (i)

such individual's presence within the Navajo Nation's Territorial Jurisdiction is of indefinite duration and beneficial to the Navajo Nation; or (ii) the non-Navajo is legally married to an enrolled member of the Navajo Tribe, and the homesite lease application is submitted jointly under Section VII." A copy of RDC-298-93 and the Homesite Lease Policy and Procedures is attached as Exhibit G; and

- J. Navajo and non-Navajo applicants for homesite leases are abide by the Homesite Lease Policy and Procedures; and
- K. An underlined and overstricken copy of the proposed Amended Master Lease is attached as Exhibit H and the Amended Master Lease incorporating the changes is attached as Exhibit A.

Section Two. Approval

- A. The Resources and Development Committee of the Navajo Nation Council hereby approves the amendments to master Lease ML-11-02 attached as Exhibit A.
- B. The Resources and Development Committee of the Navajo Nation Council hereby authorizes the President of the Navajo Nation to sign any documentation necessary to implement the purpose and intent of this resolution, including but not limited to necessary amendments to the lease.

CERTIFICATION

I, hereby, certify that the foregoing resolution was duly considered by the Resources and Development Committee of the 23rd Navajo Nation Council at a duly called meeting at Navajo Nation Council Chambers, Window Rock, Navajo Nation (Arizona), at 3 in favor, 0 opposed, 0 abstained this 28th day of July, 2015.

A handwritten signature in black ink, appearing to read 'Benjamin Bennett', with a long horizontal line extending to the right.

Benjamin Bennett, Vice-Chairperson
Resources and Development Committee
Of the 23rd Navajo Nation Council

Motion: Honorable Davis Filfred
Second: Honorable Leonard Tsosie
Vote: 3-0 (Chairman Not Voting)



LEASE NO. _____

AMENDED

MASTER LEASE

Between

THE NAVAJO NATION and

CHINLE HOSPITAL HOUSING, LLC

THIS MASTER LEASE (this "Lease") is made and entered into this ____ day of _____, 2015, by and between THE NAVAJO NATION, hereinafter called the "Lessor," whose address is P.O. Box 9000, Window Rock, Navajo Nation (Arizona) 86515, and CHINLE HOSPITAL HOUSING, LLC, an Arizona limited liability company registered as a foreign corporation in the Navajo Nation, hereinafter called the "Lessee," whose address is P.O. Box 2060, Chinle, Navajo Nation (AZ) 86503, in accordance with the provisions of 2 N.N.C. § 695(B)(2) and (4) and 25 U.S.C. § 415, as implemented by the regulations contained in 25 C.F.R. Part 162; and all amendments or successors thereto, which by this reference are made a part hereof.

1. DEFINITIONS.

(A) "Approved Encumbrance" means an encumbrance approved in writing by Lessor and the Secretary in accordance with the terms and conditions of this Lease.

(B) "Class A Members" means Class A members of the Homeowners Association who, except for the Lessee, will be restricted to current or retired employees of the Indian Health Service of the U.S. Department of Health and Human Services ("IHS") (or any future successor in interest to IHS) or their spouses and/or heirs, or to individuals with similar other professional, administrative or managerial skills beneficial to the Navajo Nation and who are either (a) Navajo Nation enrolled members, (b) enrolled members of another Federally recognized Tribe who are likely to remain on the Navajo Nation for an indefinite duration, or (c) non-Indians who are likely to remain on the Navajo Nation for an indefinite duration and who provide, or have provided, services beneficial to the Navajo Nation as defined in the Declarations of Covenants, Conditions and Restrictions that will be recorded after this Lease is recorded, and which will govern Homesite Leases for the duration of the lease.

(C) "Encumbrancer" means the owner and holder of an Approved Encumbrance, including all successors and assigns.

(D) "Hazardous Substance" means any "hazardous substance" as defined under the provisions in the Navajo Nation Comprehensive Environmental Response, compensation and

Liability Act ("NNCERCLA"), 4 N.N.C. § 2104Q, including all amendments or successors thereto.

(E) "Leased Premises" has the meaning given that term in Section 2.

(E) "Lessee" means Chinle Hospital Housing, LLC.

(F) "Lessor" means the Navajo Nation.

(H) "Lot" means a part of the Lease available for Homesite Leases for Class A Members of the Homeowners' Association.

(I) "Project" has the meaning given that term in Section 3(A).

(J) "Secretary" means the Secretary of the United States Department of the Interior or his duly authorized representative or successor.

2. LEASED PREMISES.

For and in consideration of the rents, covenants, agreements, terms and conditions contained herein, Lessor hereby leases to Lessee all that tract or parcel of land situated within the Chinle Chapter of the Navajo Nation, (County of Apache, State of Arizona), within Sections 24 and 25, Township 32 North, Range 25 East, Gila and Salt River Meridian (south half of Section 12 and the north half of Section 13, Township 5 North, Range 11 West, Navajo Special Meridian), containing approximately 15.5459 acres, more or less.

The legal description of the leased premises (hereinafter called the "Leased Premises"), a plat of which is attached to this Lease as Exhibit "A" and incorporated herein, is as follows:

A certain tract of land designated Parcel "A2", situate within Land Management District No. 10 of the Navajo Indian Reservation at Chinle, Apache County, Arizona, being more particularly described as follows:

Beginning at a point, whence a brass cap monument "Chinle-5", a Navajo Reservation control point with the NAD 83 Arizona East Zone Coordinates of N=1,873.251.82, E=667,586.54 bears S 28°59'12" E a distance of 5,914.67 feet, said point of beginning a set #4 rebar with tag marked AZ PS #22278, being the northeast corner of the tract herein described;

Thence, S 23°47'08" W, a distance of 45.07 feet to a found rebar with cap NMPS #11463, a point on the easterly boundary of tract herein described;

Thence, S 23°47'08" W, a distance of 886.46 feet to a found PK Nail NMPS #11463 a point on the easterly boundary of the tract herein described;

Thence, S 23°47'08" W, a distance of 131.50 feet to a set #4 rebar with tag marked AZ PS #22278, the southwest corner of the tract herein described;

Thence, N 72°08'46" W, a distance of 435.19 feet to a set #4 rebar with tag marked AZ PS #22278, the southwest corner of the tract herein described;

Thence, N 16°34'21" E, a distance of 1,670.23 feet to a set #4 rebar with tag marked AZ PS #22278, the northwest corner of the tract herein described;

Thence, S 39°14'58" E, a distance of 30.04 feet to a found PK Nail, a point on the northerly boundary of the tract herein described;

Thence, S 39°14'58" E, a distance of 383.78 feet to a set #4 rebar with tag marked AZ PS #22278, an angle point on the northerly boundary of the tract herein described;

Thence, S 42°43'24" W, a distance of 256.93 feet to a set #4 rebar with tag marked AZ PS #22278, to a point of curvature;

Thence, along the arc of a curve to left a distance of 79.39 feet, said curve having a radius of 268.00 feet, a central angle of 16°58'22", and a chord which bears S 34°14'13" W, a distance of 79.10 feet to a point of compound curve;

Thence, along the arc of a curve to left a distance of 47.32 feet, said curve having a radius of 30.00 feet, a central angle of 90°22'11", and a chord which bears S 19°26'04" E, a distance of 42.56 feet to a point of tangency;

Thence, S 64°37'09" E, a distance of 342.46 feet to the point of beginning;

Containing 677,178 square feet, 15.5459 acres more or less.

There is hereby reserved and excepted from the Leased Premises rights-of-way for utilities constructed by or on authority of Lessor, provided that such rights-of-way do not unreasonably interfere with Lessee's use of the Leased Premises.

3. USE OF PREMISES.

(A) Lessee shall develop, use and operate the leased premises to provide a residential development and ancillary facilities for health care employees. It is explicitly recognized by the Lessor and the Lessee that the purpose of this Lease is not economic gain, but that it is entered into to provide housing opportunities for employees of the Chinle Indian Health Service Hospital, and, by such inducement to improve the quality of health care in the central part of the Navajo Nation, and other professional, administrative and managerial service providers, both Indian and non-Indian, who will be residing on the Navajo Nation for an indefinite duration and whose services are beneficial to the Navajo Nation. It is explicitly recognized by the Lessor that the Lessee is a Limited Liability Company formed under the laws of Arizona and registered as a foreign corporation in the Navajo Nation.

(B) Lessee agrees that it will not use or cause to be used any part of the leased premises for any unlawful conduct or purpose.

4. TERM.

The term of this Lease shall be sixty-five (65) years commencing upon the later of execution of this Amended Lease by the Lessor and the Lessee, and the written approval of this Amended Lease by the Secretary.

5. RENTAL AND PERFORMANCE BOND.

(A) It is explicitly recognized by the Lessor and Lessee that the purpose of this Lease is not economic gain, but that it is entered into to provide Homesite Leases for employees of the Chinle Indian Health Service Hospital and other professional, administrative and managerial service providers, and by such inducement to improve the quality of health care, professional, administrative and managerial services in the central part of the Navajo Nation. The purpose of this lease is to assist the I.H.S. (and any successors to the I.H.S. in Chinle) and other professional organizations in their efforts to recruit high level medical, professional, and managerial service providers to relocate and remain in this area. Past efforts in such recruiting have failed because an opportunity to obtain quality housing, and build equity through home ownership, is generally lacking. The purpose of this lease is to provide housing opportunities for this group similar to those which they would have outside of Indian Country and thereby encourage them to move to and remain on the Navajo Nation. It is explicitly recognized by the Lessor that the Lessee is a Limited Liability Company formed under the laws of Arizona and registered as a foreign corporation in the Navajo Nation, and that the Lessee's interest in this Lease will be managed for the benefit of the Class A Members of the Homeowners' Association who will reside on the leased premises.

(B) With the recognition by all parties that the Project is a housing and community development project of benefit to the community and the Navajo Nation, it has been determined pursuant to 25 CFR 162.301(a)(2) (2012) that this Lease is for a public purpose (see 5(A) above) that it is in the best interest of the parties to enter into this Lease for a zero (0) rental value as allowed under 25 CFR 162.320(a)(1) (2012) and, in the absence of a rent requirement, waive any requirement for a rental performance bond.

6. CONDITION OF LEASED PREMISES.

Lessee has examined and knows the Leased Premises and improvements thereon and accepts the same as-is. Except as expressly set forth in this Lease, no representations as to the condition of the Leased Premises have been made by Lessor, any agent of Lessor or the United States prior to or at the time of execution of this Lease. Lessee warrants that it has not relied on any warranty or representation made by or on behalf of Lessor or the United States, but solely upon Lessee's independent investigation, except for any warranties or representations expressly set forth in this Lease.

7. IMPROVEMENTS.

(A) Lessee may destroy any buildings or other improvements currently located on the Leased Premises in preparation for the Project. All buildings and other improvements constructed by Lessee or its Sublessees on the Leased Premises, excluding removable personal property and trade fixtures, shall remain on the Leased Premises after termination of this Lease.

(B) Lessee or its Sublessees shall remove all removable personal property and trade fixtures prior to termination of this Lease. Should Lessee or its Sublessees fail to remove said personal property and trade fixtures prior to termination of this Lease, said property shall thereupon become property of Lessor, and may be disposed of in any manner by Lessor.

(C) As used in this Section, the term "removable personal property" shall not include property which normally would be attached or affixed to buildings, other improvements or land in such a way that it would become a part of the realty, regardless of whether such property in fact is so attached or affixed.

(D) All Hazardous Substances, Hazardous Substance storage systems or conveyance facilities placed on or under the Leased Premises are the property of Lessee and shall remain the property of Lessee upon termination of this Lease. Within a reasonable time prior to termination of this Lease, Lessee shall remove any such substances or improvements, shall inspect the Leased Premises for contamination, shall remediate all contamination, if any, and shall address any third party damages occasioned by any contamination or otherwise by the use or storage of such substances or improvements on the Leased Premises. Should Lessee fail to complete such responsibilities prior to the termination of this Lease, Lessee shall remain responsible therefore, and shall be required to post a bond in an amount reasonably required to ensure that such responsibilities are completed within a reasonable time after termination of this Lease.

8. CONSTRUCTION; MAINTENANCE; REPAIR; ALTERATION.

(A) All buildings and other improvements placed on the Leased Premises shall be constructed in a good and workmanlike manner in compliance with applicable laws and building codes. All parts of buildings or other improvements visible to the public or from adjacent premises shall present a pleasant appearance and all service areas shall be screened from public view.

(B) Lessee shall maintain the Leased Premises and all buildings and other improvements thereon and any alterations, additions or appurtenances thereto, in good order and repair and in a safe, sanitary and neat condition, and shall otherwise comply with all laws, ordinances and regulations applicable to the Leased Premises.

(C) Lessee shall have the right to make reasonable alterations, additions or repairs to buildings or other improvements on the Leased Premises, consistent with other provisions of this Lease.

9. CONSTRUCTION BONDS.

(A) Before beginning construction of each improvement, the contractor performing the work for the Lessee, at the option of the Lessee, may be required to provide security to guarantee completion of the improvements and payment in full of claims for all persons for work performed on, or materials furnished for, construction either directly or indirectly through a requirement in the construction contract. The Lessee or the contractor performing the work for the Lessee may provide said security as a term of the construction contract in any of the following forms:

1. By posting a surety bond in an amount equal to the cost of each improvement. Said bond shall be deposited as required by lending institutions with a copy to the Lessee and must remain in effect until the improvement is satisfactorily completed and full payment has been made on the claims of all persons for work performed on, or materials furnished for construction of, the improvement. Said bond shall be conditioned upon the faithful performance of the contractor performing the work for the Lessee and shall give all claimants the right to recover upon said bond in any suit brought for that purpose.
2. Or by such other method as may hereafter be mutually agreed upon between the Lessor and the Lessee.

(B) All surety bonds provided in compliance with this Lease shall be provided by companies certified by the U.S. Department of the Treasury as acceptable sureties on Federal bonds.

10. UTILITY SERVICE LINE AGREEMENTS.

(A) Lessee and all Class A Members of the Homeowners' Association are specifically authorized to enter into appropriate service line agreements with utility companies for the provision of utility services to the Leased Premises, including gas, water, sewer, electricity, telephone, television, cable, broadband, fiber optic and other utilities, without further consent by Lessor, on the condition that:

1. Such agreements are for the sole purpose of supplying utility services to the Leased Premises;
2. Such agreements authorize utility service lines only within the Leased Premises;
3. Such agreements do not extend beyond the term of this Lease;
4. Executed copies of such agreements, together with plats or diagrams showing with particularity the location, size and extent of such service lines, are filed by the utility companies with Lessor

and with the Secretary within thirty (30) days of their execution; and,

5. Such agreements are otherwise in accordance with the provisions of 25 C.F.R. § 169.22, including any amendments or successors thereto.

(B) Nothing contained herein shall be construed to limit the right of Lessor to enter into service line agreements with utility companies for service lines across the Leased Premises, provided that such service lines do not unreasonably interfere with Lessee's use of the Leased Premises, nor otherwise to affect the rights-of-way reserved to Lessor in Section 2 of this Lease.

11. LIENS; TAXES AND ASSESSMENTS; UTILITY CHARGES.

(A) Lessee shall not permit any liens arising from any work performed, materials furnished, or other obligations incurred by Lessee or its Sublessees to be enforced against the Leased Premises, any interest therein or improvements thereon. Lessee or its Sublessees shall discharge all such liens before any action is brought to enforce same, by payment, bond or other legal method.

(B) Lessee or its Sublessees shall pay, before becoming delinquent, all taxes, assessments and other like charges levied upon or against the Leased Premises, any interest therein or improvements thereon, for which Lessee or its Sublessees are is liable. Upon request by Lessor or the Secretary, Lessee or its Sublessees shall furnish Lessor and the Secretary written evidence duly certified that any and all such taxes, assessments and other like charges required to be paid by Lessee or its Sublessees have been paid, satisfied or otherwise discharged. Lessee or its Sublessees shall have the right to contest any asserted tax, assessment or other like charge against the Leased Premises, any interest therein or improvements thereon, by posting bond to prevent enforcement of any lien resulting therefrom. Lessee agrees to protect and hold harmless Lessor, the Secretary and the Leased Premises and all interests therein and improvements thereon from any and all such taxes, assessments and like charges and from any lien therefore, any sale or other proceedings to enforce payment thereof, and all costs in connection therewith. Upon request by Lessee, Lessor shall execute and deliver any appropriate documents with reference to real estate tax exemption of the Leased Premises, any interest therein or improvements thereon.

(C) Lessee or its Sublessees shall pay, before becoming delinquent, all charges for water, sewage, gas, electricity, telephone and other utility services supplied to the Leased Premises.

(D) Lessor shall have the right to pay any lien, tax, assessment or other charge payable by Lessee under this Lease, or to settle any action therefore, if, within a reasonable time after written notice thereof from Lessor or the Secretary, Lessee fails to pay or to post bond against enforcement thereof. All costs and other expenses incurred by Lessor in so doing shall be repaid by Lessee to Lessor on demand, together with interest at the legal rate from the date of payment or incursion thereof by Lessor until repayment is made by Lessee.

12. SUBLEASES AND ASSIGNMENTS; PARTIAL RELINQUISHMENTS.

(A) Except as otherwise provided in Sections (B) and (C) below, this Lease may not be assigned, Subleased or otherwise transferred or conveyed, in any manner whatsoever, in whole or in part, without the prior written consent of Lessor and the Secretary, and then only upon the condition that the assignee or other successor in interest shall agree in writing to be bound by each and every covenant, agreement, term and condition of this Lease. Any such attempted assignment, Sublease, transfer or conveyance without such prior written approval shall be void and of no effect. The consent of Lessor may be granted, granted upon conditions or withheld in the sole discretion of Lessor.

(B) Notwithstanding the provisions of subsection (A) of this Section, and subject to the provisions of subsection (D) of this Section, Lessee, but no successor in interest thereto, is hereby authorized to Sublease the Leased Premises, in whole or in part, without the prior written approval of the Lessor or the Secretary. Subleases so made shall neither serve to relieve the Lessee from any liability under this Lease nor to diminish any supervisory authority of the Secretary provided for under this Lease or under applicable federal laws and regulations. During the term of any Sublease, should the Sublessee succeed to the interests of Lessee hereunder, it is hereby agreed that no merger of interests shall occur thereby.

(C) Notwithstanding the provisions of subsection (A) of this Section, and subject to the provisions of subsection (D) of this Section, this Lease may be assigned, in whole or in part, by Lessee, but not by any successor in interest thereto, with the prior written approval of Lessor, but without further consent or approval of the Secretary; provided, that the assignee shall agree in writing to be bound by all the covenants, agreements, terms and conditions of this Lease, and no such assignment shall be valid unless and until the assignee shall so agree. Assignments so made shall not serve to relieve the Lessee from any liability under this Lease nor to diminish any supervisory authority of the Secretary provided for under this Lease or under applicable federal laws and regulations; provided, that Lessee may be relieved from its liability under this Lease, in whole or in part, with the prior written approval of the Lessor and the Secretary.

(D) Lessee shall provide a copy of any Sublease, assignment or partial relinquishment to Lessor and to the Secretary within thirty (30) days of its execution. No Sublease or assignment authorized by this Section shall be valid unless and until it is duly recorded in accordance with the provisions of 25 C.F.R. Part 150, including any amendment or successor thereto, at the Land Titles and Records Office of the Bureau of Indian Affairs, Albuquerque, New Mexico, or any successor thereto.

(E) Homesite Leases shall not be considered to be Subleases and shall be issued by the Navajo Nation Land Department in accordance with the Homesite Lease Policy and Procedures approved by the appropriate Committee of the Navajo Nation Council. Homesite Leases will be governed by the Declaration of Covenants, Conditions and Restrictions to be recorded after this lease has been recorded and holders of Homesite Leases will be Class A Members of the Homeowners' Association.

13. QUIET ENJOYMENT.

Lessor hereby covenants and agrees that, upon performing each of its covenants, agreements, terms and conditions contained in this Lease, ~~that~~ Lessee shall peaceably and quietly have, hold and enjoy the Leased Premises without any hindrance, interruption, ejection or molestation by Lessor or by any other person or persons claiming from or under Lessor.

14. ENCUMBRANCES.

(A) Except as provided in (B) below, this Lease or any interest therein may not be encumbered without the prior written approval of Lessor and the Secretary, and no such encumbrance shall be valid or binding without such prior written approval. An encumbrance shall be confined to the leasehold interest of Lessee, and shall not jeopardize in any way Lessor's interest in the land. Lessee agrees to furnish any requested financial statements or analyses pertinent to the encumbrance that Lessor and the Secretary may deem necessary to justify the amount, purpose and terms of said encumbrance.

(B) In the event of default by Lessee of the terms of an Approved Encumbrance, Encumbrancer may exercise any rights provided in such an Approved Encumbrance, provided that prior to any sale of the leasehold, Encumbrancer shall give to Lessor and the Secretary notice of the same character and duration as is required to be given to Lessee by the terms of the Approved Encumbrance and by applicable law. In the event of such default, Lessor shall have the right, which may be exercised at any time prior to the sale, to pay to Encumbrancer any and all amounts secured by the Approved Encumbrance, plus unpaid interest accrued to the date of such payment, plus expenses of sale incurred to the date of such payment.

(C) In the event of default by a Sublessee and/or the holder(s) of a Homesite Lease of the terms of an Approved Encumbrance, Encumbrancer may exercise any rights provided in such Approved Encumbrance, provided that prior to any sale of the Sublease or Homesite Lease, the Encumbrancer shall give to the Lessee, the Association as defined in the Covenants, Conditions and Restrictions, the Indian Health Service, Lessor and the Secretary, notice of the same character and duration as is required to be given to Sublessee by the terms of such Approved Encumbrance and by applicable law. In the event of such default, Lessee, the Association as defined in the Covenants, Conditions and Restrictions, the Indian Health Service, Lessor and the Secretary, in that order, shall have the right, which may be exercised at any time prior to the completion of sale, to pay to Encumbrancer any and all amounts secured by the Approved Encumbrance, plus unpaid interest accrued to the date of such payment, plus expenses of sale incurred to the date of such payment.

(D) If the Lessee, the Home Owners Association, the Indian Health Service, Lessor and the Secretary, in that order, decline to exercise the above right and a sale of the residence under the Approved Encumbrance shall occur, the purchaser at such sale shall succeed to all of the right, title and interest of the Sublessee or Homesite Lease holder in this Lease. It is further agreed that if the purchaser at such sale is Encumbrancer, Encumbrancer may sell and assign the Homesite Lease to a either a Class A Member of the Homeowners' Association, or a person eligible to be a Class A Member of the Homeowners' Association, without any further approval

by Lessor and the Secretary, provided that the assignee shall agree in writing to be bound by all the covenants, agreements, terms and conditions of this Lease, including the Covenants, Conditions and Restrictions, and no such assignment shall be valid unless and until the assignee shall so agree. If Encumbrancer is the purchaser, it shall be required to perform the obligations of this Lease only so long as it retains title thereto. If the purchaser is other than Encumbrancer, the purchaser shall agree in writing to be bound by all the covenants, agreements, terms and conditions of this Lease and no such purchase shall be valid unless and until purchaser shall so agree.

15. DEFAULT.

(A) Time is declared to be of the essence of this Lease. Should Lessee or any Sublessee be in violation of any other provision of this Lease, said violation may be acted upon by the Secretary in accordance with the provisions of 25 C.F.R. Part 162, including any amendments or successors thereto.

(B) In addition to the rights and remedies provided by the aforementioned regulations, Lessor and the Secretary, either jointly or severally, may exercise the following options after giving notice of Lessee's default and a reasonable opportunity to cure the default, subject to the provisions of subsection (D) below:

1. Collect, by suit or otherwise, all monies as they become due hereunder, or enforce by suit or otherwise, Lessee's compliance with all provisions of this Lease; or
2. Re-enter the Leased Premises and remove all persons and property therefrom, and re-let the Leased Premises without terminating this Lease as the agent and for the account of Lessee, but without prejudice to the right to cause the termination of this Lease under applicable law thereafter, and without invalidating any right of Lessor or the Secretary or any obligations of Lessee hereunder. The terms and conditions of such re-letting shall be in the sole discretion of Lessor, who shall have the right to alter and repair the Leased Premises as it deems advisable and to re-let with or without any equipment or fixtures situated thereon. Rents from any such re-letting shall be applied first to the expense of re-letting, collection, altering and repairing, including reasonable attorney's fees and any reasonable real estate commission actually paid, insurance, taxes and assessments and thereafter toward payment to liquidate the total liability of Lessee. Lessee shall pay to Lessor monthly when due, any deficiency and Lessor or the Secretary may sue thereafter as each monthly deficiency shall arise; or
3. Take any other action authorized or allowed under applicable law.

(C) No waiver of a breach of any of the terms and conditions of this Lease shall be construed to be a waiver of any succeeding breach of the same or any other term or condition of

this Lease. Exercise of any of the remedies herein shall not exclude recourse to any other remedies, by suit or otherwise, which may be exercised by Lessor or the Secretary, or any other rights or remedies now held or which may be held by Lessor in the future.

(D) Lessor, Lessee and the Secretary, as the case may be, shall give to an Encumbrancer a copy of each notice of default by Lessee, a Sublessee, or the holder(s) of a Homesite Lease, at the same time as such notice of default shall be given to the Lessee or Sublessee. Lessor, Lessee and the Secretary, as the case may be, shall accept performance by an Encumbrancer of any of Lessee's or a Sublessee's obligations under this Lease, with the same force and effect as though performed by Lessee or Sublessee. An Encumbrancer shall have standing to pursue any appeals permitted by applicable federal or Navajo Nation law that Lessee, Sublessee, or holder of a Homesite Lease would be entitled to pursue. Neither Lessor nor the Secretary shall terminate this Lease, a Sublease issued under this Lease if an Encumbrancer has cured or is taking action diligently to cure Lessee's, Sublessee's, or the holder(s) of (a) Homesite Lease's, default and has commenced and is pursuing diligently either a foreclosure action or an assignment in lieu of foreclosure.

16. SANITATION.

Lessee hereby agrees to comply with all applicable sanitation laws, regulations or other requirements of the United States and the Navajo Nation. Lessee agrees to dispose of all solid waste in compliance with applicable federal and Navajo Nation law. Lessee further agrees at all times to maintain the entire Leased Premises in a safe and sanitary condition.

17. HAZARDOUS SUBSTANCES.

Lessee shall not cause or permit any Hazardous Substance to be used, stored, generated or disposed of on or in the Leased Premises, other than Hazardous Substances that are typically used, stored, generated or disposed of by the occupants of facilities similar to the improvements on the Leased Premises, without the prior written approval of Lessor, which approval may be given, given upon conditions or denied in the sole discretion of Lessor. Without limitation of the foregoing, if Lessee causes or permits the presence of any Hazardous Substance on the Leased Premises and such results in contamination to the Leased Premises or any building or other improvement thereon, Lessee shall promptly take any and all actions necessary or appropriate to restore the Leased Premises or building or other improvement to the condition existing prior to the presence of any such Hazardous Substance on the Leased Premises. Lessee shall obtain written approval from Lessor prior to commencement of any such remedial action.

18. LIABILITY INSURANCE.

(A) At all times during the term of this Lease, except as provided in part (B) of this Section, Lessee shall carry a commercial general liability insurance policy in the amount of at least \$1,000,000 for personal injury to one (1) person and \$3,000,000 per occurrence, and \$500,000 for damage to property. Said policy shall be obtained from a reliable insurance company authorized to do business in the Navajo Nation and in the State of Arizona and shall be written to protect Lessee, Lessor and the United States and shall provide for notification to

Lessor and the Secretary prior to any cancellation or non-renewal of said policy for any reason, including non-payment of premiums. Upon written request therefore, copies of said policy shall be furnished to Lessor and the Secretary.

(B) The Lessee shall be bound by all of the terms of this Section with respect to its development and marketing of residential housing upon the Leased Premises for rental and ultimate Homesite Leasing by eligible Class A Members of the Homeowners' Association. However, any such Class A Members of the Homeowners' Association who have completed the construction of their residence shall be required to maintain such liability and personal property insurance coverage upon their purchased residence as they, in their discretion and with the approval of the Association, may be deemed necessary, or which may otherwise be required to be obtained by any lender providing acquisition financing to such Class A Members of the Homeowners' Association.

(C) Lessor or the Secretary may require that the amount of the insurance policy required by subsection (A) of this Section be increased at any time, whenever either shall determine that such increase reasonably is necessary for the protection of Lessor or the United States.

(D) With the prior written approval of Lessor and the Secretary, the insurance obligation under this Section may be satisfied by a self-insurance program maintained by Lessee or by other means of alternative performance satisfactory to Lessor and the Secretary.

19. FIRE AND CASUALTY INSURANCE.

(A) At all times during the term of this Lease, Lessee shall carry Causes of Loss-Special Form property insurance covering not less than the full insurable value of all improvements on the Leased Premises not subject to individual Homesite Leases. Said policy shall be obtained from a reliable insurance company authorized to do business in the Navajo Nation and in the State of Arizona, and shall be written to protect Lessee, Lessor, the United States and an Encumbrancer, if any, and shall provide for notification to Lessor, the Secretary and any Encumbrancer prior to any material change, cancellation or non-renewal of said policy for any reason, including non-payment of premiums. Upon written request therefore, copies of said policy shall be furnished to Lessor and the Secretary.

(B) The Lessee shall be bound by all of the terms of this Section (A) above with respect to its development and marketing of residential housing upon the leased premises for rental and ultimate purchase by Class A Members of the Homeowners' Association. However, any such Class A Members of the Homeowners' Association who have a Homesite Lease shall only be required to maintain such fire and casualty insurance coverage upon their purchased residence as is required to be obtained a) by any lender providing acquisition financing to such Class A Member of the Homeowners' Association and upon such terms and conditions as are required by any such lender, b) by the Lessee, in the absence of any lender, and upon such terms as are required by the Lessee.

(C) In the event of destruction of or damage to any improvement on the Leased Premises or upon any Sublease while an Approved Encumbrance remains in effect, the proceeds of property insurance equal to the amount of destruction or damage to the encumbered improvements (but not exceeding the remaining balance of the Approved Encumbrance) shall be paid to Encumbrancer on the condition that Encumbrancer agrees to promptly replace or repair the destroyed or damaged improvements to a condition as good as or better than before the destruction or damage occurred. If the amount paid to Encumbrancer is sufficient to repair the destroyed or damaged improvements, or, if within three (3) months after such payment by the insurer to Encumbrancer, Lessor or Lessee shall deposit with Encumbrancer sufficient additional funds, if any, required to completely replace or repair the destruction or damage, upon written order of Lessor, Lessee, or Sublessee, Encumbrancer shall pay the costs of such replacement or repair, and such payment shall not be deemed a payment or credit on the Approved Encumbrance. Otherwise, at the expiration of such three (3) months said sum so paid by the insurer to Encumbrancer shall be applied and credited on the Approved Encumbrance.

(D) With the prior written approval of the Lessor and the Secretary, the insurance obligations under this Section may be satisfied by a self-insurance program maintained by Lessee or by other means of alternative performance satisfactory to Lessor and the Secretary.

20. INSPECTION.

The Lessor and the Secretary shall have the right, at any reasonable time during the term of this Lease, subject to the rights of Sublessees, to enter upon the Leased Premises, or any part thereof, to inspect the Leased Premises and any buildings and other improvements erected or placed thereon.

21. MINERALS.

All minerals, including sand and gravel, contained in or on the Leased Premises are reserved for the use of Lessor. Lessor also reserves the right to enter upon the Leased Premises and search for and remove minerals located thereon, paying just compensation for any damage or injury caused to Lessee's personal property or improvements constructed by Lessee, so long as Lessor uses reasonable efforts to minimize any interference with the activities of Lessee and the subtenants of the Leased Premises.

22. EMINENT DOMAIN.

If the Leased Premises or any part thereof is taken under the laws of eminent domain at any time during the term of this Lease, Lessee's or Sublessee's interest in the Leased Premises or the part of the Leased Premises taken shall thereupon cease. Compensation awarded for the taking of the Leased Premises or any part thereof, including any improvements located thereon, shall be awarded to Lessor, Lessee, and Sublessee as their respective interests may appear at the time of such taking, provided that Lessee's right to such awards shall be subject to the rights of an Encumbrancer under an Approved Encumbrance. Lessor and Lessee shall then enter into a lease for the new premises on the same terms as this Lease, except that the term of the replacement lease shall be the number of years remaining on this Lease at the time of relocation.

23. DELIVERY OF PREMISES.

At the termination of this Lease, Lessee shall peaceably and without legal process deliver up the possession of the Leased Premises in good condition, usual wear and tear excepted. Upon the written request of the Lessor, Lessee shall provide to the Lessor, at Lessee's sole cost and expense, an environmental audit assessment of the Leased Premises at least sixty (60) days prior to delivery of the Leased Premises.

24. HOLDING OVER.

Holding over by Lessee after termination of this Lease shall not constitute a renewal or extension thereof or give Lessee any rights hereunder or in or to the Leased Premises or to any improvements located thereon.

25. INDEMNIFICATION.

Lessee shall indemnify and hold harmless the Lessor and the Secretary and their authorized agents, employees, land users and occupants, against any liability for loss of life, personal injury and property damages arising from the construction on, maintenance, occupancy or use of the Leased Premises by Lessee, except to the extent that the loss or damage is caused or contributed to by the indemnified party.

26. ATTORNEY'S FEES.

In any suit or action arising under or related to this Lease each party shall bear its own costs and attorney's fees incurred in such an action and no claim for such costs and attorney fees may be made by either party.

27. AGREEMENT TO ABIDE BY NAVAJO NATION AND FEDERAL LAWS.

In all activities conducted by Lessee, Sublessees, and holders of Homesite Leases within the Navajo Nation, Lessee, Sublessees, and holders of Homesite leases, shall abide by all laws and regulations of the Navajo Nation and of the United States, now in force and effect or as hereafter may come into force and effect.

28. GOVERNING LAW AND CHOICE OF FORUM.

Except as prohibited by applicable federal law, the law of the Navajo Nation shall govern the construction, performance and enforcement of this Lease. Any action or proceeding brought by Lessee, Sublessees, or Homesite Lease holders, against the Navajo Nation in connection with or arising out of the terms and conditions of this Lease shall be brought only in the courts of the Navajo Nation, and no such action or proceeding shall be brought by Lessee, Sublessees, or Homesite Lease holders, against the Navajo Nation in any court or administrative body of any State.

29. CONSENT TO JURISDICTION.

Lessee hereby consents to the legislative, executive and judicial jurisdiction of the Navajo Nation in connection with all activities conducted by the Lessee within the Navajo Nation.

30. COVENANT NOT TO CONTEST JURISDICTION.

Lessee hereby covenants and agrees never to contest or challenge the legislative, executive or judicial jurisdiction of the Navajo Nation on the basis that such jurisdiction is inconsistent with the status of the Navajo Nation as an Indian nation, or that the Navajo Nation government is not a government of general jurisdiction, or that the Navajo Nation government does not possess full police power (i.e., the power to legislate and regulate for the general health and welfare) over all lands, persons and activities within its territorial boundaries, or on any other basis not generally applicable to a similar challenge to the jurisdiction of a state government. Nothing in this Section shall be construed to negate or impair federal responsibilities with respect to the Leased Premises or to the Navajo Nation.

31. NO WAIVER OF SOVEREIGN IMMUNITY.

Nothing in this Lease shall be interpreted as constituting a waiver, express or implied, of the sovereign immunity of the Navajo Nation.

32. TERMINATION OF FEDERAL SUPERVISION.

Nothing 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, or otherwise, during the term of this Lease, however; such termination shall not serve to abrogate this Lease. Lessor, Lessee and an Encumbrancer, if any, shall be notified of any such change in the status of the Leased Premises.

33. INTEREST OF MEMBER OF CONGRESS.

No member of or delegate to Congress or any Resident Commissioner shall be admitted to any share or part of this Lease or to any benefit that may arise herefrom, but this provision shall not be construed to extend to this Lease if made with a corporation or company for its general benefit.

34. OBLIGATIONS TO THE UNITED STATES.

It is understood and agreed that while the Leased Premises are in trust or restricted status, all of Lessee's obligations under this Lease are to the United States as well as to Lessor.

35. NOTICES AND DEMANDS.

(A) Any notices, demands, requests or other communications to or upon either party or the Secretary provided for in this Lease, or given or made in connection with this Lease, (hereinafter

referred to as "notices.") shall be in writing and shall be addressed as follows:

To or upon the Lessor: President
The Navajo Nation
Post Office Box 9000
Window Rock, Navajo Nation (Arizona) 86515

Telefax: 1-928-871-7381

To or upon the Lessee: Manager
Chinle Hospital Housing, LLC
Post Office Box 2060
Chinle, Navajo Nation (Arizona) 86503

Telefax: 1-928-674-3417

Copies to: To or upon the Secretary:
Regional Director
Navajo Region
Bureau of Indian Affairs
United States Department of the Interior
301 West Hill Street
P.O. Box 1060
Gallup, New Mexico 87305
Telefax: —1-505-863-8324

(B) All notices shall be given by personal delivery, by registered or certified mail, postage prepaid, or by facsimile transmission. Notices shall be effective and shall be deemed delivered: if by personal delivery, on the date of delivery if during normal business hours, or if not during normal business hours on the next business day following delivery; if by registered or certified mail, by facsimile transmission or by telegram, on the next business day following actual delivery and receipt.

(C) Copies of all notices shall be sent to the Secretary.

(D) Lessor, Lessee and the Secretary may at any time change its address for purposes of this Section by notice.

36. SUCCESSORS AND ASSIGNS.

The terms and conditions contained herein shall extend to and be binding upon the successors, heirs, assigns, executors, administrators, employees and agents, including all contractors and subcontractors, of Lessee. Except as the context otherwise requires, the term "Lessee," as used in this Lease, shall be deemed to include all such successors, heirs, executors, assigns, employees and agents.

37. EFFECTIVE DATE; VALIDITY.

This Lease shall take effect on the date it is approved by the Secretary. This Lease, and any modification of or amendment to this Lease, shall not be valid or binding upon either party until it is approved by the Secretary.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed as of the date first above written.

LESSOR: THE NAVAJO NATION

By: _____ Date _____
_____, President

LESSEE: CHINLE HOSPITAL HOUSING, LLC
By: DCI Housing, LLC, its Managing Member

By: _____ Date _____
Jon D. Colvin, On behalf of
DCI Housing, LLC, Manager of
Chinle Hospital Housing, LLC

APPROVED pursuant to Secretarial
Redelegation 209 DM 8, Secretarial Redelegation
Order Nos. 3150 and 3188, and 10 BIAM
Bulletin 13, as amended.

Date: _____

By: _____
Regional Director
Navajo Region
Bureau of Indian Affairs
U.S. Department of the Interior

Exhibit “A”

Chinle Hospital Housing, LLC Lease

LEASE MAP



CHINLE HOSPITAL HOUSING LLC LEASE BACKGROUND

The Essential Personnel Homeownership Pilot Project was conceived more than a decade ago and has faced numerous barriers starting with the need for the Indian Health Service to relinquish part of its withdrawal to make the land (15+ acres) available for a Master Lease for a housing project. Prior to the approval of the relinquishment, the Indian Health Service provided, at its own expense, the infrastructure for the project including streets, curbs, sidewalks and utilities for up to 30 residential units.

The land was relinquished by the Indian Health Service and accepted back by the Navajo Nation in 2005 and the initial version of the Master Housing Lease for the Project, which anticipated using individual Homesite Leases for individual residential units while maintaining a single Lessor for the entire project, was prepared along with an accompanying Declaration of Covenants, Conditions and Restrictions creating a Homeowner's Association and subdivision rules. This Master Lease was approved by the Resources Committee per Resolution No. RCJN-48-09 and was signed by President Shirley on June 12, 2009.

The Master Lease was then forwarded to the Bureau of Indian Affairs for approval, which thereafter called in the Department of the Interior Solicitor to assist in the review. This lead to several changes in the attorneys assigned to the project, and several years of negotiations. Per the requirement of the Solicitor's office, the Master Lease was revised to provide that the individual residential units needed to be located on Conditional Use Permits rather than Homesite Leases in order to maintain the integrity of the concept of a single Lessor for the entire project for the duration of the lease. The Lessor made the revisions required by the Solicitor's Office and took the 2009 advice of the Manager of the Department of Housing and Urban Development Section 184 Loan Guarantee Program that "all the government ever got as security for its loan guarantees was an equitable interest in the land" and that "an equitable interest in an equitable interest would be adequate security for a Section 184 Loan Guarantee."

The amended Master Lease, with the Bureau's mandated provisions, was approved by the Resources Committee in December of 2010 per Resolution No. RCD-109-10 and was signed by Vice President Shelly on January 6, 2011. However, the Bureau of Indian Affairs subsequently required further corrections to the Master Lease, which were approved by the Nabik'iyáti'

Committee per Resolution No. NABIAP-19-11 on April 5, 2011 and the Lease was thereafter signed by President Shelly and approved and recorded by the Bureau of Indian Affairs.

However, when the Lessor approached the United States Department of Housing and Urban Development about obtaining Section 184 Loan Guarantees for Native American home buyers, it found that its rules had changed significantly since 2009 as a result of the financial crisis and large number of foreclosures during the period between 2008 and 2011. Although the Department of Housing and Urban Development Regulations specified that it *could* accept security interests in personal property (i.e. Uniform Commercial Code Filings on the houses located on the Conditional Use Permits) it was not *required* to do so and that as a result of the lessons learned from the financial crisis the Department of Housing and Urban Development informed the Lessor in 2014 that it would accept *only* Homesite Leases as adequate security for Section 184 Loan Guarantees.

This required the Lessor to make still further revisions to the Master Lease, going back to the concept of issuing Homesite Leases to individual homeowners, but this time with the provision that as individual Homesite Leases were issued they would be separated from the Master Lease, eventually leaving the Master Lease with only the common areas as a part of this lease.

The Chinle Hospital Housing LLC is now requesting that the Navajo Nation once again amend its Master Lease so that individual Native American home buyers will be able to obtain Section 184 Loan Guarantees. Because of the time that has elapsed while the Lessor has had to respond to the concerns of the Department of the Interior and the Department of Housing and Urban Development since the original Master Lease was issued in 2009, and the fact that to date the Lessor has not been able to start construction or sell lots and houses, the Lessor is requesting that the 65 year duration for the amended Master Lease does not begin until this amended lease has been approved by the Committee, signed by the President, and approved by the Bureau of Indian Affairs.

A brief history of the project:

- June 2002** — NAHASDA grant application was submitted to NHA
- June 2003** — Grant award of \$2,200,000 was made to DCI
- June 2003** — Transfer of the 15 acre project site to the Navajo Nation was begun by IHS
- March 2006** — Frustrated with nearly three years of excruciatingly slow progress, DCI met with Admiral Gary Hartz at IHS Headquarters and received assurance that the long-delayed land transfer would be approved by IHS by the end of the month; this did happen
- August 2006** — After five months of processing by GSA and BIA, President Shirley accepted the land back from IHS
- May 2007** — Chinle Hospital began a major expansion completed in 2008 which has further increased their housing shortage
- June 2009** — A precedent-setting housing master lease was unanimously approved by the Resources Committee and signed by President Shirley
- December 2010** — Technical corrections to the master lease required by the BIA were unanimously approved by the Resources Committee and signed by Vice President Shelly
- April 2011** — It was discovered that the wrong documents had been included in the legislation passed by the Resources Committee in December. This necessitated having the lease re-approved by the Náá'íyáti' Committee
- September 2014** — The HUD Section 184 Program would not accept our conditional use permit concept forcing us to rewrite our lease and related documents. This necessitates having the master lease amended by the Resources and Development Committee

Essential Personnel Homeownership Pilot Project



designed to attract and retain
critically needed health care professionals
at the Chinle Hospital

a collaborative effort between
Dineh Cooperatives, Incorporated
and the Indian Health Service

Essential Personnel Homeownership Pilot Project

To be constructed in two phases, the project will provide 30 homes for Chinle Hospital employees to relieve a severe housing shortage that is compromising the quality of medical care available to Navajo Nation residents. The opportunity to own, rather than rent, a home will help attract and retain qualified personnel.





NABIAP-19-11

RESOLUTION OF THE
NÁBIK'ÍYÁTI' COMMITTEE OF THE
22ND NAVAJO NATION COUNCIL

22ND NAVAJO NATION COUNCIL - First Year, 2011

AN ACTION

~~RELATING TO NÁBIK'ÍYÁTI' RESOURCES AND INFRASTRUCTURE;~~
RESCINDING RESOURCES COMMITTEE RESOLUTION NO. RCD-109-10 AND
APPROVING THE MASTER LEASE AND ITS TECHNICAL CORRECTIONS AS
FOUND IN ATTACHED EXHIBIT NO. 1 BETWEEN THE NAVAJO NATION AND
CHINLE HOSPITAL HOUSING, LLC, FOR A TERM OF 65 YEARS, FOR
15.5459 ACRES, MORE OR LESS, RELINQUISHED FROM THE CHINLE
COMPREHENSIVE HEALTH CARE FACILITY TRACT TO PROVIDE A
RESIDENTIAL; DEVELOPMENT AND ANCILLARY FACILITIES FOR HEALTH
CARE EMPLOYEES

BE IT ENACTED:

1. The Resources Committee approved Resolution No. RCD-109-10, December 27, 2010, "Approving Technical Corrections as Required by the Bureau of Indian Affairs to the Master Lease for Essential Health Care Personnel Housing Between the Navajo Nation and Chinle Hospital Housing, LLC, as Approved by the Resources Committee in Resolution No. RCJN-48-09 and signed by President Joe Shirley, Jr."

2. The Resources Committee by Resolution No. RCJN-48-09, adopted "Approving the Master Lease Between the Navajo Nation and Chinle Housing, LLC, for a Term of 65 Years for 15.5459 Acres (More or Less) Relinquished from the Chinle Comprehensive Health Care Facility Tract to Essential Health Care Personnel Pursuant to Resources Committee Resolution RCJN-145-05" and the Master Lease was signed by President Joe Shirley, Jr., dated June 12, 2009.

3. Navajo Nation Vice President Ben Shelly signed the Master Lease, CH-ML-11-01, on January 6, 2011 pursuant to Resolution No. RCD-109-10.

4. The Bureau of Indian Affairs has reviewed the Master Lease, CH-ML-11-01, and now requires further technical corrections to be made and incorporated into the Master Lease, as found in correspondence dated February 24, 2011 before the Secretary of the Interior can approve the lease.

5. The project Review Section has determined that the consents of the affected land users are not necessary because the proposed changes do not affect the originally approved 15.5459 acres, more or less.

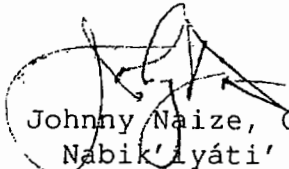
6. The Navajo Nation, pursuant to 2 N.N.C. § 695(B)(2), hereby rescinds Resources Committee Resolution No. RCD-109-10 and approves the Master Lease and its technical corrections as found in attached Exhibit No. 1, between the Navajo Nation and Chinle Hospital Housing, LLC, for a term of 65 years, for 15.5459 acres, more or less, relinquished from the Chinle Comprehensive Health Care Facility tract to provide a residential development and ancillary facilities for health care employees.

7. The "Collateral Assignment of Conditional Use Permit" as found within Exhibit No. 1 is approved as to form only, the Master Lease may be assigned only with prior written approval of the Navajo Nation as required by the terms of the Master Lease Section 12(C), as found at Exhibit No. 1.

8. The President of the Navajo Nation is hereby authorized to execute all documents necessary to effectuate the intent of this resolution.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Nabik'iyáti' Committee of the Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona) at which a quorum was present and that the same was passed by a vote of 15 in favor and 0 opposed, this 2nd day of April 2011.


Johnny Naize, Chairperson
Nabik'iyáti' Committee

April 05 11
Date

Motion: Katherine Benally
Second: Dwight Witherspoon



LEASE NO. ML-11-02

MASTER LEASE

Between

THE NAVAJO NATION and

CHINLE HOSPITAL HOUSING, LLC

THIS MASTER LEASE (this "Lease") is made and entered into this ____ day of _____, 2010, by and between THE NAVAJO NATION, hereinafter called the "Lessor," whose address is P.O. Box 9000, Window Rock, Navajo Nation (Arizona) 86515, and CHINLE HOSPITAL HOUSING, LLC, an Arizona limited liability company registered as a foreign corporation in the Navajo Nation, hereinafter called the "Lessee," whose address is P.O. Box 2060, Chinle, Navajo Nation (AZ) 86503, in accordance with the provisions of 2 N.N.C. § 695(B)(2) and (4) and 25 U.S.C. § 415, as implemented by the regulations contained in 25 C.F.R. Part 162; and all amendments or successors thereto, which by this reference are made a part hereof. This Master Lease includes a) the Declaration of Covenants, Conditions and Restrictions attached to this Master Lease as Exhibit "B", b) the standard form for Collateral Assignment of Conditional Use Permit which is to be used with all Conditional Use Permits attached to this Master Lease as Exhibit "C", and c) the standard form for Conditional Use Permit which is to be used for all Conditional Use Permits attached to this Master Lease as Exhibit "D", which are incorporated herein in their entirety.

1. DEFINITIONS.

(A) "Approved Encumbrance" means an encumbrance approved in writing by Lessor and the Secretary in accordance with the terms and conditions of this Lease.

(B) "Conditional Use Permit" means the document by which a Class A Member of the Homeowner's Association, as this term is defined in the Covenants, Conditions and Restrictions which are a part of this Lease, obtains an entitlement to a conditional and restricted use of a Lot within the project.

(C) "Conditional Use Permittee" means a Class A Member of the Homeowner's Association, as this term is defined in the Covenants, Conditions and Restrictions which are a part of this Lease, who has obtained an entitlement to a conditional and restricted use of a Lot within the project.

(D) "Encumbrancer" means the owner and holder of an Approved Encumbrance, including all successors and assigns.

(E) "Hazardous Substance" means any "hazardous substance" as defined under the provisions of section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601(14), including all amendments or successors thereto,

and "petroleum" as defined under the provisions of section 9001(8) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6991(8).

(F) "Leased Premises" has the meaning given that term in Section 2.

(G) "Lessee" means Chinle Hospital Housing, LLC.

(H) "Lessor" means the Navajo Nation.

(I) "Lot" means a part of the Lease assigned for the use of, or potentially available to, a Class A Member of the Homeowner's Association as this term is defined in the Covenants, Conditions and Restrictions which are a part of this Lease.

(J) "Project" has the meaning given that term in Section 3(A).

(K) "Secretary" means the Secretary of the United States Department of the Interior or his duly authorized representative or successor.

2. LEASED PREMISES.

For and in consideration of the rents, covenants, agreements, terms and conditions contained herein, Lessor hereby leases to Lessee all that tract or parcel of land situated within the Chinle Chapter of the Navajo Nation, (County of Apache, State of Arizona), within Sections 24 and 25, Township 32 North, Range 25 East, Gila and Salt River Meridian (south half of Section 12 and the north half of Section 13, Township 5 North, Range 11 West, Navajo Special Meridian), containing approximately 15.5459 acres, more or less.

The legal description of the leased premises (hereinafter called the "Leased Premises"), a plat of which is attached to this Lease as Exhibit "A" and incorporated herein, is as follows:

A certain tract of land designated Parcel "A2", situate within Land Management District No. 10 of the Navajo Indian Reservation at Chinle, Apache County, Arizona, being more particularly described as follows:

Beginning at a point, whence a brass cap monument "Chinle-5", a Navajo Reservation control point with the NAD 83 Arizona East Zone Coordinates of N=1,873,251.82, E=667,586.54 bears S 28°59'12" E a distance of 5,914.67 feet, said point of beginning a set #4 rebar with tag marked AZ PS #22278, being the northeast corner of the tract herein described;

Thence, S 23°47'08" W, a distance of 45.07 feet to a found rebar with cap NMPS #11463, a point on the easterly boundary of tract herein described;

Thence, S 23°47'08" W, a distance of 886.46 feet to a found PK Nail NMPS #11463 a point on the easterly boundary of the tract herein described;

Thence, S 23°47'08" W, a distance of 131.50 feet to a set #4 rebar with tag marked AZ PS #22278, the southwest corner of the tract herein described;

Thence, N 72°08'46" W, a distance of 435.19 feet to a set #4 rebar with tag marked AZ PS #22278, the southwest corner of the tract herein described;

Thence, N 16°34'21" E, a distance of 1,670.23 feet to a set #4 rebar with tag marked AZ PS #22278, the northwest corner of the tract herein described;

Thence, S 39°14'58" E, a distance of 30.04 feet to a found PK Nail, a point on the northerly boundary of the tract herein described;

Thence, S 39°14'58" E, a distance of 383.78 feet to a set #4 rebar with tag marked AZ PS #22278, an angle point on the northerly boundary of the tract herein described;

Thence, S 42°43'24" W, a distance of 256.93 feet to a set #4 rebar with tag marked AZ PS #22278, to a point of curvature;

Thence, along the arc of a curve to left a distance of 79.39 feet, said curve having a radius of 268.00 feet, a central angle of 16°58'22", and a chord which bears S 34°14'13" W, a distance of 79.10 feet to a point of compound curve;

Thence, along the arc of a curve to left a distance of 47.32 feet, said curve having a radius of 30.00 feet, a central angle of 90°22'11", and a chord which bears S 19°26'04" E, a distance of 42.56 feet to a point of tangency;

Thence, S 64°37'09" E, a distance of 342.46 feet to the point of beginning;

Containing 677,178 square feet, 15.5459 acres more or less.

There is hereby reserved and excepted from the Leased Premises rights-of-way for utilities constructed by or on authority of Lessor, provided that such rights-of-way do not unreasonably interfere with Lessee's use of the Leased Premises.

3. USE OF PREMISES.

(A) Lessee shall develop, use and operate the leased premises to provide a residential development and ancillary facilities for health care employees. It is explicitly recognized by the Lessor and the Lessee that the purpose of this Lease is not economic gain, but that it is entered into to provide housing opportunities for employees of the Chinle Indian Health Service Hospital, and by such inducement to improve the quality of health care in the central part of the Navajo Nation. It is explicitly recognized by the Lessor that the Lessee is a Limited Liability Company formed under the laws of Arizona and registered as a foreign corporation in the Navajo Nation, and that the Lessee's interest in this Lease will be managed for the benefit of the Class A Members of the Homeowner's Association who will reside on the leased premises.

(B) The Class A Members of the Homeowner's Association may have a Conditional Use Permit for a portion of the Lease, designated as a "Lot," as it may be assigned to them by the Homeowner's Association under the express language of the Conditions, Covenants and Restrictions. Only Class A Members of the Homeowner's Association may obtain a Conditional Use Permit.

(C) Class A Membership in the Homeowner's Association who are eligible for a Conditional Use Permit shall be limited, under the terms of this Lease, to 1) current or retired employees of the Indian Health Service, 2) the Indian Health Service itself, 3) Chinle Hospital Housing, LLC (Lessee), 4) the Tribally Designated Housing Entity ("TDHE") for the Navajo Nation as recognized by the U.S. Department of Housing and Urban Development. Any purported transfer of a Conditional Use Permit under this Lease, other than a temporary transfer of an equitable interest as a part of foreclosure, to anyone other than a Member or Members of the groups listed above, shall be void and have no effect.

(D) The leased premises shall not be used by Lessee, Conditional Use Permittee(s) or Assignee(s), for any purpose or purposes other than those set out above, except with the prior written consent of the Lessor. Consent may be withheld, or granted upon condition, in the sole discretion of the Lessor.

(E) Lessee agrees that it will not use or cause to be used any part of the leased premises for any unlawful conduct or purpose.

4. TERM.

The term of this Lease shall be sixty-five (65) years commencing upon the later of execution of this Lease by the Lessor and the Lessee, and the written approval of this Lease by the Secretary.

5. RENTAL AND PERFORMANCE BOND.

(A) It is explicitly recognized by the Lessor and Lessee that the purpose of this Lease is not economic gain, but that it is entered into to provide housing opportunities for employees of the Chinle Indian Health Service Hospital, and by such inducement to improve the quality of health care in the central part of the Navajo Nation. It is explicitly recognized by the Lessor that the Lessee is a Limited Liability Company formed under the laws of Arizona and registered as a foreign corporation in the Navajo Nation, and that the Lessee's interest in this Lease will be managed for the benefit of the Class A Members of the Homeowner's Association who will reside on the leased premises.

(B) With the recognition by all parties that the Project is a housing and community development project of benefit to the community and the Navajo Nation, it has been determined pursuant to 25 CFR 162.604(b)(3) (2005) that it is in the best interest of the parties to enter into this Lease for a zero (0) rental value and, in the absence of a rent requirement, waive any requirement for a rental performance bond.

(C) The Lessee may assign, encumber, issue a Conditional Use Permit or otherwise transfer any right to, or interest in, this Lease or any interest in any improvements located or to be located upon the leased premises, without the prior approval of the Lessor or the Secretary, provided, however, that any such Conditional Use Permit, assignment, encumbrance, or other transfer, will only be made in furtherance of the intent and purpose of this Lease and under the conditions of Section 12(B) of this Lease. Any Class A Member of the Homeowner's Association may secure acquisition financing from, and deliver to, any lender, a security interest in their purchased residence and their Conditional Use Permit obtained as a Class A Member of

the Homeowner's Association, in the lot on which the residence is constructed, without the prior approval of the Lessor or the Secretary. In the event of foreclosure on a security interest and/or eviction applicable Navajo Nation and federal law will apply, or in the absence of applicable Navajo Nation or federal law the law of the State of Arizona, as applied by the Navajo Courts, will apply. Proceedings for foreclosure on a security interest and/or eviction will be brought only in the Courts of the Navajo Nation and only within the Chinle Judicial District, which has *in rem* jurisdiction over the property.

(D) If, at any time during the term of this Lease, the Lessee determines, in good faith, that the proposed residential development upon the leased premises will not permit the Lessee to effectively market, or continue the effective marketing of, the dwelling units for the Class A Members of the Homeowner's Association, the Lessee may assign and transfer this Lease to the Indian Health Service of the U.S. Department of Health and Human Services ("IHS") provided that the IHS will assume and be bound by all of the Lessee's liability and obligations hereunder.

6. CONDITION OF LEASED PREMISES.

Lessee has examined and knows the Leased Premises and improvements thereon and accepts the same as-is. Except as expressly set forth in this Lease, no representations as to the condition of the Leased Premises have been made by Lessor, any agent of Lessor or the United States prior to or at the time of execution of this Lease. Lessee warrants that it has not relied on any warranty or representation made by or on behalf of Lessor or the United States, but solely upon Lessee's independent investigation, except for any warranties or representations expressly set forth in this Lease.

7. IMPROVEMENTS.

(A) Lessee may destroy any buildings or other improvements currently located on the Leased Premises in preparation for the Project. The building debris shall be disposed of at a proper refuse facility. All buildings and other improvements constructed by Lessee or its Sublessees on the Leased Premises, excluding removable personal property and trade fixtures, shall remain on the Leased Premises after termination of this Lease.

(B) Lessee or its Permittees shall remove all removable personal property and trade fixtures prior to termination of this Lease. Should Lessee or its Permittees fail to remove said personal property and trade fixtures prior to termination of this Lease, said property shall thereupon become property of Lessor, and may be disposed of in any manner by Lessor.

(C) As used in this Section, the term "removable personal property" shall not include property which normally would be attached or affixed to buildings, other improvements or land in such a way that it would become a part of the realty, regardless of whether such property in fact is so attached or affixed.

(D) All Hazardous Substances, Hazardous Substance storage systems or conveyance facilities placed on or under the Leased Premises are the property of Lessee and shall remain the property of Lessee upon termination of this Lease. Within a reasonable time prior to termination of this Lease, Lessee shall remove any such substances or improvements, shall inspect the Leased Premises for contamination, shall remediate all contamination, if any, and

shall address any third party damages occasioned by any contamination or otherwise by the use or storage of such substances or improvements on the Leased Premises. Should Lessee fail to complete such responsibilities prior to the termination of this Lease, Lessee shall remain responsible therefore, and shall be required to post a bond in an amount reasonably required to ensure that such responsibilities are completed within a reasonable time after termination of this Lease.

8. CONSTRUCTION; MAINTENANCE; REPAIR; ALTERATION.

(A) All buildings and other improvements placed on the Leased Premises shall be constructed in a good and workmanlike manner in compliance with applicable laws and building codes. All parts of buildings or other improvements visible to the public or from adjacent premises shall present a pleasant appearance and all service areas shall be screened from public view.

(B) Lessee shall maintain the Leased Premises and all buildings and other improvements thereon and any alterations, additions or appurtenances thereto, in good order and repair and in a safe, sanitary and neat condition, and shall otherwise comply with all laws, ordinances and regulations applicable to the Leased Premises.

(C) Lessee shall have the right to make reasonable alterations, additions or repairs to buildings or other improvements on the Leased Premises, consistent with other provisions of this Lease.

9. CONSTRUCTION BONDS.

(A) Before beginning construction of each improvement over \$100,000, the contractor performing the work for the Lessee shall provide security to guarantee completion of the improvements and payment in full of claims for all persons for work performed on, or materials furnished for, construction either directly or indirectly through a requirement in the construction contract. The Lessee shall provide a copy of the security to the Secretary. The Lessee or the contractor performing the work for the Lessee may provide said security as a term of the construction contract in any of the following forms:

1. By posting a surety bond in an amount equal to the cost of each improvement. Said bond shall be deposited as required by lending institutions with a copy to the Lessee and must remain in effect until the improvement is satisfactorily completed and full payment has been made on the claims of all persons for work performed on, or materials furnished for construction of, the improvement. Said bond shall be conditioned upon the faithful performance of the contractor performing the work for the Lessee and shall give all claimants the right to recover upon said bond in any suit brought for that purpose.
2. Or by such other method as may hereafter be mutually agreed upon between the Lessor and the Lessee.

(B) All surety bonds provided in compliance with this Lease shall be provided by companies certified by the U.S. Department of the Treasury as acceptable sureties on Federal bonds.

10. UTILITY SERVICE LINE AGREEMENTS.

(A) Lessee and all Class A Members of the Homeowner's Association are specifically authorized to enter into appropriate service line agreements with utility companies for the provision of utility services to the Leased Premises, including gas, water, sewer, electricity, telephone, television, cable, broadband, fiber optic and other utilities, without further consent by Lessor, on the condition that:

1. Such agreements are for the sole purpose of supplying utility services to the Leased Premises;
2. Such agreements authorize utility service lines only within the Leased Premises;
3. Such agreements do not extend beyond the term of this Lease;
4. Executed copies of such agreements, together with plats or diagrams showing with particularity the location, size and extent of such service lines, are filed by the utility companies with Lessor and with the Secretary within thirty (30) days of their execution; and
5. Such agreements are otherwise in accordance with the provisions of 25 C.F.R. § 169.22, including any amendments or successors thereto.

(B) Nothing contained herein shall be construed to limit the right of Lessor to enter into service line agreements with utility companies for service lines across the Leased Premises, provided that such service lines do not unreasonably interfere with Lessee's use of the Leased Premises, nor otherwise to affect the rights-of-way reserved to Lessor in Section 2 of this Lease.

11. LIENS; TAXES AND ASSESSMENTS; UTILITY CHARGES.

(A) Lessee shall not permit any liens arising from any work performed, materials furnished, or other obligations incurred by Lessee or its Permittees to be enforced against the Leased Premises, any interest therein or improvements thereon. Lessee or its Permittees shall discharge all such liens before any action is brought to enforce same, by payment, bond or other legal method.

(B) Lessee or its Permittees shall pay, before becoming delinquent, all taxes, assessments and other like charges levied upon or against the Leased Premises, any interest therein or improvements thereon, for which Lessee or its Permittees are liable. Upon request by Lessor or the Secretary, Lessee or its Permittees shall furnish Lessor and the Secretary written evidence duly certified that any and all such taxes, assessments and other like charges required to

be paid by Lessee or its Permittees have been paid, satisfied or otherwise discharged. Lessee or its Permittees shall have the right to contest any asserted tax, assessment or other like charge against the Leased Premises, any interest therein or improvements thereon, by posting bond to prevent enforcement of any lien resulting therefrom. Lessee agrees to protect and hold harmless Lessor, the Secretary and the Leased Premises and all interests therein and improvements thereon from any and all such taxes, assessments and like charges and from any lien therefore, any sale or other proceedings to enforce payment thereof, and all costs in connection therewith. Upon request by Lessee, Lessor shall execute and deliver any appropriate documents with reference to real estate tax exemption of the Leased Premises, any interest therein or improvements thereon.

(C) Lessee or its Permittees shall pay, before becoming delinquent, all charges for water, sewage, gas, electricity, telephone and other utility services supplied to the Leased Premises.

(D) Lessor shall have the right to pay any lien, tax, assessment or other charge payable by Lessee under this Lease, or to settle any action therefore, if, within a reasonable time after written notice thereof from Lessor or the Secretary, Lessee fails to pay or to post bond against enforcement thereof. All costs and other expenses incurred by Lessor in so doing shall be repaid by Lessee to Lessor on demand, together with interest at the legal rate from the date of payment or incursion thereof by Lessor until repayment is made by Lessee.

12. CONDITIONAL USE PERMITS AND ASSIGNMENTS; PARTIAL RELINQUISHMENTS.

(A) Except as otherwise provided in Sections (B) and (C) below, this Lease may not be assigned, Subleased or otherwise transferred or conveyed, in any manner whatsoever, in whole or in part, without the prior written consent of Lessor and the Secretary, and then only upon the condition that the assignee or other successor in interest shall agree in writing to be bound by each and every covenant, agreement, term and condition of this Lease. Any such attempted assignment, Sublease, transfer or conveyance without such prior written approval shall be void and of no effect. The consent of Lessor may be granted, granted upon conditions or withheld in the sole discretion of Lessor.

(B) Notwithstanding the provisions of subsection (A) of this Section, Lessee, but no successor in interest thereto, is hereby authorized to issue Conditional Use Permits for the Leased Premises, in whole or in part, without the prior written approval of the Lessor or the Secretary. Conditional Use Permits so made shall neither serve to relieve the Lessee from any liability under this Lease nor to diminish any supervisory authority of the Secretary provided for under this Lease or under applicable federal laws and regulations. During the term of any Conditional Use Permit, should the Conditional Use Permittee succeed to the interests of Lessee hereunder, it is hereby agreed that no merger of interests shall occur thereby.

(C) Notwithstanding the provisions of subsection (A) of this Section, this Lease may be assigned, in whole or in part, by Lessee, but not by any successor in interest thereto, with the prior written approval of Lessor, but without further consent or approval of the Secretary; provided, that the assignee shall agree in writing to be bound by all the covenants, agreements,

terms and conditions of this Lease, and no such assignment shall be valid unless and until the assignee shall so agree. Assignments so made shall not serve to relieve the Lessee from any liability under this Lease nor to diminish any supervisory authority of the Secretary provided for under this Lease or under applicable federal laws and regulations; provided, that Lessee may be relieved from its liability under this Lease, in whole or in part, with the prior written approval of the Lessor and the Secretary.

13. QUIET ENJOYMENT.

Lessor hereby covenants and agrees that, upon performing each of its covenants, agreements, terms and conditions contained in this Lease, that Lessee shall peaceably and quietly have, hold and enjoy the Leased Premises without any hindrance, interruption, ejection or molestation by Lessor or by any other person or persons claiming from or under Lessor.

14. ENCUMBRANCES.

(A) Except as provided in (B) below, this Lease or any interest therein may not be encumbered without the prior written approval of Lessor and the Secretary, and no such encumbrance shall be valid or binding without such prior written approval. An encumbrance shall be confined to the leasehold interest of Lessee, and shall not jeopardize in any way Lessor's interest in the land. Lessee agrees to furnish any requested financial statements or analyses pertinent to the encumbrance that Lessor and the Secretary may deem necessary to justify the amount, purpose and terms of said encumbrance.

(B) However, in furtherance of the purpose as stated in Section 3(B) of this Lease, without the prior approval of the Lessor, the Secretary or sureties, if any, a) the Lessee, acting on behalf of a Class A Member or Members of the Homeowner's Association, may permit the Member to encumber the residence located upon a lot and the Conditional Use Permit of the Class A Member(s) of the Homeowner's Association for that lot, b) the Lessee may convey any completed residence, and the accompanying Conditional Use Permit, to any Class A Member of the Homeowner's Association, c) the Lessee may secure acquisition financing on behalf of any Native American Class A Member of the Homeowner's Association from, and deliver to, any lender, either a form of a security interest, or other instrument of encumbrance, upon their purchased residence and Conditional Use Permit for the lot where the residence is located, in a form acceptable to the U.S. Department of Housing and Urban Development under the Section 184 program, or any successor programs to the Section 184 program, and d) the Lessee may permit non-Indian Class A Members of the Homeowner's Association to secure acquisition financing utilizing a Collateral Assignment of their Conditional Use Permit in substantially the same form as that attached to this lease as Exhibit "C."

(C) In the event of default by Permittee of the terms of an Approved Encumbrance, Encumbrancer may exercise any rights provided in such Approved Encumbrance, provided that prior to any sale of the residence and equitable use interest in the lot on which the residence is located under the terms of the Covenants, Conditions and Restrictions, Encumbrancer shall give to the Lessee, the Association as defined in the Covenants, Conditions and Restrictions, the Indian Health Service, Lessor and the Secretary, notice of the same character and duration as is required to be given to Permittee by the terms of such Approved Encumbrance and by applicable

law. In the event of such default, Lessee, the Association as defined in the Covenants, Conditions and Restrictions, the Indian Health Service, Lessor and the Secretary, in that order, shall have the right, which may be exercised at any time prior to the completion of sale, to pay to Encumbrancer any and all amounts secured by the Approved Encumbrance, plus unpaid interest accrued to the date of such payment, plus expenses of sale incurred to the date of such payment.

(D) If the Lessee, the Association as defined in the Covenants, Conditions and Restrictions, the Indian Health Service, Lessor and the Secretary, in that order, decline to exercise the above right and a sale of the residence under the Approved Encumbrance shall occur, the purchaser at such sale shall succeed to all of the right, title and interest of the Permittee in this Lease. It is further agreed that if the purchaser at such sale is Encumbrancer, Encumbrancer may sell and assign the residence and Conditional Use Permit to a either a Class A Member of the Homeowner's Association, or a person eligible to be a Class A Member of the Homeowner's Association, without any further approval by Lessor and the Secretary, provided that the assignee shall agree in writing to be bound by all the covenants, agreements, terms and conditions of this Lease, including the Covenants, Conditions and Restrictions, and no such assignment shall be valid unless and until the assignee shall so agree. If Encumbrancer is the purchaser, it shall be required to perform the obligations of this Lease only so long as it retains title thereto. If the purchaser is other than Encumbrancer, the purchaser shall agree in writing to be bound by all the covenants, agreements, terms and conditions of this Lease, including the Covenants, Conditions and Restrictions attached hereto as Exhibit "B" and no such purchase shall be valid unless and until purchaser shall so agree.

15. DEFAULT.

(A) Time is declared to be of the essence of this Lease. Should Lessee or any Permittee be in violation of any other provision of this Lease, said violation may be acted upon by the Secretary in accordance with the provisions of 25 C.F.R. Part 162, including any amendments or successors thereto.

(B) In addition to the rights and remedies provided by the aforementioned regulations, Lessor and the Secretary, either jointly or severally, may exercise the following options after giving notice of Lessee's default and a reasonable opportunity to cure the default, subject to the provisions of subsection (D) below:

1. Collect, by suit or otherwise, all monies as they become due hereunder, or enforce by suit or otherwise, Lessee's compliance with all provisions of this Lease; or
2. Re-enter the Leased Premises and remove all persons and property therefrom, and re-let the Leased Premises without terminating this Lease as the agent and for the account of Lessee, but without prejudice to the right to cause the termination of this Lease under applicable law thereafter, and without invalidating any right of Lessor or the Secretary or any obligations of Lessee hereunder. The terms and conditions of such re-letting shall be in the sole discretion of Lessor, who shall have the right to alter and repair the Leased Premises as it deems advisable and to re-let

with or without any equipment or fixtures situated thereon. Rents from any such re-letting shall be applied first to the expense of re-letting, collection, altering and repairing, including reasonable attorney's fees and any reasonable real estate commission actually paid, insurance, taxes and assessments and thereafter toward payment to liquidate the total liability of Lessee. Lessee shall pay to Lessor monthly when due, any deficiency and Lessor or the Secretary may sue thereafter as each monthly deficiency shall arise; or

3. Take any other action authorized or allowed under applicable law.

(C) No waiver of a breach of any of the terms and conditions of this Lease shall be construed to be a waiver of any succeeding breach of the same or any other term or condition of this Lease. Exercise of any of the remedies herein shall not exclude recourse to any other remedies, by suit or otherwise, which may be exercised by Lessor or the Secretary, or any other rights or remedies now held or which may be held by Lessor in the future.

(D) Lessor, Lessee and the Secretary, as the case may be, shall give to an Encumbrancer a copy of each notice of default by Lessee or a Permittee at the same time as such notice of default shall be given to the Lessee or Permittee. Lessor, Lessee and the Secretary, as the case may be, shall accept performance by an Encumbrancer of any of Lessee's or a Permittee's obligations under this Lease, with the same force and effect as though performed by Lessee or Permittee. An Encumbrancer shall have standing to pursue any appeals permitted by applicable federal or Navajo Nation law that Lessee or a Permittee would be entitled to pursue. Neither Lessor nor the Secretary shall terminate this Lease, a Conditional Use Permit issued under this Lease or a Conditional Use Permit if an Encumbrancer has cured or is taking action diligently to cure Lessee's or Permittee's default and has commenced and is pursuing diligently either a foreclosure action or an assignment in lieu of foreclosure.

16. SANITATION.

Lessee hereby agrees to comply with all applicable sanitation laws, regulations or other requirements of the United States and the Navajo Nation. Lessee agrees to dispose of all solid waste in compliance with applicable federal and Navajo Nation law. Lessee further agrees at all times to maintain the entire Leased Premises in a safe and sanitary condition.

17. HAZARDOUS SUBSTANCES.

Lessee shall not cause or permit any Hazardous Substance to be used, stored, generated or disposed of on or in the Leased Premises, other than Hazardous Substances that are typically used, stored, generated or disposed of by the occupants of facilities similar to the improvements on the Leased Premises, without the prior written approval of Lessor, which approval may be given, given upon conditions or denied in the sole discretion of Lessor. Without limitation of the foregoing, if Lessee causes or permits the presence of any Hazardous Substance on the Leased Premises and such results in contamination to the Leased Premises or any building or other improvement thereon, Lessee shall promptly take any and all actions necessary or appropriate to restore the Leased Premises or building or other improvement to the condition

existing prior to the presence of any such Hazardous Substance on the Leased Premises. Lessee shall obtain written approval from Lessor prior to commencement of any such remedial action.

18. LIABILITY INSURANCE.

(A) At all times during the term of this Lease, except as provided in part (B) of this Section, Lessee shall carry a commercial general liability insurance policy in the amount of at least \$1,000,000 for personal injury to one (1) person and \$3,000,000 per occurrence, and \$500,000 for damage to property. Said policy shall be obtained from a reliable insurance company authorized to do business in the Navajo Nation and in the State of Arizona and shall be written to protect Lessee, Lessor and the United States and shall provide for notification to Lessor and the Secretary prior to any cancellation or non-renewal of said policy for any reason, including non-payment of premiums. Upon written request therefore, copies of said policy shall be furnished to Lessor and the Secretary.

(B) The Lessee shall be bound by all of the terms of this Section with respect to its development and marketing of residential housing upon the leased premises for rental and ultimate purchase by eligible Class A Members of the Homeowner's Association. However, any such Class A Members of the Homeowner's Association who have completed the purchase of their residence shall be required to maintain such liability and personal property insurance coverage upon their purchased residence as they, in their discretion and with the approval of the Association, deem necessary, or which may otherwise be required to be obtained by any lender providing acquisition financing to such Class A Members of the Homeowner's Association.

(C) Lessor or the Secretary may require that the amount of the insurance policy required by subsection (A) of this Section be increased at any time, whenever either shall determine that such increase reasonably is necessary for the protection of Lessor or the United States.

(D) With the prior written approval of Lessor and the Secretary, the insurance obligation under this Section may be satisfied by a self-insurance program maintained by Lessee or by other means of alternative performance satisfactory to Lessor and the Secretary.

19. FIRE AND CASUALTY INSURANCE.

(A) At all times during the term of this Lease, Lessee shall carry Causes of Loss-Special Form property insurance covering not less than the full insurable value of all improvements on the Leased Premises. Said policy shall be obtained from a reliable insurance company authorized to do business in the Navajo Nation and in the State of Arizona, and shall be written to protect Lessee, Lessor, the United States and an Encumbrancer, if any, and shall provide for notification to Lessor, the Secretary and any Encumbrancer prior to any material change, cancellation or non-renewal of said policy for any reason, including non-payment of premiums. Upon written request therefore, copies of said policy shall be furnished to Lessor and the Secretary.

(B) The Lessee shall be bound by all of the terms of this Section (A) above with respect to its development and marketing of residential housing upon the leased premises for

rental and ultimate purchase by Class A Members of the Homeowner's Association. However, any such Class A Members of the Homeowner's Association who have purchased their residence shall only be required to maintain such fire and casualty insurance coverage upon their purchased residence as is required to be obtained a) by any lender providing acquisition financing to such Class A Member of the Homeowner's Association and upon such terms and conditions as are required by any such lender, b) by the Lessee, in the absence of any lender, and upon such terms as are required by the Lessee.

(C) In the event of destruction of or damage to any improvement on the Leased Premises or upon any Conditional Use Permit or Sublease while an Approved Encumbrance remains in effect, the proceeds of property insurance equal to the amount of destruction or damage to the encumbered improvements (but not exceeding the remaining balance of the Approved Encumbrance) shall be paid to Encumbrancer on the condition that Encumbrancer agrees to promptly replace or repair the destroyed or damaged improvements to a condition as good or better than before the destruction or damage occurred. If the amount paid to Encumbrancer is sufficient to repair the destroyed or damaged improvements, or, if within three (3) months after such payment by the insurer to Encumbrancer or Lessee shall deposit with Encumbrancer sufficient additional funds, if any, required to completely replace or repair the destruction or damage, upon written order of Lessee or Permittee, Encumbrancer shall pay the costs of such replacement or repair, and such payment shall not be deemed a payment or credit on the Approved Encumbrance. Otherwise, at the expiration of such three (3) months said sum so paid by the insurer to Encumbrancer shall be applied and credited on the Approved Encumbrance.

20. INSPECTION.

The Lessor and the Secretary shall have the right, at any reasonable time during the term of this Lease, subject to the rights of Permittees under their Conditional Use Permits, to enter upon the Leased Premises, or any part thereof, to inspect the Leased Premises and any buildings and other improvements erected or placed thereon.

21. MINERALS.

All minerals, including sand and gravel, contained in or on the Leased Premises are reserved for the use of Lessor. Lessor also reserves the right to enter upon the Leased Premises and search for and remove minerals located thereon, paying just compensation for any damage or injury caused to Lessee's personal property or improvements constructed by Lessee, so long as Lessor uses reasonable efforts to minimize any interference with the activities of Lessee and the subtenants of the Leased Premises.

22. EMINENT DOMAIN.

If the Leased Premises or any part thereof is taken under the laws of eminent domain at any time during the term of this Lease, Lessee's or Permittee's interest in the Leased Premises or the part of the Leased Premises taken shall thereupon cease. Compensation awarded for the taking of the Leased Premises or any part thereof, including any improvements located thereon, shall be awarded to Lessor, Lessee, and Permittee as their respective interests may appear at the time of such taking, provided that Lessee's right to such awards shall be subject to the rights of

an Encumbrancer under an Approved Encumbrance. Lessor and Lessee shall then enter into a lease for the new premises on the same terms as this Lease, except that the term of the replacement lease shall be the number of years remaining on this Lease at the time of relocation.

23. DELIVERY OF PREMISES.

At the termination of this Lease, Lessee shall peaceably and without legal process deliver up the possession of the Leased Premises in good condition, usual wear and tear excepted. Upon the written request of the Lessor, Lessee shall provide to the Lessor, at Lessee's sole cost and expense, an environmental audit assessment of the Leased Premises at least sixty (60) days prior to delivery of the Leased Premises.

24. HOLDING OVER.

Holding over by Lessee after termination of this Lease shall not constitute a renewal or extension thereof or give Lessee any rights hereunder or in or to the Leased Premises or to any improvements located thereon.

25. INDEMNIFICATION.

Lessee shall indemnify and hold harmless the Lessor and the Secretary and their authorized agents, employees, land users and occupants, against any liability for loss of life, personal injury and property damages arising from the construction on, maintenance, occupancy or use of the Leased Premises by Lessee, except to the extent that the loss or damage is caused or contributed to by the indemnified party.

26. ATTORNEY'S FEES.

In any suit or action arising under or related to this Lease each party shall bear its own costs and attorneys fees incurred in such an action and no claim for such costs and attorney fees may be made by either party.

27. AGREEMENT TO ABIDE BY NAVAJO NATION AND FEDERAL LAWS.

In all activities conducted by Lessee and Conditional Use Permittees within the Navajo Nation, Lessee and Conditional Use Permittees shall abide by all laws and regulations of the Navajo Nation and of the United States, now in force and effect or as hereafter may come into force and effect.

28. GOVERNING LAW AND CHOICE OF FORUM.

Except as prohibited by applicable federal law, the law of the Navajo Nation shall govern the construction, performance and enforcement of this Lease. Any action or proceeding brought by Lessee or Conditional Use Permittees against the Navajo Nation in connection with or arising out of the terms and conditions of this Lease shall be brought only in the courts of the Navajo Nation, and no such action or proceeding shall be brought by Lessee or Conditional Use Permittees against the Navajo Nation in any court or administrative body of any State.

29. CONSENT TO JURISDICTION.

Lessee hereby consents to the legislative, executive and judicial jurisdiction of the Navajo Nation in connection with all activities conducted by the Lessee within the Navajo Nation.

30. COVENANT NOT TO CONTEST JURISDICTION.

Lessee hereby covenants and agrees never to contest or challenge the legislative, executive or judicial jurisdiction of the Navajo Nation on the basis that such jurisdiction is inconsistent with the status of the Navajo Nation as an Indian nation, or that the Navajo Nation government is not a government of general jurisdiction, or that the Navajo Nation government does not possess full police power (i.e., the power to legislate and regulate for the general health and welfare) over all lands, persons and activities within its territorial boundaries, or on any other basis not generally applicable to a similar challenge to the jurisdiction of a state government. Nothing in this Section shall be construed to negate or impair federal responsibilities with respect to the Leased Premises or to the Navajo Nation.

31. NO WAIVER OF SOVEREIGN IMMUNITY.

Nothing in this Lease shall be interpreted as constituting a waiver, express or implied, of the sovereign immunity of the Navajo Nation.

32. TERMINATION OF FEDERAL SUPERVISION.

Nothing 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, or otherwise, during the term of this Lease, however, such termination shall not serve to abrogate this Lease. Lessor, Lessee and an Encumbrancer, if any, shall be notified of any such change in the status of the Leased Premises.

33. INTEREST OF MEMBER OF CONGRESS.

No member of or delegate to Congress or any Resident Commissioner shall be admitted to any share or part of this Lease or to any benefit that may arise herefrom, but this provision shall not be construed to extend to this Lease if made with a corporation or company for its general benefit.

34. OBLIGATIONS TO THE UNITED STATES.

It is understood and agreed that while the Leased Premises are in trust or restricted status, all of Lessee's obligations under this Lease are to the United States as well as to Lessor.

35. NOTICES AND DEMANDS.

(A) Any notices, demands, requests or other communications to or upon either party or the Secretary provided for in this Lease, or given or made in connection with this Lease, (hereinafter referred to as "notices,") shall be in writing and shall be addressed as follows:

To or upon the Lessor: President
The Navajo Nation
Post Office Box 9000
Window Rock, Navajo Nation (Arizona) 86515

Telefax: 928-871-7381

To or upon the Lessee: Manager
Chinle Hospital Housing, LLC
Post Office Box 2060
Chinle, Navajo Nation (Arizona) 86503

Telefax: 928-674-3417

Copies to: To or upon the Secretary:
Regional Director
Navajo Region
Bureau of Indian Affairs
United States Department of the Interior
301 West Hill Street
P.O. Box 1060
Gallup, New Mexico 87305
Telefax: 505-863-8324

(B) All notices shall be given by personal delivery, by registered or certified mail, postage prepaid, or by facsimile transmission. Notices shall be effective and shall be deemed delivered: if by personal delivery, on the date of delivery if during normal business hours, or if not during normal business hours on the next business day following delivery; if by registered or certified mail, by facsimile transmission or by telegram, on the next business day following actual delivery and receipt.

(C) Copies of all notices shall be sent to the Secretary.

(D) Lessor, Lessee and the Secretary may at any time change its address for purposes of this Section by notice.

36. SUCCESSORS AND ASSIGNS.

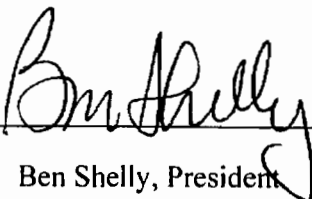
The terms and conditions contained herein shall extend to and be binding upon the successors, heirs, assigns, executors, administrators, employees and agents, including all contractors and subcontractors, of Lessee. Except as the context otherwise requires, the term "Lessee," as used in this Lease, shall be deemed to include all such successors, heirs, executors, assigns, employees and agents.

37. EFFECTIVE DATE; VALIDITY.

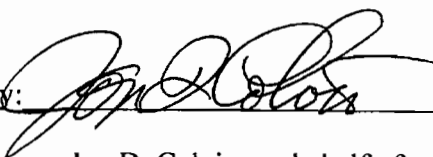
This Lease shall take effect on the date it is approved by the Secretary. This Lease, and any modification of or amendment to this Lease, shall not be valid or binding upon either party until it is approved by the Secretary.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed as of the date first above written.

LESSOR: THE NAVAJO NATION

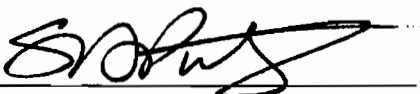
By:  Date APR 18 2011
Ben Shelly, President

LESSEE: CHINLE HOSPITAL HOUSING, LLC
By: DCI Housing, LLC, its Managing Member

By:  Date 2/22/11
Jon D. Colvin, on behalf of
DCI Housing, LLC, Manager of
Chinle Hospital Housing, LLC

APPROVED pursuant to Secretarial
Redelegation 209 DM 8, 230 DM 1
and 3 IAM 4.

Date: AUG 02 2011

By: 

Acting Regional Director
Navajo Region
Bureau of Indian Affairs
U.S. Department of the Interior



**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
ATS'ÍIS YAA'ÁHÁLYAÁNÍ KÉÉDAHAT'**

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS is made and entered into as of this ____ day of _____, 2015, by DCI Housing, LLC (hereinafter referred to as "Declarant"), an Arizona limited liability company, registered as a foreign limited liability company under the laws and ordinances of the Navajo Nation, and is recorded in reference to, and binding on, Master Lease No. _____ as an integral part of that Lease. In case of conflict between any term and condition of this Declaration of Covenants, Conditions and Restrictions and the Master Lease, the terms and conditions of the Master Lease shall apply.

RECITALS

This Declaration provides for the establishment of a residential development to be known as ATS'ÍIS YAA'ÁHÁLYAÁNÍ KÉÉDAHAT' (to be located upon Tribal Trust land of the Navajo Nation situated in Chinle, Arizona, as more particularly described and set forth in Exhibit "A" attached hereto and made a part hereof ("Parcel" or "Property").

Pursuant to a Master Lease with the Navajo Nation, dated _____, 2015 ("Master Lease"), the Navajo Nation has leased the Property to Chinle Hospital Housing, LLC, an Arizona limited liability company, registered as a foreign limited liability company under the laws and ordinances of the Navajo Nation ("Lessee"). The Master Lease authorizes the development, leasing (including the entering into of lease-purchase options), and marketing of ATS'ÍIS YAA'ÁHÁLYAÁNÍ KÉÉDAHAT' (by the Declarant, which owns and holds fifty-one percent (51%) of the outstanding membership interest in the Lessee. The remaining forty-nine percent (49%) of the outstanding membership interest in the Lessee is owned and held by the Association, as hereinafter defined.

Declarant desires that the Property be developed as a residential development. To that end, Declarant deems it desirable to establish covenants, conditions and restrictions upon the Property and each and every portion thereof, and certain mutually beneficial restrictions and obligations with respect to the proper use, occupancy and enjoyment thereof, all for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property and enhancing the quality of life within the Property.

The Declarant, in furtherance of terms and conditions of the Lease for the Property issued to the Lessee from the Navajo Nation, a federally recognized Indian Tribe and sovereign body, considers the Property, and each of the designated residential dwelling units located or to be located thereon, to possess special status by virtue of their inclusion within the reservation and area of operation of the Navajo Nation. Because of this special status, the Declarant deems it desirable at this time, and prior to the recordation of any mortgages and/or deeds of trust encumbering any portion of the Property, to establish binding and enforceable restrictions upon the Property and each and every portion thereof, as well as certain obligations with respect to the use, occupancy and enjoyment thereof, all for the purpose of protecting the value and special status of the Property.

As such, the Declarant desires and intends that all owners, mortgagees, beneficiaries and trustees under mortgages and/or deeds of trust, occupants, lessees and all other persons hereafter acquiring any interest in the Property, and their respective heirs, successors, and assigns, shall at all times hold their interests subject to the restrictions, privileges, and rights hereinafter set forth, all of which are hereby declared to be in furtherance of a plan to promote and protect the value and special status of the Property.

NOW THEREFORE, Declarant does hereby execute this Declaration and does hereby declare that all of the property described above ("Property"), shall be held, transferred, sold, conveyed, leased, occupied, and utilized subject to the following easements, restrictions, covenants, conditions, liens, assessments, privileges and rights; which are for the purpose of protecting the value and desirability of and which shall run with the Property and be binding on all parties having any right, title or interest in the leasehold interest of the Property, or any part thereof, their heirs, successors and assigns and shall inure to the benefit of each Owner thereof.

1. DEFINITIONS

Unless the context clearly requires otherwise, the following terms used in this Declaration are defined as follows. Defined terms appear throughout this Declaration with the initial letter or initial letters of such term capitalized.

- 1.1 "Articles"** means the Articles of Incorporation of the Association, as such may be amended from time to time.
- 1.2 "Assessments"** shall include the following:

- 1.2.1 **"Regular Assessment"** means the amount which is to be paid by each Member of the Association as such Member's proportionate share of the common expense of the Association, as provided in §6.3.
- 1.2.2 **"Member's Initial Contribution of Assessment"** means an amount equal to two-thirds (2/3) of the regular quarterly Assessment to be paid at the time of close of escrow.
- 1.2.3 **"Declarant's Contribution for Common Areas"** means the payment by the Declarant of the reasonable operational and maintenance costs of the Common Areas for a limited specified period.
- 1.2.4 **"Special Assessment"** means the amount levied by the Association against an individual owner of a completed residential dwelling unit upon a Lot.
- 1.2.5 **"Reconstruction Assessment"** means the amount which is to be paid by each Member representing such Member's proportionate share of the cost to the Association for reconstruction of any portion of the Common Areas, as provided in §8.
- 1.2.6 **"Capital Improvement Assessment"** means the amount which is to be paid by each Member representing such Member's proportionate share of the cost to the Association for the installation or construction of capital improvements on any of the Common Areas which the Association may from time to time authorize pursuant to the provisions of §6.5.
- 1.3 **"Association"** means ATS'ÍIS YAA'ÁHÁLYAÁNÍ KÉÉDAHAT'(Homeowners Association, Inc. a non-profit corporation organized and existing under the laws and ordinances of the Navajo Nation, and its successors and assigns.
- 1.4 **"Association Rules"** means the rules and regulations adopted by the Association.
- 1.5 **"Board"** means the Board of Directors of the Association.
- 1.6 **"Bylaws"** means the Bylaws of the Association adopted in accordance with the Articles, as such Bylaws may be amended from time to time.
- 1.7 **[Reserved]**
- 1.8 **"Common Areas"** means all leasehold real property as shown on the Plat, easements, licenses, leaseholds, rights-of-way, and other interests in leasehold

real property, if any, and the improvements thereon, held in the name of the Lessee for the benefit of the Property.

- 1.9 "Common Expenses"** means the actual and estimated costs incurred by the Association in administering, maintaining and operating the Common Areas including but not strictly limited to, the following: maintenance, management, operation, repair and replacement of the Common Areas, and all other areas on the Project which are maintained by the Association; unpaid Assessments; costs of management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and employees; the costs of utilities, including but not limited to water, electricity, gas, sewer, trash pick-up disposal, landscaping maintenance, and other services which generally benefit and enhance the value and desirability of the Property and which are provided by the Association; the costs of fire, casualty, liability, worker's compensation and other insurance covering the Common Areas; the costs of any other insurance obtained by the Association; reasonable reserves for contingencies, replacements and other proper purposes as deemed appropriate by the Association, which reserve fund shall be adequate to meet the costs and expenses of maintenance, repairs and replacement of those Common Areas which must be maintained, repaired, or replaced on a periodic basis; the costs of bonding the Members of the Board, the President, any professional managing agent or any other person handling the funds of the Association; taxes paid by the Association; amounts paid by the Association for discharge of any lien or encumbrance levied against the Common Areas or portions thereof; costs incurred by committees established by the Board or the president; costs of garbage collection service for Common Areas; and other expenses incurred by the Association for any reason whatsoever in connection with the Common Areas excepting reconstruction costs and Capital Improvements as otherwise provided herein, or the costs of any other item or items designated by, or to be provided or performed by the Association pursuant to this Declaration, the Articles, Bylaws, Association Rules or in furtherance of the purposes of the Association or in the discharge of any duties or powers of the Association.
- 1.10 "Declarant"** means the above recited Declarant, its successors and assigns, or any person or entity to whom the Declarant's rights hereunder are assigned by recorded instrument under Navajo and federal law.
- 1.11 "Declaration"** means this instrument, as from time to time amended.
- 1.12 "Default Rate of Interest"** means an annual rate of interest equal to the prime rate as established by Chase Bank USA, N.A. ("Chase") (as the rate charged to its

largest and most creditworthy customers) from time to time while interest is accruing (with interest thereunder adjusted as and when said prime rate is adjusted) plus two percent (2%) per annum, but never greater than twelve percent (12%) per annum). Notwithstanding anything herein to the contrary, if, during any periods, the highest lawful rate of interest which may be paid by the person required to pay the default rate of interest hereunder, despite the provisions hereof, is less than the rate provided above, the interest payable by such person during said periods shall be highest lawful rate. If Chase should cease doing business or no longer establish its prime rate as described above, the Association may compute interest hereunder upon the established prime rate of any other bank doing business in Arizona. If banks should cease establishing prime rates, the Association may elect to use twelve percent (12%) per annum as the default rate of interest, or may specify the rate, in lieu of said prime rate, for purposes of the computation hereunder which the Association would reasonably have to pay to borrow money at the time.

- 1.13 “Eligible Project Participants”** means current or retired employees of the Indian Health Service of the U.S. Department of Health and Human Services (“IHS”) (or any future successor in interest to IHS), and who are either (a) Navajo Nation enrolled members, (b) enrolled members of another Federally recognized Tribe, or (c) non-Indians who provide, or have provided, essential health care services to the Navajo Nation. It shall also include other professional, administrative and managerial service providers, both Indian and non-Indian, who will be residing on the Navajo Nation for an indefinite duration and whose services are beneficial to the Navajo Nation.
- 1.14 “Fair Market Value”** means the appraised value of the property at the time of a Transferee Offer and is to be determined as described in Section 3.4 of this Declaration.
- 1.15 “Homesite”** means a Lot within the Project for which a valid Homesite Lease has been issued.
- 1.16 “IHS”** means the Indian Health Service, an agency of the United States Department of Health and Human Services or its successor in interest.
- 1.17 “Lessee”** means Chinle Hospital Housing, LLC or its successor in interest.
- 1.18 “Lessor”** means the Navajo Nation or its successor in interest.
- 1.19 “Lot”** means one of the Thirty (30) subdivided Lots comprising the Property, as shown and designated upon the Plat. A Lot shall not include any Common Areas.

- 1.20 **"Majority of Members"** means the Members of the Association holding more than fifty percent (50%) of the total votes entitled to be cast with respect to a given matter. Unless otherwise specified, any provision herein requiring the approval of the Members means the approval of a majority of Members.
- 1.21 **"Member"** means every Person who holds Membership in the Association pursuant to §3.
- 1.22 **"Mortgage"** means any recorded, filed or otherwise perfected instrument given in good faith and for valuable consideration which is not a fraudulent conveyance under Arizona law as security for the performance of an obligation, including without limitation a deed of trust. **"Mortgagee"** means the holder of a note secured by a Mortgage, including the Trustee and Beneficiary under any deed of trust. **"Mortgagor"** means the party executing a Mortgage, or a Trustor executing a deed of trust.
- 1.22 **"Occupant"** means any Person, other than an Owner, in rightful possession of a completed residential dwelling unit upon a Lot for which a Homesite Lease has been issued, whether as a guest, tenant or otherwise.
- 1.24 **"Optionee"** means the Lessee, the Association and the Indian Health Service, jointly and severally, as the parties which have the right to exercise a Right of First Refusal under Section 3.4 of the Declaration.
- 1.25 **"Optionor"** means a current Class A Member who has received a Transferee Offer from a Transferee, or a former Class A Member who is no longer an Eligible Project Participant and subject to the conditions of Section 3.4.
- 1.26 **"Owner"** means one or more Persons, who are alone or collectively the record owner of title to a completed or uncompleted residential dwelling unit upon a Lot, whether or not subject to any Mortgage.
- 1.27 **"Parcel"** means that Parcel of real property referred to in the recitals hereof and described in this Declaration of Covenants, Conditions and Restrictions.
- 1.28 **"Person"** means an individual, corporation, limited liability company, partnership, trustee or other entity capable of holding leasehold real property interests, or title to personal property and improvements thereon, and their respective heirs, successors and assigns.
- 1.29 **"Plat"** means the Plat of subdivision of the Parcel as first recorded in the Land Titles and Records Office of the Bureau of Indian Affairs in Albuquerque, New Mexico.

- 1.30 **"President"** means the duly elected or appointed President of the Association.
- 1.31 **"Private Driveways"** means those driveways constructed within the respective Lot lines to be used by the Owners for ingress and egress to said Lots.
- 1.32 **"Project"** means the Property, as described in the recitals hereof, to be called ATS'ÍIS YAA'ÁHÁLYAÁNÍ KÉÉDAHAT'(.
- 1.33 **"Property"** means the Parcel together with all buildings, improvements and other permanent fixtures of whatever kind now or hereafter located hereon and all easements, rights, appurtenances, and privileges and belonging or in any way pertaining thereto.
- 1.34 **"Record" or "Recording"** means an instrument of record in, or the act of recording an instrument with, the Land Titles and Records Office of the Bureau of Indian Affairs in Albuquerque, New Mexico.
- 1.35 **"Reserves"** means that portion of the Regular Assessment to be used to ensure payment when due of the cost of capital expenditures relating to the repair and replacement of the Common Areas, (excluding Private Driveways), and equipment fixtures and furnishings in the Common Areas.
- 1.36 **"Transfer Notice"** means a written notice of a Transferee Offer given to the Optionees by the Optionor.
- 1.37 **"Transferee"** means a person who has made a bona fide offer to purchase a residence in the Project from a Class A Member subject to the terms and conditions of Section 3.4 of this Declaration.
- 1.38 **"Transferee Offer"** means a bona fide offer made by a Transferee.

2. RIGHTS OF ENJOYMENT OF COMMON AREAS

- 2.1 **Member's Right of Enjoyment.** Every Member shall have a non-exclusive easement for use and enjoyment in and to the Common Areas, which right shall be appurtenant to and shall pass with such Member's Membership as herein provided, and to all of the easements, covenants, conditions, restrictions and other provisions contained in this Declaration, subject, without limitation, to the following provisions:
- 2.1.1 The right of the Association to limit the number of guests of Members and to limit the use of the Common Areas by Persons who are not Members,

but who are in possession of a completed residential dwelling unit upon a Homesite within the Project.

- 2.1.2 The right of the Association to establish reasonable rules and regulations pertaining to or restricting the use of the Common Areas by Members or other Persons.
 - 2.1.3 The right of the Association to borrow money for the purpose of improving, replacing, restoring or expanding the Common Areas or adding new Common Areas and, in aid thereof, to mortgage said Common Areas, provided that the rights of the lender thereunder shall be subordinated to the rights of the Members. However, no funds shall be borrowed unless a majority of the Members approve the borrowing of the funds.
 - 2.1.4 The rights of the Association to suspend the right of a Member or any Person to use the Common Areas or any designated portion thereof during any time in which any Assessment respecting such Member remains unpaid and delinquent, or for a period not to exceed sixty (60) days for any single infraction of the Association Rules or breach of this Declaration, and up to one (1) year for any subsequent violation of the same or similar provision of the Association Rules or this Declaration, provided that any suspension of such right to use the Common Areas except for failure to pay Assessments, shall be made only by a seventy-five percent (75%) vote of the Board of Directors of the Association and, after notice and hearing, in accordance with the Bylaws. Notwithstanding the foregoing, the Association shall not have the right hereunder to suspend any Member's right to use any portion of the Property necessary for such Member to gain access to his, her, or its Homesite. Suspension, however, does not release that Member from any obligation to pay all of his, her, or its Assessments to the Association.
- 2.2 **Assignment of Use.** No Member may delegate his right of use and enjoyment of the Common Areas to any Person, except to the Members of his immediate family as provided in §3 or to his guests as permitted by the Association Rules.
 - 2.3 **Waiver and Use.** No Member may exempt himself, and no Member shall be exempt, from personal liability for assessments or release any completed residential dwelling unit owned by him or her upon any Homesite from the liens, charges and other provisions of this Declaration, the Articles, Bylaws, or Association Rules, by voluntary waiver of or suspension or restriction of such Member's right to the use and enjoyment of the Common Areas, or the abandonment of such Member's completed residential dwelling unit upon any

Lot or Membership.

3. MEMBERSHIP

- 3.1 Membership.** There shall be two classes of Membership; Class A Membership and Class B Membership. Class A Membership shall be limited to Eligible Project Participants. Every Owner of a Homesite shall be a Class A Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of a completed or uncompleted residential dwelling unit and the Homesite on which it is situated. Only one Membership shall exist based upon ownership of a single completed or uncompleted residential dwelling unit and the Homesite on which it is situated. The Declarant shall be the sole Class B Member.
- 3.2 Transfer of Membership.** The rights and obligations of an Owner and a Membership in the Association shall not be assigned, transferred, pledged or alienated in any way, except upon the transfer, whether by sale, intestate succession, testamentary disposition, foreclosure of a mortgage or other legal process transferring title to a validly issued Homesite Lease. However, any transfer shall be made only to Eligible Project Participants and any other transfer, whether by sale, testamentary disposition, foreclosure of a mortgage or other legal process shall be a prohibited transfer. Any attempt to make a prohibited transfer, other than for the purpose of liquidating an interest in a property acquired by operation of law as described in Section 3.4 (below), shall be void.
- 3.3 Voting Rights.** The Association shall have two (2) classes of voting rights based upon the type of Membership in the Association, as follows:
1. **Class A** - Class A Members shall be all Owners except Declarant and, except as hereafter provided in the case of election of directors, shall be entitled to one (1) vote for each validly issued Homesite Lease subject to Assessment as hereinafter provided in which they hold the interest required for Membership. In addition, Class A members, except the Declarant, will be restricted to current or retired employees of the Indian Health Service of the U.S. Department of Health and Human Services ("IHS") (or any future successor in interest to IHS) or their spouses and/or heirs, or to similar individuals with other professional, administrative or Managerial skills beneficial to the Navajo Nation and who are either (a) Navajo Nation enrolled members, (b) enrolled members of another Federally recognized Tribe which are likely to remain on the Navajo Nation for an indefinite duration, or (c) non-Indians which are likely to remain on the Navajo Nation for an indefinite

duration and who provide, or have provided, services beneficial to the Navajo Nation (collectively, "Eligible Project Participants").

The sale or transfer of any Homesite (and the accompanying ownership of its appurtenant Class A Membership), to any person or entity other than Eligible Project Participants will be subject to Declarant's Right of First Refusal and Option Agreement referenced in §3.4 below. Primary occupancy of any Homesite by anyone other than Eligible Project Participants will also be prohibited, unless the terms of Declarant's Right of First Refusal and Option Agreement have been satisfied.

2. **Class B** – The Class B Member shall be the Declarant, which shall be entitled to three (3) votes for each ownership interest of a completed or uncompleted residential dwelling unit which it possesses upon any Lot and for any undeveloped Lots.

The Class B Membership shall cease and be converted into Class A Membership upon the earlier of (1) on the date which is Ninety (90) days subsequent to the date when the outstanding votes in the Class A Membership equal or exceed the outstanding votes in the Class B Membership; or (2) on the fourth (4th) anniversary following the date of cessation by any Declarant, as defined in this Declaration, to offer completed residential dwelling units and the Lots on which they are situated for Homesite leasing in the ordinary course of business. In the event the Declarant annexes the Additional Property as provided and set forth in §14.5, the then outstanding votes in the Class A Membership and the then outstanding votes in the Class B Membership shall be adjusted to reflect the inclusion of the additional Class A and Class B Memberships in the Association, by virtue of the ownership of completed or uncompleted residential dwelling units upon Lots comprising the Additional Property.

If and so long as any Class B Membership is outstanding, the Class A Memberships shall not be entitled to cast any vote with respect to the election of directors.

- 3.4 **Right of First Refusal and Option Agreement.** If any Class A Member ("Optionor") receives a bona fide written offer ("Transferee Offer") from any person or entity ("Transferee") to purchase all or any portion of, or any interest in or right to, any Homesite ("Option Property") owned by the Optionor, then, and in such event, and prior to any transfer of the Option Property, the Optionor shall give the Lessee, the Association, the Indian Health Service, the Lessor and/or the Secretary (jointly and severally, "Optionee") written notice ("Transfer Notice") containing the Transferee's identity and a true and complete copy of the

Transferee Offer. Alternatively, if any Class A member ceases to be an Eligible Project Participant, this situation shall be treated as if that former Class A Member had received a bona fide Transferee Offer at Fair Market Value and the Optionee, at their discretion, may exercise their Right of First Refusal. Thereafter, the following terms and conditions shall be applicable with respect to such Transferee Offer:

1. **Method of Exercise of Option.** The Optionee, or either of them, shall have thirty (30) days from the date it receives the Transfer Notice to provide written notice to the Optionor of its intent to exercise its option to purchase the Option Property at Fair Market Value. Fair Market Value may include, but is not limited to, the offering price of the Transferee. The use of Fair Market Value in exercising a Right of First Refusal in response to a Transferee Offer has the purpose of stabilizing the value of the homes within the Project and is accepted as a condition of holding a Class A Membership. Fair Market Value will be determined by an appraisal of the property made by an appraiser who is mutually acceptable to the Optionor and the Optionee(s) intending to exercise the Right of First Refusal, who shall use standard appraisal methodology, including construction cost, replacement cost, and comparable sales (including the Transferee's offer) to determine the Fair Market Value. The cost of the appraisal shall be shared by the Optionor and the Optionee(s) intending to exercise the Right of First Refusal. In the event that the Optionor and the Optionee(s) cannot mutually agree upon a single appraiser, the Optionor and the Optionee(s) shall each, at their own cost, retain an appraiser and the two appraisers shall select the third appraiser, with the cost of this appraiser to be shared by the Optionor and Optionee(s) intending to exercise the Right of First Refusal. The determination of the third appraiser as to the Fair Market Value of the Property shall be final and shall be the price at which the Right of First Refusal shall be exercised.

2. **Enforcement and Application of this Declaration.** Whether or not the Optionee, or either of them, exercises its or their option to purchase the Option Property, and except as otherwise provided below, the terms and conditions of this Declaration shall remain fully enforceable, and shall be nonetheless binding in all respects as against the Transferee, and any completed residential dwelling unit on any Lot that may be purchased by the Transferee from the Optionor. As such, if the Optionee, or either of them, exercises its or their option to purchase the Option Property, all of the terms and conditions of this Declaration shall be and remain fully enforceable as against the Option Property including, without limitation, the requirement that (a) the sale or transfer of any completed residential dwelling unit (and the accompanying ownership of its appurtenant Class A membership), to any person or entity other than Eligible Project

Participants will be subject to the Right of First Refusal and Option Agreement contained in this §3.4; and (b) the primary occupancy of any completed residential dwelling unit by anyone other than Eligible Project Participants will also be prohibited, unless the terms of the Right of First Refusal and Option Agreement contained in this §3.4 have been satisfied. However, if Optionee, or either of them, does not exercise its or their option to purchase the Option Property and the Optionor proceeds to convey the Option Property to the Transferee, all of the terms and conditions of this Declaration shall remain fully enforceable, and shall be nonetheless binding in all respects as against the Transferee, except that the Transferee, and any primary occupant of the Transferee's completed residential dwelling unit so acquired by the Transferee need not be an Eligible Project Participant. However, if the acquiring Transferee is not an Eligible Project Participant, that Transferee shall not acquire a Class A Membership, or any Membership, in the Association and shall not be eligible to obtain a new lease on the Homesite so acquired. The structure on that Homesite shall be treated as the personal property of the Transferee and shall be treated as an unlawful detainer on the property. The Transferee shall thereafter have one hundred twenty (120) days to remove the structure or transfer the Homesite Lease to an Eligible Participant after which the Transferee will be subject to a Forcible Detainer action under Navajo Law. Notwithstanding the preceding, any subsequent conveyance by any such acquiring Transferee of any Homesite Lease within the Property shall be nonetheless subject to the terms and conditions of the Right of First Refusal and Option Agreement contained in this §3.4.

3. **Optionee's Remedies.** In the event of any breach of, or default under, this Agreement or any of the terms and conditions hereof by the Optionor, the Optionee, or either of them, shall have the right to (a) demand and have specific performance of this Agreement, (b) sue for damages, (c) sue for cancellation of the Transferee Offer, (d) declare a default of, and pursue all available remedies hereunder, and (e) pursue any other remedy provided at law or in equity. Without limitation to the preceding, it is expressly acknowledged and agreed that any transfer of the Option Property to any Transferee in violation of any of the terms and conditions of the Right of First Refusal and Option Agreement contained in this §3.4 shall be null and void.

3.5 **Articles and Bylaws.** Each Member shall have such other rights, duties, and obligations as are set forth in the Articles and Bylaws.

4. ASSOCIATION

4.1 **Purpose of Association.** The Association has been, or will be, incorporated as a non-profit corporation to serve as the governing body of all of the Members for

the protection, improvement, alteration, maintenance, repair, replacement, administration and operation of the Property, the Assessment of expenses, payment of losses, disposition of casualty insurance proceeds, and other matters as provided in this Declaration, the Articles, Bylaws, or Association Rules. The Association shall not be deemed to be conducting a business of any kind, and all funds received by the Association shall be held and applied by it for the Owners and Members in accordance with the provisions of this Declaration, the Articles and the Bylaws.

4.2 Membership in Association. Each Owner shall be a Member of the Association so long as he or she shall be a Member of the Association as provided in §3, and such Membership shall automatically terminate when he or she ceases to be a Member. Any attempt to make a prohibited transfer of a Membership in the Association is void and will not be recognized by or reflected upon the books and records of the Association. In the event any Member fails or refuses to transfer or surrender the Membership registered in his or her name as herein required, the Association shall have the right to record a transfer upon the books of the Association and issue a new Membership as appropriate, and thereupon the old Membership outstanding in the name of said Member shall be null and void as though the same had been surrendered.

4.3 Board of Directors.

4.3.1 The affairs of the Association shall be conducted by the Board as herein provided and in accordance with the Articles and Bylaws. Except for directors elected by the Declarant, each director shall be an adult household member of a completed residential dwelling unit. If a director shall cease to meet such qualifications during any term, he or she will thereupon cease to be a director and his or her place on the Board shall be deemed vacant.

4.3.2 The Declarant shall have the absolute power and right to appoint and remove the Members of the Board until its Class B Membership terminates as provided for herein.

4.4 Controlling Effect of this Declaration. In the event of any dispute or disagreement between any Owners relating to the Property, or any question of interpretation or application of the provisions of this Declaration, the Articles or the Bylaws, the determination thereof by the Board shall be binding on each and all such Owners. Any such determination of the Board which involves the legal interpretation of this Declaration, the Articles or Bylaws, may be appealed to the Chinle District Court provided that such an appeal is taken in the form of an original proceeding for declaratory relief within ten (10) days of the final

determination of the Board.

- 4.5 Additional Provisions in Articles and Bylaws.** The Articles and Bylaws may contain any provision relating to the conduct of the affairs of the Association and the rights and powers of its directors, officers, employees, agents and Members not inconsistent with law or this Declaration.
- 4.6 Association Rules.** The Board shall be empowered to adopt, amend or repeal such rules and regulations as it deems reasonable and appropriate (the "Association Rules"). The Association Rules shall be binding upon all Persons subject to this Declaration and shall govern the use and/or occupancy of the Common Areas or any other part of the Property. The Association Rules may include the establishment of a system of fines and penalties enforceable as Special Assessments. The Association Rules shall govern such matters in furtherance of the purposes of the Association, including, without limitation, the use of the Common Areas; provided, however, that the Association Rules may not discriminate among Owners and Members except as expressly provided or permitted herein, and shall not be inconsistent with this Declaration, the Articles, or the Bylaws. A copy of the Association Rules as they may from time to time be adopted, amended or repealed or a notice setting forth the adoption, amendment or repeal of specific portions of the Association Rules shall be delivered to each Owner and Member in the same manner established in this Declaration for the delivery of notices. Upon completion of the notice requirements, said Association Rules shall have the same force and effect as if they were set forth in and were part of this Declaration and shall be binding on the Owners and Members, and all other Persons having any interest in, or making any use of, the Property, whether or not actually received thereby. The Association Rules, as adopted, amended or repealed, shall be available to each Owner, Member or other Person reasonably entitled thereto, upon request. In the event of any conflict between any provision of the Association Rules and any provision of this Declaration, the Articles, or the Bylaws, the provision of the Association Rules shall be deemed to be superseded by the provision of this Declaration, the Articles, or the Bylaws, to the extent of any such conflict.
- 4.7 Indemnification.** To the fullest extent permitted by law, every director and every officer of the Association, and the Declarant (to the extent a claim may be brought against the Declarant by reason of its appointment, removal or control over members of the Board) shall be indemnified by the Association, and every other Person serving as an employee or direct agent of the Association, or on behalf of the Association as a member of a committee or otherwise, may, in the discretion of the Board, be indemnified by the Association, against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed upon him in connection with any proceeding to which he or she may be a party, or in

which he or she may become involved, by reason of his or her being or having served in such capacity on behalf of the Association (or in the case of the Declarant by reason of having appointed, removed or controlled or failed to control members of the Board), or any settlement thereof, whether or not he or she is a director, officer, or member of a committee, or serving in such other specified capacity at the time such expenses are incurred, provided that the Board shall determine, in good faith, that such officer, director, member of a committee or other Person, or the Declarant, did not act, fail to act, or refuse to act willfully or with gross negligence or fraudulent or criminal intent in the performance of his or her duties. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which such Persons may be entitled at law or otherwise.

- 4.8 Non-Liability of Officials.** To the fullest extent permitted by law, neither Declarant, the Board, or any other committees of the Association nor any Member thereof, nor any directors or officers of the Association, shall be liable to any Member, Owner, Occupant, the Association or any other Person for any damage, loss or prejudice suffered or claimed on account of any decision, course of action, act, inaction, omission, error, negligence or the like made in good faith and which Declarant, the Board, or such committees or Persons reasonably believed to be within the scope of their respective duties.
- 4.9 Easements.** In addition to the blanket easements granted in §5, the Association is authorized and empowered to grant upon, across or under real property owned or controlled by the Association such permits, licenses, easements and rights-of-way for sewer lines, water lines, underground conduits, storm drains, television cable and other similar public or private utility purposes, roadways or other purposes as may be reasonably necessary and appropriate for the orderly maintenance, preservation and enjoyment of the Common Areas or for the preservation of the health, safety, convenience and welfare of the Owners and Members, provided that any damage to a Homesite resulting from such grant shall be repaired by the Association at its expense.
- 4.10 Accounting.** The Association, at all times, shall keep, or cause to be kept, true and correct records of account in accordance with generally accepted accounting principles, and shall have available for the inspection of all Owners and Members at reasonable times such books which shall specify in reasonable detail all expenses incurred and funds accumulated from Assessments or otherwise.
- 4.11 Records.** The Association shall, upon reasonable written request and during reasonable hours, make available for inspection by each Owner and Member the books, records and financial statements of the Association together with current copies, as amended from time to time, of this Declaration and the Articles,

Bylaws, and Association Rules. The Declarant shall be under no obligation to make its own books and records available for inspection by any Owner, Member or other Person.

- 4.12 Managing Agent.** All powers, duties and rights of the Association or the Board, as provided by law and herein, may be delegated to a managing agent under a management agreement; provided, however, that no such delegation shall relieve the Association of its obligation to perform any such delegated duty.
- 4.13 Declarant's Control of Association.** Notwithstanding anything in this Declaration to the contrary, so long as Class B Membership exists as provided above, the Declarant may maintain absolute control over the Association, including appointment of the members of the Board.

5. EASEMENTS

- 5.1 Blanket Easements.** There is hereby created a blanket easement upon, across, over and under the Property for the purposes of ingress and egress (over existing roadways), installing, constructing, replacing, repairing, maintaining and operating all utilities, including but not limited to water, sewer, gas, telephone, electricity, television cable, security systems, communication lines and systems, and sewage disposal systems on individual Homesites, and in addition thereto for the use of emergency vehicles of all types. By virtue of the easement, it shall be expressly permissible for the providing utility company and, where applicable, the Association to erect (including without limitation underground installation) and maintain the necessary facilities, septic tanks, wires, circuits, conduits, cables and related appurtenances, facilities and equipment on the Property. Notwithstanding anything to the contrary contained in this Section, no easements shall be created nor shall any sewers, electrical lines, water lines or other facilities for utilities be installed or relocated except as initially created and approved by the Declarant or thereafter created or approved by the Association. This provision shall in no way affect any other recorded easements on the Property.
- 5.2 Use of Common Areas.** Each Owner and Member shall have the non-exclusive right to use the Common Areas in common with all other Owners and Members as required for the purposes of access and ingress and egress to (and use, occupancy and enjoyment of) any completed or uncompleted residential dwelling unit upon any Lot owned by such Owner or Member. Such right to use the Common Areas for purposes of access and ingress and egress shall, subject to the Association Rules, extend to each Owner, Member, Occupant and the agents, servants, tenants, family members and invitees of each Owner or Member. Such right to use the Common Areas shall be perpetual and appurtenant to each

respective completed or uncompleted residential dwelling unit upon any Lot, subject to and governed by the provisions of this Declaration, the Articles, Bylaws and Association Rules and such reasonable limitations and restrictions as may from time to time be contained therein.

- 5.3 Maintenance Easement.** There is hereby reserved a blanket easement upon, over, across and under all Common Areas for the purpose of access, ingress to and egress from any portion of the Property for the purpose of performing any maintenance or other function which the Association is empowered and obligated to perform under this Declaration.
- 5.4 Declarant Easement.** Declarant hereby reserves a blanket easement upon, over, across and under the Property (other than inside any residential dwelling unit) for the purpose of ingress to and egress from any portion of the Property for the purpose of development and construction of improvements, including but not limited to residential dwelling units on any portion of the Property and for the purpose of extending to or within any portion of the Property all utilities referred to in this Section and for the purpose of developing, advertising and selling any completed residential dwelling unit upon any Lot on the Property.
- 5.5 Reciprocal Working Easements.** There shall be reciprocal appurtenant easements, as between adjacent Lots, for the repair and rebuilding of the walls, fences, roofs, and landscape maintenance within five (5) feet of the common boundary. Unless there is an emergency, said easement will be utilized only after giving reasonable notice to the resident of the adjacent Lot. The user of the easement provision shall be responsible for all damage to the Property and improvements of the adjacent Lot during the use of the easement provision.

6. ASSESSMENTS

- 6.1 Creation of Lien and Personal Obligation.** Each Owner and Member, by acceptance of a transfer of Membership or other conveyance of an interest in a Homesite or by acceptance of his Membership, is deemed to covenant and agree to pay to the Association Regular Assessments, Special Assessments, Capital Improvement Assessments and Reconstruction Assessments, if applicable; such Assessments to be established and collected from time to time as provided in this Declaration. The Assessments, together with interest thereon, late charges, attorneys' fees and court costs, and other costs of collection thereof, as hereinafter provided, shall be a continuing lien upon such Owner or Homesite Lease for the Lot on which the Assessments are made.
- 6.2 Purpose of Assessments.** The Assessments levied by the Association shall be used to promote the recreation, health, safety and welfare of the Owners and

Members, to enhance the quality of life within the Project, to preserve the value of the Property, to pay the costs of administration of the Association and all other Common Expenses, or to otherwise further the interests of the Association.

6.3 Regular Assessments.

6.3.1 Each Owner shall pay as his Regular Assessment such Member's proportionate share of the Common Expenses which shall be proportional to the share payable by every other Owner based upon the appraised value of the lease obtained by that Member in relation to the appraised value of all of the Homesites excluding common areas; which Regular Assessment shall be payable in equal quarterly installments. Except as otherwise specifically provided herein, payment of Regular Assessments shall be in such amounts and shall be made at such times as may be provided in the Articles and Bylaws, or as determined by the Association.

6.3.2 Not later than sixty (60) days prior to the beginning of each fiscal year of the Association, the Association shall make available for review by each Owner and Member at the Association's office during reasonable times a pro forma operating statement or budget for the upcoming fiscal year which shall, among other things, estimate the total Common Expenses to be incurred for such fiscal year. The Association shall at that time determine the amount of the Regular Assessment to be paid by each Member and notify the Member thereof. Each Member shall thereafter pay to the Association his or her Regular Assessment in quarterly installments. Each such installment shall be due and payable on the date set forth in the written notice sent to Members, which shall be on the first day of each calendar quarter unless changed by the Association.

6.3.3 If the Association determines that the total Regular Assessments for the current year are, or will become, inadequate to meet all Common Expenses for whatever reason, including Common Expenses in excess of the estimated Common Expenses used in preparation of the Association's budget for that year, the Board may determine the approximate amount of such inadequacy and issue a supplemental estimate of the Common Expenses and determine the revised amount of Regular Assessments to be paid by each Member for the balance of the year, and the date or dates when due. If the estimated total Regular Assessments for the current year proves to be excessive in light of the actual Common Expenses, the Association may, at the discretion of the Board, retain such excess as additional working capital or reserves, reduce the amount of the Regular Assessments capital or reserves, reduce the amount of the Regular Assessments for the succeeding year, or abate collection of Regular

Assessments for such period as it deems appropriate. No reduction or abatement of Regular Assessments because of any such anticipated surplus may diminish the quantity or quality of services upon which the Common Expenses for the year in question are based.

6.4 Special Owner or Lot Assessments. Special Assessments shall be levied by the Association against a Member or an Owner, and his or her Homesite to reimburse the Association for:

6.4.1 Costs incurred in bringing an Owner, his or her completed or uncompleted residential dwelling unit, and his or her Homesite, into compliance with the provisions of this Declaration, or the Articles, Bylaws, or Association Rules;

6.4.2 Any other charge designated as a Special Assessment in this Declaration, the Articles, Bylaws or Association Rules;

6.4.3 Fines levied or fixed by the Board as provided herein, or as otherwise provided in the Articles, Bylaws, or Association Rules;

6.4.4 Attorneys' fees, interest and other costs or charges provided to be paid as, or which are incurred in connection with, a Special Assessment in accordance with this Declaration, the Articles, Bylaws, or Association Rules.

6.4.5 In the event the Association undertakes to provide materials or services which benefit individual Members, completed or uncompleted residential dwelling units, or Lots, such Members, in accepting such materials or services agree that the costs thereof shall be a Special Assessment as to that Homesite.

6.5 Capital Improvement Assessments. All amounts collected as Capital Improvement Assessments may only be used for Capital Improvements and shall be deposited by the Association in a separate bank account to be held in trust for such purposes. Said funds shall not be commingled with any other funds of the Association and shall be deemed a contribution to the capital account of the Association by the Members. A Capital Improvement Assessment may be levied by the Association provided that such Assessment shall have the assent of two-thirds (2/3) of the votes entitled to be cast by Members who are voting in person or by proxy at a meeting duly called for such purpose.

6.6 Member's Initial Contribution of Assessment. Except for Declarant, each Owner, upon becoming an Owner, shall make an initial contribution to the

Association by paying an amount equal to the cost of two-thirds (2/3) of the Regular Quarterly Assessment for said Homesite; which shall be paid upon close of escrow at the time each Homesite is sold. This initial contribution shall be in addition to the pro rata share of the Regular Quarterly Assessment to be paid upon the close of escrow for the calendar quarter in which escrow closes and shall be used by the Association for payment of operating expenses or any other purpose permitted under this Declaration.

- 6.7 Declarant's Assessment.** The Declarant shall pay the reasonable operational and maintenance costs of the Common Areas until such time as the Class B Membership in the Association has been converted to Class A Membership. After the Class B Membership in the Association has been converted to Class A Membership, the Declarant shall pay a pro rata share of the reasonable operational and maintenance costs of the Common Areas based on the ratio of the number of completed and uncompleted residential dwelling units upon Lots remaining unconveyed by the Declarant to the total of Thirty (30) Lots. In the event the Declarant annexes the Additional Property as provided and set forth in §14.5, the Declarant shall pay the reasonable operational and maintenance costs of the Common Areas within the Property, as well as the Common Areas within the Additional Property as defined in §14.5 (collectively, "Combined Common Areas"); and upon the conversion of the Class B Membership in the Association to Class A Membership thereafter, the Declarant shall pay a pro rata share of the reasonable operational and maintenance costs of the Combined Common Areas based on the ratio of the number of completed and uncompleted residential dwelling units upon Lots remaining unconveyed by the Declarant.
- 6.8 Uniform Assessment.** The Regular Assessment and Capital Improvement Assessment for each Member shall be proportional based upon the appraised value of the lot assigned to that Member in relation to the appraised value of all of the lots excluding common areas.
- 6.9 Exempt Property.** All Common Areas and all properties dedicated to and accepted by, or otherwise owned or acquired by, a public authority shall be exempt from the Assessments created herein.
- 6.10 Date of Commencement of Regular Assessments.** The Regular Quarterly Assessments shall commence as to each Member, pro rata to, and commencing upon, the date of conveyance to the Owner of the Lot on which they have obtained a Homesite.
- 6.11 Time and Manner of Payment and Interest.** Assessments shall be due and payable by the Members in such manner and at such times as the Association shall designate. If not paid within thirty (30) days after its due date, such

Assessment shall bear interest at the rate of twelve percent (12%) interest, per annum, or such other rate set by the Board until paid. The Association may, in its discretion and without waiving the imposition of a late charge for interest in any other instance, waive the interest in any particular instance. A delinquent Member shall also be liable for attorneys' fees and other related costs incurred by the Association as a result of such delinquency, and if any suit, action or arbitration proceeding is brought to collect any such Assessment or charge, then there shall be added to the amount thereof costs of suit and reasonable attorneys' fees to be fixed by the court and included in any judgment or award rendered thereon. The delinquency of a Member shall be deemed to also constitute the delinquency of the Owner of the Homesite on which it is situated to which such Membership appertains.

6.11.1 The Association shall have a lien on the completed or uncompleted residential dwelling unit and the Homesite on which it is situated for (i) all Assessments levied against the completed or uncompleted residential dwelling unit on a Lot; (ii) all interest, lien fees, late charges and other fees and charges assessed against the completed or uncompleted residential dwelling unit on a Lot or payable by the Owner thereof; (iii) all fines levied against the Owner of the completed or uncompleted residential dwelling unit on a Lot; (iv) all attorneys' fees, court costs, title report fees, costs and fees charged by any collection agent either to the Association or to an Owner any other fees or costs incurred by the Association in attempting to collect Assessments or other amounts due to the Association by the Owner of a completed or uncompleted residential dwelling unit on a Lot; and (v) any other amounts payable to the Association pursuant to this Declaration. Recording of this Declaration constitutes record notice and perfection of the Assessment lien by recording a Security Interest in the home as personal property as provided for in 5A N.N.C. §9-101 *et seq.* The Association may, at its option, record a Notice of Lien setting forth the name of the delinquent Owner as shown in the records of the Association, the legal description or street address of the completed or uncompleted residential dwelling unit on a Lot against which the notice of Lien is recorded and the amount claimed to be past due as of the date of the recording of the Notice, including interest, lien recording fees and reasonable attorneys' fees. Before recording any Notice of Lien against a completed or uncompleted residential dwelling unit on a Lot, the Association shall make a written demand to the defaulting Owner for payment of the delinquent Assessments, together with interest, late charges and reasonable attorneys' fees, if any. The demand shall state the date and amount of the delinquency. Each default shall constitute a separate basis for a demand, but any number of defaults may be included within the single demand. If the delinquency is not paid within ten (10)

days after delivery of the demand, the Association may proceed with recording a Notice of Lien against the Homesite on which it is situated.

- 6.11.2** The Association shall not be obligated to issue a satisfaction or release of the Notice of Lien until all delinquent Assessments, interest, lien fees, fines, reasonable attorneys' fees, court costs, collection costs and all other sums payable to the Association by the Owner of the completed or uncompleted residential dwelling unit on a Homesite have been paid in full.
- 6.11.3** The Association shall have the right, at its option, to enforce collection of any delinquent Assessments, together with interest, lien fees, reasonable attorneys' fees and any other sums due to the Association in any manner allowed by law including, but not limited to, (i) bringing an action at law against the Owner personally obligated to pay the delinquent Assessments and such action may be brought without waiving the Assessment Lien securing payment of the delinquent Assessments; (ii) bringing an action to foreclose the Assessment Lien against the Homesite on which it is situated, in the manner provided by law for the foreclosure of a security interest or a realty mortgage; or (iii) by asserting a security interest against the proceeds from a subsequent sale. The Association shall have the power to bid in any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all completed or uncompleted residential dwelling units purchased at such sale.
- 6.12 No Offsets.** All Assessments shall be payable in the amount specified in the Assessment or notice of Assessment and no offsets against such amount shall be permitted for any reason, including without limitation, a claim that (a) the Association, the Board or the Declarant is not properly exercising its duties and powers as provided in this Declaration; (b) Assessments for any period exceed Common Expenses; or (c) a Member has made, and elects to make, no use of the Common Area.
- 6.13 Homestead Waiver.** Each Owner and Member, to the extent permitted by law, hereby waives, to the extent of any liens created pursuant to this Declaration, whether such liens are now in existence or are created at any time in the future, the benefit of any homestead or exemption laws of the State of Arizona now in effect, or in effect from time to time hereafter.
- 6.14 Reserves.** The Reserves included in the Common Expenses which are collected as part of the Regular Assessments shall be deposited by the Association in a separate bank account to be held in trust for the purposes for which they are collected and are to be segregated from and not commingled with any other

funds of the Association, except to the extent that the Association's accountant deems it desirable to do otherwise on the basis of standard accounting principles in similar contexts or the laws, tax or otherwise, of the Navajo Nation, the State of Arizona or the United States, relating to nonprofit corporations or Homeowner's Associations. Such Reserves shall be deemed a contribution to the capital account of the Association by the Members. The responsibility of the Board (whether while controlled by the Declarant or by the Members) shall be only to provide for such Reserves as the Board, in good faith, deems reasonable, and neither the Declarant, the Board nor any Member thereof shall have any liability to any Owner or Member or the Association if such Reserves prove to be inadequate.

- 6.15 Subordination of the Lien to Mortgages.** The lien of the Assessments provided for herein shall be subordinate to the lien of any first mortgage or trust deed. Sale or transfer of any Homesite shall not affect the Assessment lien. However, the sale or transfer of any Homesite pursuant to mortgage or security interest foreclosure, exercise of a power of sale pursuant to a deed of trust, or any proceeding in lieu thereof, shall extinguish the lien of such Assessments as to payments that became due prior to such sale or transfer. No such sale or transfer shall relieve such purchasing Homesite Owner from liability for any Assessments thereafter becoming due or from the lien thereof; and notwithstanding the extinguishment of any Assessment lien as provided in the preceding sentence, the previous Member/Owner under whose ownership the amount of Assessments represented by said extinguished lien accrued, shall remain personally liable to the Association therefor.
- 6.16 Exemption of Unsold Lots.** Notwithstanding anything in this Section to the contrary, no Assessments (except the Declarant's Assessments as defined and set forth in §6.7 above) shall be levied upon, or payable with respect to, any completed or uncompleted residential dwelling unit on a Lot owned by Declarant, or an affiliate of Declarant to whom the completed or uncompleted residential dwelling unit on a Lot has been distributed by Declarant, until such completed or uncompleted residential dwelling unit on a Lot has been conveyed by Declarant (or said affiliate) to a non-affiliated purchaser thereof.
- 6.17 Transfer Fee.** Each person shall pay to the Association immediately upon becoming the Owner of a completed or uncompleted residential dwelling unit on a Lot a transfer fee in such amount as is established from time to time by the Board.

7. INSURANCE

- 7.1 Authority to Purchase.** The Association shall purchase and maintain certain

insurance upon the Common Areas including but not limited to the insurance described in this Section. Such policies, and endorsements thereon, or copies thereof shall be deposited with the Association. The Association shall advise the Owners and Members of the coverage of said policies in order to permit the Owners and Members to determine which particular items are included within the coverage so that the Owners and Members may insure themselves as they see fit if certain items are not insured by the Association.

7.2 Coverage. The Association shall maintain and pay for policies of insurance as follows:

- 7.2.1** A multi-peril type policy covering all of the Common Areas providing, as a minimum, fire and extended coverage, and all other coverage in kinds and amounts customarily acquired or required for Projects similar in construction, location and use, including, without limitation, perils normally covered by an "all-risk" policy, in an amount determined by the Association;
- 7.2.2** A policy of comprehensive public liability insurance covering all of the Common Areas in an amount determined by the Association but not less than One Million Dollars (\$1,000,000.00) per occurrence, for personal injury or death and/or property damage. The scope of such coverage shall include all other coverage in the kinds and amounts customarily acquired or required for projects similar in construction, location and use, including without limitation, liability for non-owned and hired automobiles, liability for property of others, liability arising in connection with the operation, maintenance or use of the Common Areas, liability assumed by contract or contractual liability, and liability arising out of any employment contracts of the Association;
- 7.2.3** The Association shall, at its election, obtain fidelity bond coverage against dishonest acts on the part of directors, officers, managers, trustee, agents, employees or volunteers responsible for handling funds belonging to or administered by the Association. If funds of the Association are handled by a management agent, then fidelity bond coverage shall also be obtained for the officers, employees or agents thereof handling or responsible for Association funds;
- 7.2.4** A worker's compensation policy, if necessary, to meet the requirements of law;
- 7.2.5** Such other insurance, and in such other amounts, as the Association shall determine from time to time to be desirable.

8. DAMAGE AND DESTRUCTION OF COMMON AREAS

- 8.1 Duty of Association.** In the event of partial or total destruction of the Common Areas, or any improvements thereon, it shall be the duty of the Association to restore and repair the same as promptly as practical pursuant to this Section. The proceeds of any casualty insurance maintained pursuant to this Declaration shall be used for such purpose, subject to the prior rights of mortgagees whose interest may be protected by said policies.
- 8.2 Automatic Reconstruction.** In the event that the amount available from the proceeds of any insurance policies for such restoration and repair, together with any uncommitted or unreserved capital of the Association, shall be at least seventy-five percent (75%) of the estimated cost of restoration and repair, a reconstruction assessment against each Member in its proportionate share and/or the Owner of the Homesite to which a Membership is appurtenant, (as calculated utilizing the formula specified in §§6.3.1 and 6.8 above) may be levied by the Association to provide the necessary funds for such reconstruction in excess of the amount of the funds available for such purpose. The Association shall thereupon cause the damaged or destroyed Common Areas to be restored to substantially their former condition prior to the destruction or damage.
- 8.3 Vote of Members.** In the event that the amount available from the proceeds of any insurance policies for such restoration and repair, together with any uncommitted or unreserved capital of the Association, shall be less than seventy-five percent (75%) of the estimated cost of restoration, and repair, the Common Areas shall be replaced or restored unless two-thirds (2/3) of the Members, at a special meeting held for such purpose, disapprove of such replacement or restoration. If the Members do not disapprove of such replacement or restoration, the Association shall levy a reconstruction Assessment against each Member in its proportionate share, and/or the Owner of the completed or uncompleted residential dwelling unit on a Lot to which a regular Membership is appurtenant, (as calculated utilizing the formula specified in §§6.3.1 and 6.8 above) and cause the damaged or destroyed Common Areas to be restored as closely as practical to its former condition prior to the destruction or damage. If the Members disapprove of the repair or restoration of the damaged or destroyed improvements on the Common Areas as provided above, the Common Areas so damaged or destroyed shall be cleared and used as determined by the Association and the costs thereof shall be paid with the insurance proceeds.
- 8.4 Excess Insurance Proceeds.** In the event any excess insurance proceeds remain after any reconstruction by the Association pursuant to this Section, the

Association, in its sole discretion, may retain such sums in the general funds of the Association or may distribute all or a portion of such excess to the Members in their proportionate shares, (as calculated utilizing the formula specified in §§6.3.1 and 6.8 above) subject to the prior rights of mortgagees whose interest may be protected by the insurance policies carried by the Association. The rights of a Member, an Owner, or the mortgagee of a completed or uncompleted residential dwelling unit on a Lot as to such distribution shall be governed by the provisions of the mortgage encumbering such completed or uncompleted residential dwelling unit on such Lot.

- 8.5 Use of Reconstruction Assessments.** All amounts collected as Reconstruction Assessments shall only be used for the purposes set forth in this Section and shall be deposited by the Association in a separate bank account to be held in trust for such purposes. Such funds shall not be commingled with any other funds of the Association by the Members. Any Reconstruction Assessment shall be secured by the lien provided for in §6.1 hereof.

9. MAINTENANCE, REPAIRS AND REPLACEMENTS

- 9.1 Owners' Responsibility.** Each Owner shall furnish and be responsible for, at his or her own expense, all of the maintenance, repairs and replacements within the Homesite upon which his or her own completed or uncompleted residential dwelling unit is located, including but not limited to the Private Driveways. Each Owner shall also be responsible for keeping his or her Lot free of all debris, weeds and other fire hazards of any kind. If debris, weeds or any fire hazard accumulates on any Homesite, the Association may, at its option, clear and dispose of any such accumulation and charge said Owner for all expenses incurred thereby. The obligation to pay all such charges shall be a Special Assessment secured by the lien provided for in §6.1 hereof.
- 9.2 Maintenance by Association.** Except as otherwise provided herein, maintenance, repairs and replacements of the Common Areas, shall be furnished by the Association as part of the Common Expenses, subject to the Bylaws and Association Rules. If, due to the act or neglect of an Owner or Member, or the invitee, guest or other authorized visitor or either, or an Occupant of such Owner's or Member's Homesite, damage shall be caused to the Common Areas, or to Homesites utilized by others, or maintenance, repair, or replacement thereof shall be required which would otherwise be a common expense, then such Owner or Member shall pay for the damage and for such maintenance, repairs and replacements as may be determined necessary or appropriate by the Association, to the extent not covered by the Association's insurance. Such obligation shall be a Special Assessment secured by the lien provided for in §6.1 hereof.

9.2.1 The Association shall maintain the Common Areas. These costs shall be included in the operating budget of the Association and collected as part of the Regular Assessment.

9.3 Right of Access. An authorized representative of the Association, and all contractors, repairmen or other agents employed or engaged by the Association, shall be entitled to reasonable access to each of the Lots as may be required in connection with maintenance, repairs or replacements of or to the Common Areas and other areas for which the Association is required by this covenant to provide maintenance or any equipment, facilities or fixtures affecting or serving other Lots and the Common Areas, or to perform any of the Association's duties or responsibilities hereunder.

10. ARCHITECTURAL CONTROL

10.1 Prior Architectural Review and Approval. No building, fence, wall, or other structure shall be commenced, erected or maintained upon the Property, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. The establishment of any such architectural committee, as well as its duties and responsibilities, shall be set forth in the Association Rules, should the Board of Directors of the Association desire, in its discretion, to delegate the architectural control functions in this §10 to any such architectural committee. In the event the Board of Directors, or its designated architectural committee if established, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this §10 will be deemed to have been fully complied with.

11. USE AND OCCUPANCY RESTRICTIONS

11.1 Residential Use and Occupancy by Adult Individuals and Adult Families. Each Homesite and each completed residential dwelling unit thereon, shall be used, improved and devoted exclusively for single family residential purposes. No business or commercial building may be erected on any Homesite and no gainful occupation, profession, trade or commercial enterprise or other non-residential use may be conducted on any Homesite except as expressly permitted

by the Declarant with respect to Lots held by the Declarant, or as otherwise approved by the Association. No temporary buildings, structures or trailers may be erected, placed or maintained on any Homesite except as expressly permitted by the Declarant with respect to Lots held by the Declarant, or as otherwise expressly approved by the Association. Nothing herein contained shall be deemed to limit Declarant's rights, as set forth and reserved in §12 hereof.

It is the desire and intent of the Declarant that the ownership, and residential use and occupancy, of all Homesites be restricted to current or retired employees of the Indian Health Service of the U.S. Department of Health and Human Services ("IHS") (or any future successor in interest to IHS), or their spouses and/or heirs, or to similar individuals with other professional, administrative or Managerial skills beneficial to the Navajo Nation and who are either (a) Navajo Nation enrolled members, (b) enrolled members of another Federally recognized Tribe which are likely to remain on the Navajo Nation for an indefinite duration, or (c) non-Indians which are likely to remain on the Navajo Nation for an indefinite duration and who provide, or have provided services beneficial to the Navajo Nation (collectively, "Eligible Project Participants"). Nothing contained in this §11, or any other term or condition of this Declaration, shall constitute any representation or warranty on the part of the Declarant, its Counsel, or any other person or entity, that such ownership, and residential use and occupancy of completed residential dwelling units only by Eligible Project Participants, as defined in §3.3 above, meets, or qualifies for any qualified treatment or other exemption under any applicable law or regulation. Whenever possible, each and every provision of this Declaration shall be interpreted in such a manner as to be valid under applicable law and so as to be applicable to all of the Property, but if any provision hereof shall be invalid or prohibited or inapplicable to any of the Property, then such provision shall be ineffective to the extent of such prohibition, invalidation or inapplicability, which will not invalidate the remainder of such provision or the remaining provisions hereof, or the applicability thereof to the remaining portions of the Property.

- 11.2 Violation of Law or Insurance.** No Owner or Member shall permit anything to be done or kept in or upon his or her lot or any Common Areas which will result in the cancellation of insurance thereon or which would be in violation of any law.
- 11.3 Signs.** No sign of any kind shall be displayed to the public view or from any Lot or any Common Areas without the approval of the Association, except such signs (a) as may be used by Declarant and any Builder in connection with the development and sale of completed residential dwelling units on Lots within the Property; (b) as may be required by legal proceedings or the prohibition of which

is precluded by law; or (c) as may be required for traffic control and regulation of the Common Areas.

- 11.4 Household Pets and Other Animals.** No animals, birds, fowl, poultry, livestock, or reptiles of any kind may be kept, bred, or maintained upon any Lot, or in or upon any Common Area; provided, however, that a reasonable number of commonly accepted household pets may be permitted in accordance with the Association Rules. No animals of any nature whatsoever shall be kept, bred, or raised within the Property for any commercial purpose or purposes. In no event shall any domestic pet be allowed to run free or unleashed from or off the premises of any Lot, nor be allowed to create an unreasonable amount of noise or create any nuisance. An Owner shall be liable for any and all damage to property and to persons and other animals caused by his, her, or their permitted household pets. Upon written request of any Owner, the Association shall exclusively determine, in its sole and absolute discretion, whether any permitted animal as described herein is a nuisance and should, as such, be removed from any Lot upon the Property. Any decisions rendered by the Association in this regard shall be final, binding, and enforceable to the same extent as other matters subject to the jurisdiction of the Association hereunder.
- 11.5 Nuisances.** No Owner or Member shall permit or suffer anything to be done or kept about or within his or her Lot, or on or about the Property, which will obstruct or interfere with the rights of other Owners, Members, Occupants, or Persons authorized to the use and enjoyment of the Common Areas, or annoy them by unreasonable noises or otherwise, nor will he or she commit or permit any nuisance or commit or suffer any illegal act to be committed therein. Each Owner or Member shall comply with the Association Rules, the requirements of all health authorities and other governmental authorities having jurisdiction over the Property.
- 11.6 Temporary Occupancy.** No boat, truck, mobile home, trailer, camper, recreational vehicle, tent, shack, barn or similar thing and no temporary building or structure of any kind may be erected, placed or maintained on any Lot or used at any time for a residence, whether temporarily or permanently, on any portion of the Property except as expressly permitted by and in compliance with, the Association Rules.
- 11.7 Boats, Trailers and Motor Vehicles.** Except as specifically permitted by the Association Rules, (a) no boats, trailers, buses, motor homes, campers or other vehicles shall be parked or stored in or upon the Common Areas or upon a Lot except within an enclosed garage; (b) no vehicle shall be repaired or rebuilt on any Lot or upon the Common Areas; (c) no vehicle shall be parked on any street;

and (d) only automobiles in operating condition may be parked in uncovered parking areas upon any Lots. The Association may remove, or cause to be removed, any unauthorized vehicle at the expense of the Owner thereof in any manner consistent with law.

11.8 Lights and Reflective Materials, Solar Ray Panels and Solar Ray Collector Units.

- a. No exterior lighting of any type shall be placed on or utilized upon any Lot, except as may be expressly permitted by the Association Rules.
- b. Foil and other light reflective materials may not be placed or maintained in the windows or glass areas of any structure erected on the Property. Other reflective materials, including house sidings and roofing material are prohibited, unless erected and maintained so as not to be visible from neighboring Property.
- c. No solar ray panels or collector units or any other type of solar energy device may be installed or constructed or mounted on the roof of any structure or located on any portion of the Property so as to be visible from neighboring Property. Any proposal to install, construct or erect any such panels, units, devices or equipment must be approved, in advance, in writing, by the Association.

11.9 Outside Speakers, Amplifiers and Antennae. No radios, stereos, loudspeakers or amplifiers of any kind shall be placed upon the outside or be directed to the outside of any building, except as approved by the Association. There shall be no antenna of any sort, including any device for the reception of or transmission of television, radio, microwave or other similar signals, either installed or maintained, except as expressly permitted by the Association.

11.10 Storage. No exterior storage of any kind shall be permitted, except with prior written approval and authorization of the Association.

11.11 Garages. Garages shall be used for parking vehicles and storage purposes only and shall not be converted for living or recreational activities. Garage doors shall be kept closed except as necessary for entering and exiting.

11.12 Garbage. No garbage, trash or debris shall be kept, maintained or contained in any Lot so as to be visible from another Lot or the Common Areas. No incinerators shall be kept or maintained on any Lot and no trash, garbage or debris shall be burned by open fire or otherwise on any portion of the Property.

No refuse pile, garbage or unsightly objects shall be allowed to be placed, accumulated or suffered to remain anywhere on a Lot. Garbage containers shall not be left in a position to be visible to the neighboring Lot Owners for more than twenty-four (24) hours.

- 11.13 Exterior Coverings.** No exterior screening or shade materials of any type including, but not limited to, awnings, shutters, screens and coverings affecting the exterior appearance of any completed residential dwelling unit, or of any Lot, shall be permitted except as expressly authorized by the Association Rules.
- 11.14 Mining.** No portion of the Property shall be used in any manner to explore for or remove any waste, oil or other hydrocarbons or minerals of any kind or earth substance of any kind.
- 11.15 Safe Condition.** Without limiting any other provision in this §11, each Owner shall maintain and keep his or her completed residential dwelling unit, and appurtenant Lot, at all times in a safe, sound and sanitary condition and repair, and shall correct any condition or refrain from any activity which might interfere with the reasonable enjoyment by other Owners or Members of their respective completed residential dwelling units, appurtenant Lots, or the Common Areas.
- 11.16 Fires.** Other than barbecues in properly constructed barbecue pits or grills, and fire pits or fireplaces in compliance with the Association Rules, or as otherwise expressly permitted in the Association Rules, no open fires shall be permitted on the Lots.
- 11.17 Clothes Drying Area.** No portion of any Lot shall be used as a drying or hanging area for laundry of any kind except as such drying or hanging areas may be approved, in advance, in writing, by the Association.
- 11.18 No Further Subdivision.** No Lot shall be divided or subdivided by any Owner.
- 11.19 No Obstructions to Drainage.** No Owner shall erect, construct, maintain, permit or allow any fence or other improvement or other obstruction which would interrupt the normal drainage of any portion of the land comprising the Property, the Lots, or the Common Area, except that, with the prior consent of the Association, nonpermanent structures, including fences, may be erected in those areas which contain only underground closed conduit storm drainage facilities.
- 11.20 Enforcement.** The Association or its authorized agents may enter any Lot in which a violation of these restrictions exists and may correct such violation at the

expense of the Owner of the completed residential dwelling unit upon such Lot. In addition to, but not in exclusion to its other remedies set forth in this Declaration, the Association shall be empowered to levy fines upon the Owner of such completed residential dwelling unit in an amount of up to Fifty Dollars (\$50.00) per day for each such violation during the continuance thereof, provided that such, fines are levied in accordance with the procedures for fines set forth in the Bylaws. Such expenses, and such fines as may be imposed pursuant to the Bylaws or Association Rules, shall be a Special Assessment secured by a lien upon such Homesite enforceable in accordance with the provisions of §6 hereof. All remedies described in §13 hereof and all other rights and remedies available at law or equity shall be available in the event of any breach by any Owner, Member, Occupant or other Person, of any provision of this §11.

- 11.21 Modification.** The Board may modify or waive the foregoing restrictions or otherwise restrict and regulate the use and occupancy of the Property, the completed residential dwelling units, and the Lots by reasonable rules and regulations of general application adopted by the Board from time to time, which shall be incorporated into the Association Rules.
- 11.22 Maintenance and Repair of Improvements.** No improvement shall be permitted to fall into disrepair, and each such improvement shall at all times be kept in good condition inside and out. Owners shall maintain in good repair all exterior surfaces, including but not limited to walls, Private Driveways, porches, patios and appurtenances. Garages shall be kept at all times in a neat and tidy manner and doors shut whenever not in use for access or egress. Shrubs, trees, grass and plantings on any Lots shall be kept by the Owner at all times neatly trimmed, properly cultivated and free from trash, weeds and other unsightly materials.
- 11.23 Common Areas.** Except for the private roadways upon the Property, the Common Areas shall remain in their undisturbed natural condition (other than such landscaping as may be permitted by the Association, as appropriate).
- 11.24 Storm Water Retention Areas.** Those certain storm water retention areas within and upon the Common Area, as shown and designated upon the Plat, are areas within the Property where no construction, site work or other improvements, other than landscaping, is permitted without approval by the Association.
- 11.25 Height of Structures.** The Association intends to discourage, and has the right to prohibit, the construction of any residential dwelling unit or other structure which would appear excessive in height when viewed from the street or other Lots anywhere upon the Property. The maximum height for any residential dwelling unit, including chimneys and other points of measurement, shall be established by the Association in its Association Rules. Notwithstanding the

above, no part of any structure erected anywhere within the Property, as shown on the Plat, shall exceed twenty five (25) feet in height as measured to the finish grade.

11.26 Party Walls. Each wall which is built as a part of the original construction of the residential dwelling units upon the Property, and is placed upon and over the dividing line between adjoining Lots is a party wall; and, to the extent not inconsistent with the provisions of this §11.26, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

11.26.1 The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

11.26.2 If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter makes use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use, without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

11.26.3 Notwithstanding any other provision of this §11.26, an Owner who by his or her negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

11.26.4 The right of any Owner to contribution from any other Owner under this §11.26 shall be appurtenant to the applicable residential dwelling unit, and Lot, of the affected Owner or Owners, and shall pass to any such Owner's successors in title or interest.

11.26.5 In the event of any dispute arising concerning a party wall, or under the provisions of this §11.26, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision, which shall be binding upon the parties, shall be by a majority of all of the arbitrators. Any such arbitration shall be conducted in accordance with the applicable rules and procedures of the American Arbitration Association.

12. EXEMPTION OF DECLARANT FROM RESTRICTIONS

Notwithstanding anything contained in this Declaration to the contrary, none of the restrictions contained in this Declaration shall be construed or deemed to limit or

prohibit any act of Declarant, its employees, agents and subcontractors, or parties designated by it in connection with the construction, completion, sale or leasing of the completed residential dwelling units upon the Lots, or other development and improvement of the Common Areas or the Property.

13. REMEDIES

13.1 General Remedies. In the event of any default by any Owner, Member, Occupant or other Person under the provisions of this Declaration, the Articles, Bylaws, or Association Rules, the Declarant and the Association shall have each and all of the rights and remedies which may be provided for in this Declaration, the Articles, Bylaws, or Association Rules, or which may be available at law or equity, and may prosecute any action or other proceedings against such defaulting Owner, Member, Occupant or other Persons for an injunction, whether affirmative or negative, or for enforcement or foreclosure of the lien herein provided and the appointment of a receiver for the Homesite on which that dwelling is located, or for damages, or specific performance or for judgment for payment of money and collection thereof, or the right to take possession of the Homesite on which that dwelling is located and to rent the same and apply the rents received to payment of unpaid Assessments and interest accrued thereon, and to sell the same as hereinafter in this §13.1 provided, or for any combination of remedies or for any other relief, all without notice and without regard to the value of the completed residential dwelling unit upon the Lot or the solvency of such Owner or Member. The proceeds of any such rental or sale shall first be paid to discharge court costs, other litigation costs, including without limitation reasonable attorneys' fees, and all other expenses of the proceeding and sale, and all such items shall be taxed against the defaulting Owner or Member in a final judgment. Any balance of proceeds after satisfaction of such charges and any unpaid Assessments hereunder or any liens shall be paid to the Owner or Member. Upon the confirmation of the sale to an Eligible Project Participant, the purchasers thereupon shall be entitled to a bill of sale, including a security interest in, the Homesite on which the dwelling unit is located, and to immediate possession of the same, and shall be entitled to apply to the court for a writ of restitution for the purpose of acquiring such possession, and it shall be a condition of any such sale, and the judgment shall so provide, that the purchaser shall take the interest in the property sold subject to this Declaration.

13.2 Expenses of Enforcement. All expenses of the Association or the Declarant in connection with any court action or proceeding described or permitted by this §13, including court costs and reasonable attorneys' fees and other fees and expenses, and all damages, liquidated or otherwise, together with interest

thereon until paid at the default rate of interest, shall be charged to and assessed against such defaulting Owner or Member or other Person and shall be a Special Assessment against such Owner or Member or other Person and the Association shall have a lien as provided in §6 therefor. In the event of any such default by any Owner, Member, or other Person whereby the Association and Declarant, and the manager or managing agent of the Association, if so authorized by the Board, shall have the authority to correct such default and to do whatever may be necessary for such purpose, and all expenses in connection therewith shall be charged to and assessed against such defaulting Owner, Member or other Person as a Special Assessment, which shall constitute a lien against the defaulting Owner or Member's Homesite on which the dwelling unit is located as provided in §6. Any and all such rights and remedies may be exercised at any time and from time to time, cumulatively or otherwise, by the Association or the Declarant.

- 13.3 Legal Action.** In addition to any other remedies available under this §13, if any Owner or Member (either by his conduct or by the conduct of any Occupant of his Lot or family member, guest, invitee or agent) shall violate any of the provisions of this Declaration or the Articles, Bylaws, or Association Rules, as then in effect, the Association, the Declarant, or any affected or aggrieved Owner or Member, shall have the power to file an action against the defaulting Owner or Member, but not against the Association or Lessee, for a judgment or injunction against the Owner or Member or such other Person, requiring the defaulting Owner or Member or such other Person to comply with the provisions of this Declaration, the Articles, the Bylaws, or the Association Rules, and granting other appropriate relief, including money damages.
- 13.4 Effect on Mortgage.** Anything to the contrary herein notwithstanding, any breach of any of the covenants, restrictions, reservations, conditions and servitudes provided for in this Declaration, or any right of re-entry by reason thereof, shall not defeat or adversely affect the lien or any mortgage upon any Homesite but, except as herein specifically provided, each and all of said covenants, restrictions, reservations, conditions and servitudes shall be binding upon and effective against any lessee or Owner of a Homesite whose title thereto is acquired by foreclosure, trustee's sale, sale, deed in lieu of foreclosure or otherwise.
- 13.5 Limitation on the Declarant's Liability.** Notwithstanding anything to the contrary herein, it is expressly agreed that the Declarant (including, without limitation, any assignee of the interest of the Declarant hereunder) shall not have any liability to the Association, or any Owner, Member or other Person, arising under, in connection with, or resulting from (including without limitation resulting from action or failure to act with respect to) this Declaration, except in

the case of the Declarant (or its assignee) to the extent of its interest in the Property, and in the case of a partner in the Declarant (or in any such assignee), his or her interest in the Declarant (or such assignee) and, in the event of a judgment against the Declarant (or any partner or assignee thereof) no execution or other action shall be sought or brought thereon against any other assets, nor be a lien upon such other assets, of the judgment debtor.

14. AMENDMENT

- 14.1 Amendment to Declaration.** Amendments to this Declaration shall be made by an instrument in writing entitled "Amendment to Declaration" which sets forth the entire amendment. Except as otherwise specifically provided for in this Declaration, any proposed amendment must be approved by a majority of the Board prior to its consideration and adoption by the Members. Amendments may be adopted at a meeting of the Members upon the approval thereof by a two-thirds (2/3) vote of the entire Membership, or without any meeting if Members holding two-thirds (2/3) of the entire Membership have been duly notified and have consented in writing to such amendment. In any event, the amendment when adopted shall bear the signature of the President of the Association and shall be attested to by the secretary, who shall state whether the amendment was properly adopted, and shall be acknowledged by them as officers of the Association. Amendments once properly adopted shall be effective upon approval of the Lessor and the Secretary and such agencies as may be required and by subsequent recording of the Amendment to Declaration in the appropriate governmental offices, or such later date as may be specified in the Amendment.
- 14.2 Effect of Amendment.** It is specifically covenanted and agreed that any amendment to this Declaration properly adopted will be completely effective to amend any and all of the covenants, conditions and restrictions contained herein which may be affected and any or all clauses of this Declaration or the Plat, unless otherwise specifically provided in the section being amended or the amendment itself.
- 14.3 Required Approvals.** Notwithstanding the provisions of the foregoing sections of this §14:
- (a) If this Declaration or any applicable provisions of law requires the consent or agreement of all Members and/or Owner and/or all lien holders and all trustees and/or beneficiaries under trust deeds, or a specified percentage thereof, for any action specified in this Declaration, then any instrument changing, modifying or rescinding any provision of this Declaration with respect to such action shall be signed by all of the

Members and/or all lien holders and trustees and/or beneficiaries under trust deeds, or the specified percentage thereof, as required by this Declaration or by said law.

- (b) So long as Class B Membership exists, this Declaration may not be amended by the Members pursuant to §14.1 without the written consent of Declarant, which may be withheld for any reason.

14.4 Declarant's Right to Amend. Notwithstanding any other provision of this §14, so long as Class B Membership exists, the Declarant reserves the right to amend this Declaration without the approval of the Board or the Members provided, however, that no such amendment shall have the effect of changing the Plat of an Owner's Homesite without the consent of the Owner or changing the pro rata interest or obligations of any such dwelling unit or Lot for the purpose of levying Assessments or charges or allocating distribution of hazard insurance proceeds or compensation awards, without the approval of the Members as provided in §14.1.

14.5 Declarant's Right to Annex Phase Two. Further, and notwithstanding any other provision of this §14 or any other term or condition hereof to the contrary, so long as Class B Membership exists, the Declarant reserves the right to withdraw and lease real property ("Additional Property") which is adjacent to and abuts the Property subject to this Declaration. In such event, the Declarant shall prepare and record either an Amendment to this Declaration or a separate Declaration of Covenants, Conditions, and Restrictions for ATS'ÍIS YAA'ÁHÁLYAÁNÍ KÉÉDAHAT'(- Phase Two, to provide and specify that (1) all of the Owners of Homesites comprising the Property and all of the Owners of Homesites comprising the Additional Property shall be Members of the Association, (2) all of the Common Areas within the Property and all of the Common Areas within the Additional Property shall be conveyed to and thereafter owned and held by the Association, and (3) all of the covenants, conditions, restrictions, easements and other terms and conditions set forth in this Declaration, and all of the covenants, conditions, restrictions, easements and other terms and conditions set forth in any such amended or separate Declaration for the Additional Property, as referenced above, shall inure to and be binding upon all of the Owners of the Homesites comprising the Property and all of the Owners of the Homesites comprising the Additional Property, as appropriate.

15. GENERAL PROVISIONS

15.1 Notices. Notices provided for in this Declaration, the Articles, Bylaws, or Association Rules shall be in writing and shall be addressed to the Association at

the address specified in the Bylaws. The Association may designate a different address or addresses for notice by giving written notice of such change of address to all Owners and Members at such time. All notices to Owners shall be to the address of their respective residential dwelling units or to the last address shown on the records of the Association and to other Members at the last address shown on the records of the Association. Any Member may designate a different address or addresses for notices to him or her by giving written notice of his or her change of address to the Association. Notices addressed as above shall be deemed delivered when mailed by United States registered or certified mail, or when delivered in Person with written acknowledgment of the receipt thereof.

15.2 Captions and Exhibits; Construction. Captions given to various sections herein are for convenience only and are not intended to modify or affect the meaning of any of the substantive provisions hereof. The various exhibits referred to herein are incorporated as though fully set forth where such reference is made. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of the Property, as hereinabove set forth.

15.3 Severability and Applicable Law. If any provision of this Declaration, the Articles, Bylaws, or Association Rules, or any section, clause, sentence, phrase or word, or the application thereof in any circumstance, is held invalid, the validity of the remainder of this Declaration, the Articles, Bylaws, or Association Rules, and the application of any such remaining provision, section, sentence, clause, phrase or word in any other circumstances, shall not be affected thereby, and the remainder of this Declaration, the Articles, Bylaws, or Association Rules shall be construed as if such invalid part were never included therein.

This Declaration, and the respective rights, obligations, and liabilities of any person or entity hereunder, shall be governed by, and construed in accordance with, the laws and ordinances of the Navajo Nation.

15.4 Rule Against Perpetuities. If any of the options, privileges, covenants or rights created by this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provision shall continue until twenty-one (21) years after the death of the survivor of the now living descendants of the President of the United States, Barack H. Obama, and the Governor of the State of Arizona, Jan Brewer.

15.5 Mortgage of Lots. Each Owner shall have the right, subject to the provisions hereof, to make separate mortgages for his respective Homesite. No Member shall have the right or authority to make or create or cause to be made or created any mortgage, or other lien or security interest, on or affecting the Property or

any part thereof, except only to the extent of his own Homesite.

- 15.6 Power of Attorney.** Unless otherwise specifically restricted by the provisions of this Declaration, wherever the Association is empowered to take any action or do any act, including, but not limited to, actions or acts in connection with the Common Areas or sale thereof, which may at any time be deemed to require the act of an Owner or Member, the Owners and Members and each of them hereby constitute and appoint the Association as their attorney-in-fact, as may be appropriate for the purposes of taking such action or doing such acts including but not limited to executing, acknowledging and delivering any instruments or documents necessary, appropriate or helpful for such purposes. It is acknowledged that this power of attorney is irrevocable and coupled with an interest and by becoming a Member of the Association or by the acceptance of a bill of sale, including a security interest, in a Homesite or by signing a contract for purchase of a Homesite or by succeeding in any other manner to the Ownership of a Homesite, or any interest therein, or a Membership in the Association, each Owner and Member shall be deemed and construed to have ratified and expressly granted the above power of attorney.

16. RIGHTS AND OBLIGATIONS

Each grantee of Declarant by the acceptance of a certificate of transfer, or each purchaser under any contract for such certificate of transfer, or each purchaser under any agreement of sale, or each Person acquiring a Membership in the Association, and the heirs, successors and assigns of the foregoing Persons, accepts the same subject to all restrictions, conditions, covenants, reservations, lien and charges and the jurisdiction, rights and powers created or reserved by this Declaration, and all rights, benefits and privileges of every character hereby granted, created, reserved or declared, and all impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the land and equitable servitude's, and shall bind any Person having at any time interest or estate in said land, and shall inure to the benefit of any such Person in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every certificate of transfer, purchase contract or instrument evidencing or creating such interest.

IN WITNESS WHEREOF, Declarant has caused this Declaration to be duly executed in its behalf as of the date hereinabove written.

DCI HOUSING, LLC, an Arizona limited liability company, registered as a foreign limited liability company under the laws and ordinances of the Navajo Nation ("Declarant")

By: DINEH COOPERATIVES, INCORPORATED,
an Arizona non-profit corporation, registered as
a foreign corporation under the laws and
ordinances of the Navajo Nation, its sole
Member

By: _____
Its President

STATE OF ARIZONA)
)
COUNTY OF _____) ss.

The foregoing instrument was acknowledged before me this ____ day of _____, 2010, by _____, _____ of Dineh Cooperatives, Incorporated, an Arizona non-profit corporation, registered as a foreign corporation under the laws and ordinances of the Navajo Nation, as sole Member of DCI Housing, LLC, an Arizona limited liability company, registered as a foreign limited liability company under the laws and ordinances of the Navajo Nation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR ATS'ÍIS YAA'ÁHÁLYAÁNÍ KÉÉDAHAT'

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RCD-289-93

RESOLUTION
OF THE RESOURCES COMMITTEE
OF THE NAVAJO NATION COUNCIL

Approving the Homesite Lease Policy and Procedures

WHEREAS:

1. The Resources Committee of the Navajo Nation Council is empowered to approve homesite leases and certificate procedures, and promulgate rules and regulations thereto, pursuant to 2 N.T.C., Section 695 (b) (4) (i); and

2. The Resources Committee of the Navajo Nation Council is authorized to delegate authority to the Department Director of the Office of Navajo Land Administration to review and grant individual homesite leases and certificates in accordance with procedures adopted by the Resources Committee (see 2 N.T.C., Section 695 (b) (4) (ii); and

3. The Division of Natural Resources, Office of Navajo Land Administration, was directed to revise and update the existing homesite lease policy and guidelines approved under RCJ-6-88. The recommended Homesite Lease Policy and Procedures is attached hereto and marked as Exhibit "A"; and

4. The Office of Navajo Land Administration, Homesite Section, discussed and recommended revisions with certain tribal programs and departments, including grazing officials, chapter representatives and BIA Real Property representatives during the period of April to September, 1992. A list of the meetings held is attached hereto and marked as Exhibit "B"; and

5. This recommended Homesite Lease Policy and Procedures will benefit qualified applicants who are seeking housing and/or utility assistance through various tribal, state and federal programs. Individuals needing a homesite lease include, but are not limited to, Navajo veterans, elderly members, handicapped persons, burnout case victims, Navajo relocatee(s), and home buyers seeking mortgage; and

6. The Office of Navajo Land Administration (ONLA) strongly recommends that a revolving account be established and administered by the ONLA, Homesite Section, for the purpose of defraying its cost in administering the Homesite Lease Policy and Procedures. The ONLA further recommends that the standard application fee be increased to \$15.00, the resurvey fee increase to \$150.00, and each lessee be required to pay an annual rental fee of \$1.00 for the term of the lease. By supplementing proposed revolving account

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monies with annual fiscal year allocations, the Navajo Nation can better serve the demand for homesite leases and requests for surveys at the local level reservation wide; and

7. It is necessary to amend the standard forms that will be used in applying for a homesite lease on Navajo tribal trust or fee lands. The amended forms are consistent with the recommended Homesite Lease Policy and Procedures. The amended homesite lease application, field clearance certification form, consent form, and general notice form to lease fee land and tribal lands within the Eastern Navajo Agency are attached hereto and marked respectively as Exhibits "C", "D", "E", and "F"; and

8. It is to the best of those qualifying applicants seeking a homesite lease on Navajo tribal trust or fee land that the Resources Committee of the Navajo Nation Council approve the recommended Homesite Lease Policy and Procedures as provided in Exhibit "A".

NOW THEREFORE BE IT RESOLVED THAT:

1. The Resources Committee of the Navajo Nation Council approves the Homesite Lease Policy and Procedures as provided in Exhibit "A"; which shall supersede those guidelines approved by RCJ-6-88, pursuant to 2 N.T.C., Section 695 (b) (4) (i).

2. The Resources Committee of the Navajo Nation Council delegates its authority to approve, issue, amend, assign, relinquish, and execute homesite leases to the Department Director of ONLA. The Office of the President or Vice-President will no longer be responsible for executing homesite leases. The delegated authority shall be limited to withdrawal of one (1) acre or less of tribal trust or fee land for residential purposes, excluding authority to withdraw lands for residential subdivision and other types of withdrawals, pursuant to 2 N.T.C., Section 695 (b) (4) (ii).

3. The Resources Committee of the Navajo Nation Council further approves the amended standard forms that will be used in applying for a homesite lease on Navajo trust land or fee land. The standard forms include: The amended homesite lease application, field clearance certification form, consent form, and general notice form to lease fee land or tribal lands within the Eastern Navajo Agency. These amended forms are attached and marked respectively as Exhibits "C", "D", "E", and "F".

4. The Resources Committee of the Navajo Nation Council also approves the recommended rates for filing fee at \$15.00 and a resurvey fee at \$150.00.

5. The Resources Committee of the Navajo Nation Council further supports the establishment of a revolving account that will be administered by the ONLA, Homesite Section, specifically for

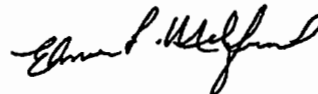
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surveying proposed homesites and processing of homesite lease applications and maintaining files for existing homesite leases.

6. All duly certified chapters of the Navajo Nation, respective grazing officials, potential homesite lease applicants, lessee(s), grazing permittee(s), Navajo tribal programs and departments, including the Bureau of Indian Affairs, are advised and directed to adhere to and comply with the Homesite Lease Policy and Procedures as provided in Exhibit "A", effective following the date of approval.

C E R T I F I C A T I O N

I hereby certify that the foregoing resolution was duly considered by the Resources Committee of the Navajo Nation Council at a duly called meeting at Window Rock, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 5 in favor, 0 opposed and 0 abstained, this 22nd day of December, 1993.



Elmer L. Milford
Chairperson

Motion: Samuel Yazzie
Second: Frank Guerro

EXHIBIT "A"

**HOMESITE LEASE
POLICY & PROCEDURES**



**PREPARED BY
OFFICE OF NAVAJO LAND ADMINISTRATION
December 22, 1993**

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**HOMESITE LEASE
POLICY AND PROCEDURES FOR
TRIBAL TRUST/FEE LAND**

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Section V.	Eligibility Requirements
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SECTION I. DEFINITIONS

- A. "Abandonment" shall mean not making any improvements on the lease premises or vacating the lease premises with improvements for a period of two (2) years with no intention of developing the established homesite lease. (One (1) year for vacant lots within a subdivision).
- B. "Fee Land" means lands held by the Navajo Nation in fee title.
- C. "Homesite Lease Applicant (HLA)" means an individual(s) who is applying for a homesite lease on Navajo Tribal trust or fee land.
- D. "Homesite Certificate" means written acknowledgement from the Navajo Nation which allows a home owner to apply for infrastructure or renovation assistance. A certificate is not a lease.
- E. "Homesite Lease" means a written document evidencing approval from the Navajo Nation and the BIA to lease one (1) acre or less of Navajo Tribal trust or fee land for residential purposes.
- F. "Lessee" means an individual(s) who has a finalized homesite lease approved by the Navajo Nation and the BIA.
- G. "Lessor" means the Navajo Nation or its duly authorized designee.
- H. "Local Chapter" shall mean a duly certified chapter of the Navajo Nation, pursuant to 2 N.T.C. § 4001(d).
- I. "Local Grazing Official (LGO)" means an elected individual who is responsible for grazing matters within their respective district unit boundary. Such grazing official shall mean the District Grazing Committee Member, Eastern Navajo Land Board Member, or Farm Board Member.
- J. "Probate" means the process of collecting a decedent's assets, liquidating liabilities, paying necessary taxes, and distributing property to heirs. These activities are carried out by the executor or administrator of the estate.

- K. "Relinquishment" means surrendering or renouncing one's interest in a homesite lease by allowing such interest to revert to the Navajo Nation. When it has been determined that the Lessee(s) does not intend to develop the homesite premises, the local chapter will be in a position to recommend relinquishment of such leasehold premises to the ONLA Director.
- L. "Surveyor" means one who determines an area or portion of the earth's surface by length, direction of boundary lines, and contour of surface. The surveyor must be registered with the Office of Navajo Land Administration and with the respective state where he/she surveys.
- M. "Watering Point" means all tribally developed and maintained springs, wells, and charcos or deep reservoirs intended for livestock use.

SECTION II. AUTHORITY

The Resources Committee of the Navajo Nation Council approved this Homesite Lease Policy and Procedures on December 22, 1993, pursuant to RCD-289-93, which shall supersede those guidelines approved by RCJ-6-88. This authority is codified in the Navajo Tribal Code at 2 N.T.C. § 695(b)(4)(i).

SECTION III. PURPOSE

It is the purpose of the homesite lease policy and procedures to regulate the issuance, transfer, relinquishment, amendment, and execution of homesite leases to qualified applicants in a timely manner.

The issuance of a homesite lease is intended to promote individual home ownership for qualified applicants. An established homesite lease provides for the encumbrance of the leasehold interest to secure capital for development of a private dwelling. In addition, this expedited homesite lease procedure shall benefit

those Navajo families directly affected by relocation as a result of P.L. 93-531 (as amended). A homesite lease is intended for use in situations where there are no improvements on the proposed homesite lease area. It allows for a procedure that will minimize the potential for dispute among grazing permittees and prospective HLAs.

SECTION IV. SCOPE

The homesite lease procedure shall apply to Navajo Nation trust or fee lands, including the Navajo Partitioned Land and the Chambers/Sanders Trust Lands (see P.L. 96-305) that are within the territorial boundaries of the Navajo Nation, including satellite Navajo Reservations. This homesite lease policy and procedures does not apply to individual Indian allotments.

SECTION V. ELIGIBILITY REQUIREMENTS

The following criteria shall be considered in determining eligibility of applicants seeking to obtain a homesite lease on Navajo trust or fee lands:

- A. An applicant must be an enrolled member of the Navajo Tribe.
- B. An applicant must be eighteen (18) years of age or older.
- C. A nonmember of the Navajo Tribe is eligible under this section if the Resources Committee finds that:
 - (i) such individual's presence within the Navajo Nation's Territorial Jurisdiction is of indefinite duration and beneficial to the Navajo Nation; or
 - (ii) the non-Navajo is legally married to an enrolled member of the Navajo Tribe, and the homesite lease application is submitted jointly under section VII.

SECTION VI. LOCAL GRAZING OFFICIAL

- A. The LGO shall be responsible for identifying all of the grazing permittees who are directly affected by the proposed homesite application. The LGO may accompany the HLA(s) in asking for consent from the identified permittee(s).
- B. On Navajo Tribal fee land, the LGO shall give general notice to individuals who have grazing privileges within affected range units concerning the proposed homesite development.
- C. The LGO shall be solely responsible for certifying field clearance(s) by executing a field clearance certification form which is approved by the Resources Committee of the Navajo Nation Council.
- D. The LGO shall attach the consent form(s) obtained from the directly affected grazing permittee(s) to the field clearance certification form. The field clearance form and consent form(s) shall be submitted with the homesite lease application. The location of the proposed development illustrated on the application must be acknowledged in writing by the LGO. Such acknowledgement is intended to discourage the HLA from changing the location of the proposed homesite after the LGO has made his/her recommendation.
- E. On lands within the Eastern Navajo Agency, the LGO shall be responsible for giving general notice of proposed homesite development to persons who have grazing privileges within respective range management units.
- F. An existing private dwelling not in dispute shall be exempt from field clearance certification requirements, provided that the structure has been established for two (2) or more years and is occupied. The existing private dwelling must be within the exterior boundaries of the proposed homesite lease. The LGO shall be responsible for verifying the stipulations provided herein.

- G. The LGO's tasks are complete when he/she has identified those grazing permittees that are directly affected by the proposed development.

SECTION VII. APPLICATION PROCEDURES

Phase One (1) Applicant Responsibility

- A. The applicant(s) must sign their own names in ink on eight (8) sets of applications. All signatures must reflect the name of the homesite lease applicant(s) (HLA) as recorded by the Navajo Census & Vital Statistics Office. If a HLA does not write and a thumb print is used, the thumb print must be applied to all eight (8) applications with two (2) witnesses attesting to each thumb print.
- B. The HLA shall then submit his/her homesite lease application with properly completed field clearance certification and consent form to the ONLA or its agency suboffice for processing of the application.
- C. The HLA shall pay a non-refundable filing fee in the amount of fifteen dollars (\$15.00) by money order payable to the Navajo Nation at the time of filing such application.

Phase Two (2) Office of Navajo Land Administration

- A. No branch of the Navajo Nation Government shall deny an application for a homesite lease because of the applicant's sex, religious association, clan membership, political philosophy, personal grudges, chapter affiliation, income, education, public or private status, or tribal affiliation except as limited by Section V.
- B. The ONLA Homesite Section shall be responsible for accepting homesite lease applications and money orders in the amount of fifteen dollars (\$15.00) for the non-refundable filing fee. The ONLA Homesite Section shall provide the HLA(s) with a

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receipt upon full payment. No partial payments will be accepted. Only originals will be accepted by the Office of Navajo Land Administration (ONLA), Homesite Section.

- C. The ONLA Homesite Section shall review each homesite lease application by verifying the following items:
 - 1. Legal Name(s)
 - 2. Age
 - 3. Address
 - 4. Census Number, if applicable
 - 5. Certificate of Indian Blood, if applicable
- D. The ONLA Homesite Section will forward the complete homesite lease application to the ONLA Survey Section for survey and legal description.
- E. Upon completion of the survey, the ONLA Survey Section, shall forward the final certified survey plat with legal description to ONLA Homesite Section for further processing.
 - 1. A resurvey fee of \$150.00 will be assessed for any resurveys. All surveys and resurveys performed by the Survey Section shall be limited to homesite leases.
 - 2. Any survey performed by a private surveyor who is registered with the state where the proposed development is located is permissible, provided that such survey is in accordance with ONLA standards and specifications. (An application for homesite must be reviewed by the ONLA homesite section before the HLA can hire an independent registered land surveyor).
- F. The ONLA Homesite Section shall then forward the application, survey plat, and legal description to the Title Examiner's Office for legal review.
- G. The ONLA Title Examiner's Office shall review all homesite lease applications for legal sufficiency. Any homesite lease application requiring further review or clarification may be submitted to the Navajo Nation Department of Justice, Natural Resources Unit. The NNDOJ, NRU, shall have ten (10) working

days to review and comment on such homesite lease applications requiring review or clarification.

- H. After a homesite lease application has been verified by the ONLA Homesite Section, Survey Section, and Title Examiner's Office, the application shall be submitted to the ONLA Department Director who shall give the final approval on behalf of the Navajo Nation for all homesite leases. The ONLA Homesite Section will submit appropriate documents to the agency superintendent for execution and final distribution.

Phase Three (3) Final Approval by Bureau of Indian Affairs

The homesite lease must be executed by the BIA Agency Superintendent. The finalized lease should be distributed to the lessee; the Navajo Nation, lessor; and the Southwest Title Plant, BIA, Albuquerque, New Mexico, Land Titles and Records Office.

SECTION VIII. ASSIGNMENT

- A. All finalized homesite leases are transferable by assignment. Assignee(s) must satisfy the same eligibility criteria as the HLA under Section V. The lessee(s) must execute an assignment form to properly assign a homesite lease.
- B. In the event of divorce or probate, the Navajo Nation Courts have jurisdiction to distribute the undivided leasehold interest of a homesite lease. All field clearance(s) shall be recognized and will remain in effect. The involved parties shall notify the ONLA Homesite Section, about any such disposition by a court.
- C. In a probate proceeding, the Navajo Nation Courts may distribute the leasehold interest of an established homesite lease to beneficiaries under a will or to heirs of an Estate. The court may distribute the homesite lease to a non-Navajo surviving spouse or beneficiaries provided such interest is held for the benefit of the heirs.

- D. A lessee may assign a portion of an existing one (1) acre homesite lease to an individual eligible under Section V. The assignment shall be surveyed and limited to one-half ($\frac{1}{2}$) acre. All prior field clearances shall apply to the assignment. All qualified assignee(s) must sign a homesite lease form upon securing the assignment from the lessee.
- E. Any lot within a subdivision cannot be subdivided.
- F. The Assignor and the Assignee must reapply for separate homesite leases with a legal description for each parcel.

SECTION IX. MORTGAGES

- A. A finalized homesite lease authorizes a lessee to encumber the leasehold interest of a homesite lease for building improvements. The leasehold interest can be mortgaged as security for finance or payment of debt. The lessee may transfer all or part of the leasehold interest to the Mortgagee (Lender) with the understanding that the Mortgagee (Lender) will transfer the leasehold interest back to the lessee when the mortgage has been paid in full.
- B. The mortgage document must be recorded with the Bureau of Indian Affairs Real Property Management Office and the Recorder's Office of the county in which the real estate is located. The Office of Navajo Land Administration will receive copies of the mortgage document from the Bureau of Indian Affairs Real Property Office.
- C. In the event the Mortgagor (Borrower) defaults on the Mortgage, the Mortgagee (Lender) has the authority to foreclose the lien through the Navajo Nation Courts and offer the leasehold interest for sale. The Mortgagee (Lender) may have the right to possession of improvements on the lease premises and rents from the mortgaged property upon default of the Mortgagor (Borrower).

SECTION X. MODIFICATION

- A. A finalized homesite lease can be modified at the written request of the lessee, which shall be limited to change in marital status or change in the lessee's name due to marriage or census record. The ONLA Department Director shall have authority to approve requests for modification.
- B. The requested modification must be accompanied by a copy of the marriage license, court order, and certificate of Indian Blood depending on the nature of request.

SECTION XI. RELINQUISHMENT OF HOMESITE LEASE

- A. The lessee may surrender or renounce his/her interest in a homesite lease by signing a relinquishment form provided by the ONLA.
- B. The lessee shall submit such relinquishment form to the ONLA or local suboffice thereof.
- C. The ONLA Department Director shall have authority to grant all requests for relinquishment.
- D. The ONLA Homesite Section will forward all relinquishment forms to the BIA, Agency Superintendent, for final approval.

SECTION XII. ABANDONMENT

- A. The local chapter shall be responsible for notifying the ONLA Homesite Section or local suboffice thereof, to make its recommendation to cancel an established homesite lease that has been abandoned for two (2) years or more. The local chapter must comply with the following procedures before making its recommendation to cancel an abandoned homesite lease:
 - 1. The local chapter must give notice of intent to cancel by certified mail to the respective lessee(s).

2. In situations where the local chapter does not know the address of the lessee(s), the local chapter must publish a general notice of intent to cancel in the local newspaper, post a notice at the nearest chapter house or in one or more local trading posts, and announce its plans in English and in Navajo on a local radio station for a period of one (1) week.
3. If the lessee(s) responds within the thirty (30) days, but does not desire to develop the homesite lease, the respective lessee(s) shall have first option to assign their interest in the homesite lease to a qualified applicant(s) of his or her choice.
4. After thirty (30) working days from public notice of intent to cancel and no response is received, the local chapter shall recommend cancellation of the established homesite lease premises to the ONLA Department Director by certified chapter resolution.
5. The ONLA Department Director shall have the authority to cancel the abandoned homesite lease as recommended by the local chapter. If cancelled, the abandoned homesite lease shall revert to the Navajo Nation.

SECTION XIII. OBJECTION

A. Affected Permittee.

1. An objecting permittee must show that he or she is directly affected by the proposed homesite lease within his/her grazing use area. The grazing permit or land use permit must be within the district unit boundary of the proposed homesite lease.
2. Persons who do not make beneficial use of a grazing permit or do not have an interest in a valid grazing permit and/or land use permit for the area containing the proposed homesite lease do not have grounds to object.

3. Grazing permittees who meet criteria one (1) above may file a written objection with the Office of Navajo Land Administration or any suboffice thereof any time prior to the granting of the proposed homesite lease by the ONLA Department Director.
4. The objecting party must attach a copy of his or her valid grazing permit and/or land use permit, including an officially recognized customary use area map, where applicable, with his or her written objection.

B. Meeting.

1. Objectors who meet criteria under Section XII A(3)(4) may request a meeting with the ONLA Department Director.
2. The ONLA Department Director shall make a determination whether to grant the request for a meeting.
3. If the request for meeting is granted, the ONLA Department Director shall schedule a meeting between the parties within twenty (20) working days from the date the objection was received, giving both parties ten (10) working days notice of the date, time and place of the meeting. No verbal objection or verbal request for a meeting will be accepted by the Office of Navajo Land Administration.
4. Any request for continuance shall be considered by the ONLA Department Director, in which ten (10) working days notice must be given to the parties of the new date, time and place of the rescheduled meeting.
5. The ONLA Department Director, the ONLA Title Examiner, and an ONLA Homesite Section representative shall be present at the meeting to review all relevant documentation, provide technical assistance, and conduct the meeting. The meeting is intended to allow the parties to resolve their differences informally without legal representation. Legal representation is permissible, provided that both parties are legally

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represented at the meeting. Both counsels must be present at the meeting.

6. If differences have not been resolved, any party may appeal in writing to the Resources Committee of the Navajo Nation Council. The ONLA Department Director shall have ten (10) working days to contact and schedule a hearing before the Resources Committee. When a hearing date has been determined, the ONLA Department Director shall give ten (10) working days notice of the date, time, and place of the scheduled hearing before the Resources Committee. The Resources Committee is authorized to review and decide disputes and complaints relating to homesite lease applications or certificates by 2 N.T.C. § 695(b)(4)(i). Decisions of the Resources Committee shall be final subject to appeal to the Navajo Nation District Court. The appeal shall be limited to a review of the administrative record.
7. If it has been determined that the objecting party has no grounds to object or if the objection is received after the homesite lease application has been granted, such homesite lease application will be processed and finalized.
8. The ONLA Department Director shall be responsible for the following items:
 - i. Developing meeting procedures,
 - ii. Developing a Memorandum of Understanding (MOU) that describes the settlement reached through the meeting,
 - iii. Preparing and maintaining the minutes of the meeting, including other relevant documentation produced at the meeting, and
 - iv. Developing all notice(s) and mailing such notices to the parties involved by certified mail.

C. Denial and Request for Reconsideration.

1. If an application for homesite lease is denied, the HLA may file a request for review to the ONLA or any suboffice thereof.
2. The HLA must provide the Office of Navajo Land Administration with the following documentation:
 - i. Homesite Lease Application
 - ii. Field Clearance Certification, if applicable
 - iii. Verification of Permittee Consent, if applicable and
 - iv. Certificate of Indian Blood, if applicable.
3. If it has been determined that the HLA has met all of the requirements in applying for a homesite lease, the ONLA Department Director shall report his findings to the LGO with a recommendation.
4. The HLA will be given a copy of the findings and recommendation prepared by the ONLA Department Director. The HLA shall be responsible for requesting the LGO to review the homesite lease application, provided that the ONLA Department Director has verified that the HLA is in compliance with the homesite lease policy and procedures.
5. The ONLA Department Director shall make the final decision based on the LGO's recommendation. Administrative review by the Navajo Nation would be complete at this stage.

D. The written objection shall be addressed to:

Office of Navajo Land Administration
Attn: Director
Post Office Box 308
Window Rock, Arizona 86515

- E. Any dispute arising from a finalized homesite lease may be appealed to the Navajo Nation Courts by the disputing parties.
- F. All homesite lease applications denied within the Eastern Navajo Agency are subject to review and mediation by the Eastern Navajo Land Board (ENLB). The ENLB shall exercise its

authority to mediate disputes concerning homesite lease applications without ONLA Department Director review. If mediation is not successful, the parties may request for review and decision by the Resources Committee of the Navajo Nation Council. (See 3 N.T.C. § 238(3)). All request for appeal to the Resources Committee shall be subject to the procedures provided at Section XII (b)(6).

SECTION XIV. APPLICATION/LEASE RESTRICTIONS

- A. An established homesite lease is intended for residential purposes only and is not to be used for any other purpose.
- B. A homesite lease is not a business site lease.
- C. A homesite lease is not a grazing permit.
- D. A qualified HLA may apply for one (1) homesite lease within a land management district.
- E. The Navajo Nation advises all applicants not to disturb or to construct on the proposed site before final evaluation by the Navajo Nation Historical Preservation Department.
- F. No homesite lease application shall be considered by the LGO when it has been determined that the site is on lands which have been withdrawn or otherwise obligated for community purposes or when it is determined that the homesite would contravene local land use ordinance.
- G. Written authorization from the District Grazing Committee is required if the proposed homesite is within a half mile of government or Navajo tribal developed permanent livestock watering point. (See 3 N.T.C. § 714, et seq.).
- H. A lessee(s) shall not engage in any illegal activities on an established homesite lease.
- I. Any proposed homesite lease application which is not in compliance with this homesite lease policy and procedures will not be accepted by the ONLA Department Director.

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- J. Navajo trust land cannot be sold. If the improvements that are permanently affixed to the leasehold are sold, the leasehold interest must be assigned at no additional cost.
- K. A homesite lease application is not considered a lease, therefore it is not transferable by assignment or court order.

SECTION XV. TERM

A finalized homesite lease shall have a term of sixty-five (65) years, which shall commence on the date the application is executed by the Navajo Area Director or his designee or authorized representative, and shall expire on the sixty-fifth anniversary of the date of execution.

SECTION XVI. RENEWAL OF LEASE

- A. An expired homesite lease is subject to renewal for a period of twenty-five (25) years upon approval by the ONLA Department Director.
- B. The Lessee may renew his or her homesite lease anytime within six (6) months from the expiration date of the existing homesite lease by giving written notice to the ONLA Department Director.
- C. The renewal of the lease will be granted by the ONLA Department Director provided the annual fee for the existing lease is paid in full. The existing homesite lease must not be pending litigation before any court of the Navajo Nation.
- D. The ONLA Department Director shall then forward the executed homesite lease to the Agency Superintendent for review and approval.

SECTION XVII. ANNUAL FEE

The lessee(s) shall pay a non-refundable annual fee to the Navajo Nation, lessor, in the amount of one (1) dollar for each year of the term of the homesite lease. Such annual fee must be paid each year in advance, following the date of execution for the term of the lease. (See 16 N.T.C. § 204(12)).

Nonpayment of fees shall be cause for cancellation of the lease. The lessee may at his/her discretion pay the total amount due prior to expiration of the homesite lease.

SECTION XVIII. AMENDMENTS

This policy and procedures may be amended or superseded as needed by majority vote of the Resources Committee of the Navajo Nation Council. The Department Director of the ONLA shall be responsible for recommending and preparing needed amendments to this policy and procedures for consideration by the Resources Committee.



FLOW CHART

REVISED HOMESITE LEASE POLICY AND PROCEDURE

PHASE ONE (1)

APPLICATION FOR HOMESITE LEASE

Prepared by Homesite Lease Applicant (HLA)

PHASE TWO (2)

FIELD CLEARANCE FORM AND CONSENT FORM

Prepared by Local District Grazing Committee Member (LDGCM)

PHASE THREE (3)

OFFICE OF NAVAJO LAND ADMINISTRATION (ONLA)

Filing Fee, Survey, Legal Description, and NAVAJO NATION
DEPARTMENT OF JUSTICE, NRU (Determination of Leasehold
Interest)

PHASE FOUR (4)

Finalization of Homesite Lease
Executed and Distributed by respective BIA, Agency Real
Property Offices

STAFF DIRECTORY

Central Office: (602) 871-6401/6402

Post Office Box 308

Window Rock, Arizona 86515

Director: Melvin Bautista

Asst. Director: Charles Morrison

Homesite Section: (602) 871-7055

- Raymond Joe, HSA III

- Clarence Begay,, RW II

- Julia Begay, Secretary I

- Suzanne C. Kee, Clerk II

- Arlinda John, Program Manager

Survey Section: (602) 871-7054

- Charles Joe, Supervisor

- Andrew Murphy, ET II

- Irvin Keeto, ET II

Tuba City Sub-Office: (602) 283-4981

Post Office Box 3309

Tuba City, Arizona 86045

- Ricky McCabe, ET III

Chinle Sub-Office: (602) 674-2056/2057/2058

Post Office Box 2179

Chinle, Arizona 86503

- Caroline Dale, HSA II

Shiprock Sub-Office: (505) 368-5279

Post Office Box 208

Shiprock, New Mexico 87420

- Teddy Charles, ET III

Eastern Agency Sub-Office: (505) 786-7321/7322

Post Office Box 948

Crownpoint, New Mexico 87313

- Allen Y. Nez, Land Claims Adjuster

Utah Sub-Office: (801) 651-3655

Post Office Box 410

Montezuma Creek, Utah 84534

- Margaret Dee, RW II

RESOURCES COMMITTEE OF THE NAVAJO NATION COUNCIL

Elmer Milford, Chairperson

George Arthur, Vice-Chairperson

Irving Billy

Frank Guerro

Norman John, II

Mark Peshlakai

Andrew Tso

Samuel Yazzie

**WORKSHOP SCHEDULE
PROPOSED HOMESITE LEASE
POLICY AND PROCEDURES**

1. Directive from Division of Natural Resources through the Navajo Nation Council.
 2. Homesite Workshop #1, Kayenta, Arizona on April 20, 1992
Regional Sub-Office Staff
 3. Homesite Workshop #2, Farmington, New Mexico on April 29 - May 1, 1992
Regional Sub-Office Staff
 4. Homesite Workshop #3, Crownpoint, New Mexico on May 21, 1992
Eastern Navajo Land Board Members
 5. May 22, 1992, Resources Committee
The Report was continued with no action.
 6. Homesite Workshop #4, Tuba City, Arizona on May 26, 1992
Community Service Coordinators & Tuba City Sub-Office, ONLA
 7. Homesite Workshop #5, Chinle, Arizona on May 27, 1992
Grazing Officials and Department of Agriculture
 8. Homesite Workshop #6, Red Mesa Chapter on May 28, 1992
Grazing Officials from Shiprock Agency
 9. Homesite Workshop #6, Window Rock, Arizona on May 29, 1992
Grazing Officials/Community Service Coordinator
 10. Homesite Workshop #7, Rock Point, Arizona on June 15, 1992
Reservation Wide Grazing Officials
 11. Homesite Workshop #8, Tuba City, Arizona on June 18-19, 1992
Grazing Official Chapter Officials, CHR, Housing Services, Peabody Coal. Co.,
Navajo/Apache/Coconino County, ADES, BIA, Community Development, and Project
Review Section
- NOTE: Workshop was broadcasted on local radio station (Tuba City, Arizona)
12. June 23, 1992, BIA Agency Real Property Staff Members
 13. Homesite Workshop #9, Window Rock, Arizona on June 24, 1992
A booth was open to general public, 10th Anniversary for NNDOJ

COPY

**Workshop Schedule
Proposed Homesite Lease
Policy and Procedures
Page 2**

14. **June 25, 1992, Resources Committee Meeting**
The Report continued to the next meeting with no action.
15. **Homesite Workshop #10, Crownpoint, New Mexico on June 24, 1992**
Eastern Navajo Land Board Members
16. **June 29, 1992, Judiciary Committee Meeting**
Report on Proposed Revisions.
17. **July 13, 1992, Homesite Policy Meeting with Division of Natural Resources and Program Directors.** No one from Division came to the meeting except Alan Downer and Dexter Gill.
18. **September 24, 1992, Report to Resources Committee.**

620128

FOR OFFICE USE ONLY

☐ Field Clearance ☐ Consent ☐ Complete Application
☐ Land Status ☐ Filing Fee Reviewed By _____ Date _____

HOMESITE LEASE APPLICATION FORM

DATE: _____

NAME: _____ CENSUS NO. _____ AGE _____

NAME: _____ CENSUS NO. _____ AGE _____

ADDRESS: _____

PHONE NO: _____ OFFICE: _____

I, (We) hereby apply for one acre or less of Navajo Tribal Land for a homesite lease from the Navajo Nation for the purpose of developing a private dwelling for the term of sixty-five (65) years within SECTION _____ TOWNSHIP _____, RANGE _____,

COUNTY: _____ STATE : _____

CHAPTER: _____ AGENCY: _____

GRAZING DISTRICT: _____ UNIT : _____

Draw map showing the location and direction to the proposed site.

N
 W + E
 S

CONCURRENCE

LOCAL GRAZING OFFICIAL/FARM BOARD MEMBER

DATE

62/4/8

ELIGIBILITY REQUIREMENTS

1. You must be enrolled member of the Navajo Tribe or a non-member that meets the requirements set forth under Section V Part (C) (i) (ii) of the Homesite Lease Policy and Procedures
2. You must be eighteen (18) years of age or older.

PLEASE ANSWER THE FOLLOWING QUESTIONS

Are there any improvement(s) on the proposed site? (i.e. Road, Trails, Powerlines, etc,) If so, describe _____

Do you have a house on the proposed site? _____ If so, when was the house built? _____ Do you now live in the house? _____

Does your name reflect the record at the Navajo Census and Vital Statistics Office? _____

The following documents must be attached to the application:

1. Certificate of Indian Blood
2. Completed Field Clearance Certification form
3. Completed consent form(s)
Note: Does not apply to eastern Navajo Agency.
4. A Non-Refundable fifteen dollars (\$15.00) money order payable to the Navajo Nation for filing fee

I, (We) acknowledge and understand that the following conditions apply to a Homesite Lease:

1. The Homesite Lease is intended for residential purposes only and not to be used for any other purpose, i. e. police quarters or educational instruction.
2. A Homesite Lease is not a business site lease.
3. A Homesite Lease is not a grazing permit.
4. No Homesite Lease Application shall be considered by the local Grazing Officer when it has determined that such lands have been formerly withdrawn or otherwise obligated for community purposes, e. g. subdivision plans, zoning, existing community projects.
5. Written authorization from the District Grazing Committee is required if the proposed homesite is within a half of a mile of a government or tribally developed permanent livestock watering point. (3 N.T. C. 714 e t seq.)

2017

6. There is a non - refundable one dollar (\$1.00) annual fee for the lease that must be paid to the Navajo Nation each year in advance following the date of execution for term of the lease.

7. If applicable, please attach assignment or relinquishment form to the application

As directed by the Resources Committee of the Navajo Nation Council, I, (We) understand and hereby agree to comply with the provisions provided in the revised Homesite Lease policy and procedure.

Signed this day _____ of _____ 199 ____.

Applicant

Witness: _____

Applicant

Witness: _____

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FIELD CLEARANCE CERTIFICATION
FOR
HOMESITE LEASE APPLICATION

I, _____, Grazing Committee Member of Grazing Management District _____, community of _____ chapter have identified the following individuals as landuse or grazing permittee(s) who are directly affected by the proposed homesite development as illustrated and proposed by the following homesite lease application(s):

Homesite Lease Applicant

Homesite Lease Applicant

AUTHORIZED GRAZING / LANDUSE PERMITTEE

(THIS IS NOT A CONSENT FORM)

	NAME	CENSUS NO	PERMIT NO.
1.	_____	_____	_____
2.	_____	_____	_____
3.	_____	_____	_____
4.	_____	_____	_____
5.	_____	_____	_____
6.	_____	_____	_____
7.	_____	_____	_____
8.	_____	_____	_____
9.	_____	_____	_____
10.	_____	_____	_____

CERTIFICATION

According to my records and to the best of my knowledge, the list of the affected permittee(s) referenced above includes all of the permitted landusers who are directly affected by the proposed homesite development.

Local Grazing Official/Farm Board Member

Date

COPY

CONSENT FORM
FOR
NAVAJO TRUST LAND

TO WHOM IT MAY CONCERN:

I, _____ hereby grant consent to the Navajo Nation and the Bureau of Indian Affairs to permit _____ and _____ to lease one acre or less of Navajo Tribal Land within my permitted grazing use area for residential purpose as illustrated and acknowledged by the Grazing Official on the Homesite Lease Application.

I further waive any rights I may have to compensation for the diminishment in value of my permitted grazing use rights as a result of the proposed homesite development.

Signed this _____ day of _____ 199 ____ .

WITNESSES:
(For thumbprint use only)

Grazing Permittee

C# _____

Grazing Permit No. _____
Date of issue _____
Farm Plot No. _____

ACKNOWLEDGED:

Grazing Official/Farm Board Member

Date

Chapter

COPY

EXHIBIT F

**GENERAL NOTICE
EASTERN NAVAJO AGENCY**

DATE : _____

TO : _____
Grazing Lessee

FROM : _____
Local Grazing Official
Eastern Navajo Agency

SUBJECT: HOMESITE LEASE APPLICATION

This General Notice is intended to inform you that the following person(s) have applied for a homesite lease:

Homesite lease applicant

C# _____ and C# _____
Homesite lease applicant

ADDRESS

The proposed homesite lease is located on Navajo Tribal Land within
Section _____ Township _____, Range _____, NMPM, in the County of
_____, State of New Mexico.

If you have any concerns regarding this homesite lease application, please respond in writing within 10 days upon receipt of this letter. If there is no response within the specified time, the homesite lease application will be processed and finalized.

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**HOMESITE LEASE
POLICY & PROCEDURES**

**PREPARED BY
OFFICE OF NAVAJO LAND ADMINISTRATION
HOMESITE SECTION**

DECEMBER 22, 1993

COPY

**HOMESITE LEASE
POLICY AND PROCEDURES FOR
TRIBAL TRUST/FEE LAND**

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Section II.	Authority
Section III.	Purpose
Section IV.	Scope
Section V.	Eligibility Requirements
Section VI.	Local Grazing Official
Section VII.	Application Procedures
Section VIII.	Assignment
Section IX.	Mortgages
Section X.	Modification
Section XI.	Relinquishment of Homesite Lease
Section XII.	Abandonment
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Section XV.	Term
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SECTION I. DEFINITIONS

- A. "Abandonment" shall mean not making any improvements on the lease premises or vacating the lease premises with improvements for a period of two (2) years with no intention of developing the established homesite lease. (One (1) year for vacant lots within a subdivision).
- B. "Fee Land" means lands held by the Navajo Nation in fee title.
- C. "Homesite Lease Applicant (HLA)" means an individual(s) who is applying for a homesite lease on Navajo Tribal trust or fee land.
- D. "Homesite Certificate" means written acknowledgement from the Navajo Nation which allows a home owner to apply for infrastructure or renovation assistance. A certificate is not a lease.
- E. "Homesite Lease" means a written document evidencing approval from the Navajo Nation and the BIA to lease one (1) acre or less of Navajo Tribal trust or fee land for residential purposes.
- F. "Lessee" means an individual(s) who has a finalized homesite lease approved by the Navajo Nation and the BIA.
- G. "Lessor" means the Navajo Nation or its duly authorized designee.
- H. "Local Chapter" shall mean a duly certified chapter of the Navajo Nation, pursuant to 2 N.T.C. § 4001(d).
- I. "Local Grazing Official (LGO)" means an elected individual who is responsible for grazing matters within their respective district unit boundary. Such grazing official shall mean the District Grazing Committee Member, Eastern Navajo Land Board Member, or Farm Board Member.
- J. "Probate" means the process of collecting a decedent's assets, liquidating liabilities, paying necessary taxes, and distributing property to heirs. These activities are carried out by the executor or administrator of the estate.

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- K. "Relinquishment" means surrendering or renouncing one's interest in a homesite lease by allowing such interest to revert to the Navajo Nation. When it has been determined that the Lessee(s) does not intend to develop the homesite premises, the local chapter will be in a position to recommend relinquishment of such leasehold premises to the ONLA Director.
- L. "Surveyor" means one who determines an area or portion of the earth's surface by length, direction of boundary lines, and contour of surface. The surveyor must be registered with the Office of Navajo Land Administration and with the respective state where he/she surveys.
- M. "Watering Point" means all tribally developed and maintained springs, wells, and charcos or deep reservoirs intended for livestock use.

SECTION II. AUTHORITY

The Resources Committee of the Navajo Nation Council approved this Homesite Lease Policy and Procedures on December 22, 1993, pursuant to RCD-289-93, which shall supersede those guidelines approved by RCJ-6-88. This authority is codified in the Navajo Tribal Code at 2 N.T.C. § 695(b)(4)(i).

SECTION III. PURPOSE

It is the purpose of the homesite lease policy and procedures to regulate the issuance, transfer, relinquishment, amendment, and execution of homesite leases to qualified applicants in a timely manner.

The issuance of a homesite lease is intended to promote individual home ownership for qualified applicants. An established homesite lease provides for the encumbrance of the leasehold interest to secure capital for development of a private dwelling. In addition, this expedited homesite lease procedure shall benefit

those Navajo families directly affected by relocation as a result of P.L. 93-531 (as amended). A homesite lease is intended for use in situations where there are no improvements on the proposed homesite lease area. It allows for a procedure that will minimize the potential for dispute among grazing permittees and prospective HLAs.

SECTION IV. SCOPE

The homesite lease procedure shall apply to Navajo Nation trust or fee lands, including the Navajo Partitioned Land and the Chambers/Sanders Trust Lands (see P.L. 96-305) that are within the territorial boundaries of the Navajo Nation, including satellite Navajo Reservations. This homesite lease policy and procedures does not apply to individual Indian allotments.

SECTION V. ELIGIBILITY REQUIREMENTS

The following criteria shall be considered in determining eligibility of applicants seeking to obtain a homesite lease on Navajo trust or fee lands:

- A. An applicant must be an enrolled member of the Navajo Tribe.
- B. An applicant must be eighteen (18) years of age or older.

SECTION VI. LOCAL GRAZING OFFICIAL

- A. The LGO shall be responsible for identifying all of the grazing permittees who are directly affected by the proposed homesite application. The LGO may accompany the HLA(s) in asking for consent from the identified permittee(s).
- B. On Navajo Tribal fee land, the LGO shall give general notice to individuals who have grazing privileges within affected range units concerning the proposed homesite development.

- C. The LGO shall be solely responsible for certifying field clearance(s) by executing a field clearance certification form which is approved by the Resources Committee of the Navajo Nation Council.
- D. The LGO shall attach the consent form(s) obtained from the directly affected grazing permittee(s) to the field clearance certification form. The field clearance form and consent form(s) shall be submitted with the homesite lease application. The location of the proposed development illustrated on the application must be acknowledged in writing by the LGO. Such acknowledgement is intended to discourage the HLA from changing the location of the proposed homesite after the LGO has made his/her recommendation.
- E. On lands within the Eastern Navajo Agency, the LGO shall be responsible for giving general notice of proposed homesite development to persons who have grazing privileges within respective range management units.
- F. An existing private dwelling not in dispute shall be exempt from field clearance certification requirements, provided that the structure has been established for two (2) or more years and is occupied. The existing private dwelling must be within the exterior boundaries of the proposed homesite lease. The LGO shall be responsible for verifying the stipulations provided herein.
- G. The LGO's tasks are complete when he/she has identified those grazing permittees that are directly affected by the proposed development.

SECTION VII. APPLICATION PROCEDURES

Phase One (1) Applicant Responsibility

- A. The applicant(s) must sign their own names in ink on eight (8) sets of applications. All signatures must reflect the name of the homesite lease applicant(s) (HLA) as recorded by the

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Navajo Census & Vital Statistics Office. If a HLA does not write and a thumb print is used, the thumb print must be applied to all eight (8) applications with two (2) witnesses attesting to each thumb print.

- B. The HLA shall then submit his/her homesite lease application with properly completed field clearance certification and consent form to the ONLA or its agency suboffice for processing of the application.
- C. The HLA shall pay a non-refundable filing fee in the amount of fifteen dollars (\$15.00) by money order payable to the Navajo Nation at the time of filing such application.

Phase Two (2) Office of Navajo Land Administration

- A. No branch of the Navajo Nation Government shall deny an application for a homesite lease because of the applicant's sex, religious association, clan membership, political philosophy, personal grudges, chapter affiliation, income, education, public or private status, or tribal affiliation except as limited by Section V.
- B. The ONLA Homesite Section shall be responsible for accepting homesite lease applications and money orders in the amount of fifteen dollars (\$15.00) for the non-refundable filing fee. The ONLA Homesite Section shall provide the HLA(s) with a receipt upon full payment. No partial payments will be accepted. Only originals will be accepted by the Office of Navajo Land Administration (ONLA), Homesite Section.
- C. The ONLA Homesite Section shall review each homesite lease application by verifying the following items:
 - 1. Legal Name(s)
 - 2. Age
 - 3. Address
 - 4. Census Number, if applicable
 - 5. Certificate of Indian Blood, if applicable

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- D. The ONLA Homesite Section will forward the complete homesite lease application to the ONLA Survey Section for survey and legal description.
- E. Upon completion of the survey, the ONLA Survey Section, shall forward the final certified survey plat with legal description to ONLA Homesite Section for further processing.
1. A resurvey fee of \$150.00 will be assessed for any resurveys. All surveys and resurveys performed by the Survey Section shall be limited to homesite leases.
 2. Any survey performed by a private surveyor who is registered with the state where the proposed development is located is permissible, provided that such survey is in accordance with ONLA standards and specifications. (An application for homesite must be reviewed by the ONLA homesite section before the HLA can hire an independent registered land surveyor).
- F. The ONLA Homesite Section shall then forward the application, survey plat, and legal description to the Title Examiner's Office for legal review.
- G. The ONLA Title Examiner's Office shall review all homesite lease applications for legal sufficiency. Any homesite lease application requiring further review or clarification may be submitted to the Navajo Nation Department of Justice, Natural Resources Unit. The NNDOJ, NRU, shall have ten (10) working days to review and comment on such homesite lease applications requiring review or clarification.
- H. After a homesite lease application has been verified by the ONLA Homesite Section, Survey Section, and Title Examiner's Office, the application shall be submitted to the ONLA Department Director who shall give the final approval on behalf of the Navajo Nation for all homesite leases. The ONLA Homesite Section will submit appropriate documents to the agency superintendent for execution and final distribution.

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Phase Three (3) Final Approval by Bureau of Indian Affairs

The homesite lease must be executed by the BIA Agency Superintendent. The finalized lease should be distributed to the lessee; the Navajo Nation, lessor; and the Southwest Title Plant, BIA, Albuquerque, New Mexico, Land Titles and Records Office.

SECTION VIII. ASSIGNMENT

- A. All finalized homesite leases are transferable by assignment. Assignee(s) must satisfy the same eligibility criteria as the HLA under Section V. The lessee(s) must execute an assignment form to properly assign a homesite lease.
- B. In the event of divorce or probate, the Navajo Nation Courts have jurisdiction to distribute the undivided leasehold interest of a homesite lease. All field clearance(s) shall be recognized and will remain in effect. The involved parties shall notify the ONLA Homesite Section, about any such disposition by a court.
- C. In a probate proceeding, the Navajo Nation Courts may distribute the leasehold interest of an established homesite lease to eligible beneficiaries under a will or to heirs of an Estate.
- D. A lessee may assign a portion of an existing one (1) acre homesite lease to an individual eligible under Section V. The assignment shall be surveyed and limited to one-half ($\frac{1}{2}$) acre. All prior field clearances shall apply to the assignment. All qualified assignee(s) must sign a homesite lease form upon securing the assignment from the lessee.
- E. Any lot within a subdivision cannot be subdivided.
- F. The Assignor and the Assignee must reapply for separate homesite leases with a legal description for each parcel.

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SECTION IX. MORTGAGES

- A. A finalized homesite lease authorizes a lessee to encumber the leasehold interest of a homesite lease for building improvements. The leasehold interest can be mortgaged as security for finance or payment of debt. The lessee may transfer all or part of the leasehold interest to the Mortgagee (Lender) with the understanding that the Mortgagee (Lender) will transfer the leasehold interest back to the lessee when the mortgage has been paid in full.
- B. The mortgage document must be recorded with the Bureau of Indian Affairs Real Property Management Office and the Recorder's Office of the county in which the real estate is located. The Office of Navajo Land Administration will receive copies of the mortgage document from the Bureau of Indian Affairs Real Property Office.
- C. In the event the Mortgagor (Borrower) defaults on the Mortgage, the Mortgagee (Lender) has the authority to foreclose the lien through the Navajo Nation Courts and offer the leasehold interest for sale. The Mortgagee (Lender) may have the right to possession of improvements on the lease premises and rents from the mortgaged property upon default of the Mortgagor (Borrower).

SECTION X. MODIFICATION

- A. A finalized homesite lease can be modified at the written request of the lessee, which shall be limited to change in marital status or change in the lessee's name due to marriage or census record. The ONLA Department Director shall have authority to approve requests for modification.
- B. The requested modification must be accompanied by a copy of the marriage license, court order, and certificate of Indian Blood depending on the nature of request.

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SECTION XI. RELINQUISHMENT OF HOMESITE LEASE

- A. The lessee may surrender or renounce his/her interest in a homesite lease by signing a relinquishment form provided by the ONLA.
- B. The lessee shall submit such relinquishment form to the ONLA or local suboffice thereof.
- C. The ONLA Department Director shall have authority to grant all requests for relinquishment.
- D. The ONLA Homesite Section will forward all relinquishment forms to the BIA, Agency Superintendent, for final approval.

SECTION XII. ABANDONMENT

- A. The local chapter shall be responsible for notifying the ONLA Homesite Section or local suboffice thereof, to make its recommendation to cancel an established homesite lease that has been abandoned for two (2) years or more. The local chapter must comply with the following procedures before making its recommendation to cancel an abandoned homesite lease:
 - 1. The local chapter must give notice of intent to cancel by certified mail to the respective lessee(s).
 - 2. In situations where the local chapter does not know the address of the lessee(s), the local chapter must publish a general notice of intent to cancel in the local newspaper, post a notice at the nearest chapter house or in one or more local trading posts, and announce its plans in English and in Navajo on a local radio station for a period of one (1) week.
 - 3. If the lessee(s) responds within the thirty (30) days, but does not desire to develop the homesite lease, the respective lessee(s) shall have first option to assign their interest in the homesite lease to a qualified applicant(s) of his or her choice.

4. After thirty (30) working days from public notice of intent to cancel and no response is received, the local chapter shall recommend cancellation of the established homesite lease premises to the ONLA Department Director by certified chapter resolution.
5. The ONLA Department Director shall have the authority to cancel the abandoned homesite lease as recommended by the local chapter. If cancelled, the abandoned homesite lease shall revert to the Navajo Nation.

SECTION XIII. OBJECTION

A. Affected Permittee.

1. An objecting permittee must show that he or she is directly affected by the proposed homesite lease within his/her grazing use area. The grazing permit or land use permit must be within the district unit boundary of the proposed homesite lease.
2. Persons who do not make beneficial use of a grazing permit or do not have an interest in a valid grazing permit and/or land use permit for the area containing the proposed homesite lease do not have grounds to object.
3. Grazing permittees who meet criteria one (1) above may file a written objection with the Office of Navajo Land Administration or any suboffice thereof any time prior to the granting of the proposed homesite lease by the ONLA Department Director.
4. The objecting party must attach a copy of his or her valid grazing permit and/or land use permit, including an officially recognized customary use area map, where applicable, with his or her written objection.

B. Meeting.

1. Objectors who meet criteria under Section XII A(3)(4) may request a meeting with the ONLA Department Director.

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2. The ONLA Department Director shall make a determination whether to grant the request for a meeting.
3. If the request for meeting is granted, the ONLA Department Director shall schedule a meeting between the parties within twenty (20) working days from the date the objection was received, giving both parties ten (10) working days notice of the date, time and place of the meeting. No verbal objection or verbal request for a meeting will be accepted by the Office of Navajo Land Administration.
4. Any request for continuance shall be considered by the ONLA Department Director, in which ten (10) working days notice must be given to the parties of the new date, time and place of the rescheduled meeting.
5. The ONLA Department Director, the ONLA Title Examiner, and an ONLA Homesite Section representative shall be present at the meeting to review all relevant documentation, provide technical assistance, and conduct the meeting. The meeting is intended to allow the parties to resolve their differences informally without legal representation. Legal representation is permissible, provided that both parties are legally represented at the meeting. Both counsels must be present at the meeting.
6. If differences have not been resolved, any party may appeal in writing to the Resources Committee of the Navajo Nation Council. The ONLA Department Director shall have ten (10) working days to contact and schedule a hearing before the Resources Committee. When a hearing date has been determined, the ONLA Department Director shall give ten (10) working days notice of the date, time, and place of the scheduled hearing before the Resources Committee. The Resources Committee is authorized to review and decide disputes and complaints relating to homesite lease applications or certificates

by 2 N.T.C. § 695(b)(4)(i). Decisions of the Resources Committee shall be final subject to appeal to the Navajo Nation District Court. The appeal shall be limited to a review of the administrative record.

7. If it has been determined that the objecting party has no grounds to object or if the objection is received after the homesite lease application has been granted, such homesite lease application will be processed and finalized.
8. The ONLA Department Director shall be responsible for the following items:
 - i. Developing meeting procedures,
 - ii. Developing a Memorandum of Understanding (MOU) that describes the settlement reached through the meeting,
 - iii. Preparing and maintaining the minutes of the meeting, including other relevant documentation produced at the meeting, and
 - iv. Developing all notice(s) and mailing such notices to the parties involved by certified mail.

C. Denial and Request for Reconsideration.

1. If an application for homesite lease is denied, the HLA may file a request for review to the ONLA or any suboffice thereof.
2. The HLA must provide the Office of Navajo Land Administration with the following documentation:
 - i. Homesite Lease Application
 - ii. Field Clearance Certification, if applicable
 - iii. Verification of Permittee Consent, if applicable and
 - iv. Certificate of Indian Blood, if applicable.
3. If it has been determined that the HLA has met all of the requirements in applying for a homesite lease, the ONLA Department Director shall report his findings to the LGO with a recommendation.

COPY

4. The HLA will be given a copy of the findings and recommendation prepared by the ONLA Department Director. The HLA shall be responsible for requesting the LGO to review the homesite lease application, provided that the ONLA Department Director has verified that the HLA is in compliance with the homesite lease policy and procedures.
 5. The ONLA Department Director shall make the final decision based on the LGO's recommendation. Administrative review by the Navajo Nation would be complete at this stage.
- D. The written objection shall be addressed to:
- Office of Navajo Land Administration
Attn: Director
Post Office Box 308
Window Rock, Arizona 86515
- E. Any dispute arising from a finalized homesite lease may be appealed to the Navajo Nation Courts by the disputing parties.
- F. All homesite lease applications denied within the Eastern Navajo Agency are subject to review and mediation by the Eastern Navajo Land Board (ENLB). The ENLB shall exercise its authority to mediate disputes concerning homesite lease applications without ONLA Department Director review. If mediation is not successful, the parties may request for review and decision by the Resources Committee of the Navajo Nation Council. (See 3 N.T.C. § 238(3)). All request for appeal to the Resources Committee shall be subject to the procedures provided at Section XII (b)(6).

SECTION XIV. APPLICATION/LEASE RESTRICTIONS

- A. An established homesite lease is intended for residential purposes only and is not to be used for any other purpose.
- B. A homesite lease is not a business site lease.
- C. A homesite lease is not a grazing permit.

- D. A qualified HLA may apply for one (1) homesite lease within a land management district.
- E. The Navajo Nation advises all applicants not to disturb or to construct on the proposed site before final evaluation by the Navajo Nation Historical Preservation Department.
- F. No homesite lease application shall be considered by the LGO when it has been determined that the site is on lands which have been withdrawn or otherwise obligated for community purposes or when it is determined that the homesite would contravene local land use ordinance.
- G. Written authorization from the District Grazing Committee is required if the proposed homesite is within a half mile of government or Navajo tribal developed permanent livestock watering point. (See 3 N.T.C. § 714, et seq.).
- H. A lessee(s) shall not engage in any illegal activities on an established homesite lease.
- I. Any proposed homesite lease application which is not in compliance with this homesite lease policy and procedures will not be accepted by the ONLA Department Director.
- J. Navajo trust land cannot be sold. If the improvements that are permanently affixed to the leasehold are sold, the leasehold interest must be assigned at no additional cost.
- K. A homesite lease application is not considered a lease, therefore it is not transferable by assignment or court order.

SECTION XV. TERM

A finalized homesite lease shall have a term of sixty-five (65) years, which shall commence on the date the application is executed by the Navajo Area Director or his designee or authorized representative, and shall expire on the sixty-fifth anniversary of the date of execution.

SECTION XVI. RENEWAL OF LEASE

- A. An expired homesite lease is subject to renewal for a period of twenty-five (25) years upon approval by the ONLA Department Director.
- B. The Lessee may renew his or her homesite lease anytime within six (6) months from the expiration date of the existing homesite lease by giving written notice to the ONLA Department Director.
- C. The renewal of the lease will be granted by the ONLA Department Director provided the annual fee for the existing lease is paid in full. The existing homesite lease must not be pending litigation before any court of the Navajo Nation.
- D. The ONLA Department Director shall then forward the executed homesite lease to the Agency Superintendent for review and approval.

SECTION XVII. ANNUAL FEE

The lessee(s) shall pay a non-refundable annual fee to the Navajo Nation, lessor, in the amount of one (1) dollar for each year of the term of the homesite lease. Such annual fee must be paid each year in advance, following the date of execution for the term of the lease. (See 16 N.T.C. § 204(12)).

Nonpayment of fees shall be cause for cancellation of the lease. The lessee may at his/her discretion pay the total amount due prior to expiration of the homesite lease.

SECTION XVIII. AMENDMENTS

This policy and procedures may be amended or superseded as needed by majority vote of the Resources Committee of the Navajo Nation Council.



FLOW CHART

REVISED HOMESITE LEASE POLICY AND PROCEDURE

PHASE ONE (1)

APPLICATION FOR HOMESITE LEASE

Prepared by Homesite Lease Applicant (HLA)

PHASE TWO (2)

FIELD CLEARANCE FORM AND CONSENT FORM

Prepared by Local District Grazing Committee Member (LDGCM)

PHASE THREE (3)

OFFICE OF NAVAJO LAND ADMINISTRATION (ONLA)

Filing Fee, Survey, Legal Description, and NAVAJO NATION
DEPARTMENT OF JUSTICE, NRU (Determination of Leasehold
Interest)

PHASE FOUR (4)

Finalization of Homesite Lease
Executed and Distributed by respective BIA, Agency Real
Property Offices

STAFF DIRECTORY

Central Office: (602) 871-6401/6402

Post Office Box 308

Window Rock, Arizona 86515

Director: Melvin Bautista

Asst. Director: Charles Morrison

Homesite Section: (602) 871-7055

- Raymond Joe, HSA III
- Clarence Begay,, RW II
- Julia Begay, Secretary I
- Suzanne C. Kee, Clerk II
- Arlinda John, Program Manager

Survey Section: (602) 871-7054

- Charles Joe, Supervisor
- Andrew Murphy, ET II
- Irvin Keeto, ET II

Tuba City Sub-Office: (602) 283-4981

Post Office Box 3309

Tuba City, Arizona 86045

- Ricky McCabe, ET III

Chinle Sub-Office: (602) 674-2056/2057/2058

Post Office Box 2179

Chinle, Arizona 86503

- Caroline Dale, HSA II

Shiprock Sub-Office: (505) 368-5279

Post Office Box 208

Shiprock, New Mexico 87420

- Teddy Charles, ET III

Eastern Agency Sub-Office: (505) 786-7321/7322

Post Office Box 948

Crownpoint, New Mexico 87313

- Allen Y. Nez, Land Claims Adjuster

Utah Sub-Office: (801) 651-3655

Post Office Box 410

Montezuma Creek, Utah 84534

- Margaret Dee, RW II

RESOURCES COMMITTEE OF THE NAVAJO NATION COUNCIL

Elmer Milford, Chairperson

George Arthur, Vice-Chairperson

Irving Billy

Frank Guerro

Norman John, II

Mark Peshlakai

Andrew Tso

Samuel Yazzie

COPY



LEASE NO. _____

AMENDED

MASTER LEASE

Between

THE NAVAJO NATION and

CHINLE HOSPITAL HOUSING, LLC

THIS MASTER LEASE (this "Lease") is made and entered into this ____ day of _____, 2010~~5~~, by and between THE NAVAJO NATION, hereinafter called the "Lessor," whose address is P.O. Box 9000, Window Rock, Navajo Nation (Arizona) 86515, and CHINLE HOSPITAL HOUSING, LLC, an Arizona limited liability company registered as a foreign corporation in the Navajo Nation, hereinafter called the "Lessee," whose address is P.O. Box 2060, Chinle, Navajo Nation (AZ) 86503, in accordance with the provisions of 2 N.N.C. § 695(B)(2) and (4) and 25 U.S.C. § 415, as implemented by the regulations contained in 25 C.F.R. Part 162; and all amendments or successors thereto, which by this reference are made a part hereof. ~~This Master Lease includes a) the Declaration of Covenants, Conditions and Restrictions attached to this Master Lease as Exhibit "B", b) the standard form for Collateral Assignment of Conditional Use Permit which is to be used with all Conditional Use Permits attached to this Master Lease as Exhibit "C", and c) the standard form for Conditional Use Permit which is to be used for all Conditional Use Permits attached to this Master Lease as Exhibit "D", which are incorporated herein in their entirety.~~

1. DEFINITIONS.

(A) "Approved Encumbrance" means an encumbrance approved in writing by Lessor and the Secretary in accordance with the terms and conditions of this Lease.

(B) ~~"Conditional Use Permit" means the document by which a Class A Member of the Homeowner's Association, as this term is defined in the Covenants, Conditions and Restrictions which are a part of this Lease, obtains an entitlement to a conditional and restricted use of a Lot within the project.~~ "Class A Members" means Class A members of the Homeowners Association who, except for the Lessee, will be restricted to current or retired employees of the Indian Health Service of the U.S. Department of Health and Human Services ("IHS") (or any future successor in interest to IHS) or their spouses and/or heirs, or to similar individuals with similar other professional, administrative or managerial skills beneficial to the Navajo Nation and who are either (a) Navajo Nation enrolled members, (b) enrolled members of another Federally recognized Tribe who are likely to remain on the Navajo Nation for an indefinite duration, or (c) non-Indians who are likely to remain on the Navajo Nation for an indefinite duration and who provide,

or have provided, services beneficial to the Navajo Nation as defined in the Declarations of Covenants, Conditions and Restrictions that will be recorded after this Lease is recorded, and which will govern Homesite Leases for the duration of the lease.

~~(C)~~ “Conditional Use Permittee” means a Class A Member of the Homeowner’s Association, as this term is defined in the Covenants, Conditions and Restrictions which are a part of this Lease, who has obtained an entitlement to a conditional and restricted use of a Lot within the project.

~~(D)~~ “Encumbrancer” means the owner and holder of an Approved Encumbrance, including all successors and assigns.

~~(E)~~ “Hazardous Substance” means any “hazardous substance” as defined under the provisions of section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601(14), including all amendments or successors thereto, and “petroleum” as defined under the provisions of section 9001(8) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6991(8). in the Navajo Nation Comprehensive Environmental Response, compensation and Liability Act (“NNCERCLA”), 4 N.N.C. § 2104Q, including all amendments or successors thereto.

~~(F)~~ “Leased Premises” has the meaning given that term in Section 2.

~~(G)~~ “Lessee” means Chinle Hospital Housing, LLC.

~~(H)~~ “Lessor” means the Navajo Nation.

~~(I)~~ “Lot” means a part of the Lease assigned for the use of, or potentially available to, a for Homesite leases for Class A Members of the Homeowner’s Association, as this term is defined in the Covenants, Conditions and Restrictions which are a part of this Lease.

~~(J)~~ “Project” has the meaning given that term in Section 3(A).

~~(K)~~ “Secretary” means the Secretary of the United States Department of the Interior or his duly authorized representative or successor.

2. LEASED PREMISES.

For and in consideration of the rents, covenants, agreements, terms and conditions contained herein, Lessor hereby leases to Lessee all that tract or parcel of land situated within the Chinle Chapter of the Navajo Nation, (County of Apache, State of Arizona), within Sections 24 and 25, Township 32 North, Range 25 East, Gila and Salt River Meridian (south half of Section 12 and the north half of Section 13, Township 5 North, Range 11 West, Navajo Special Meridian), containing approximately 15.5459 acres, more or less.

The legal description of the leased premises (hereinafter called the "Leased Premises"), a plat of which is attached to this Lease as Exhibit “A” and incorporated herein, is as follows:

A certain tract of land designated Parcel "A2", situate within Land Management District No. 10 of the Navajo Indian Reservation at Chinle, Apache County, Arizona, being more particularly described as follows:

Beginning at a point, whence a brass cap monument "Chinle-5", a Navajo Reservation control point with the NAD 83 Arizona East Zone Coordinates of N=1,873,251.82, E=667,586.54 bears S 28°59'12" E a distance of 5,914.67 feet, said point of beginning a set #4 rebar with tag marked AZ PS #22278, being the northeast corner of the tract herein described;

Thence, S 23°47'08" W, a distance of 45.07 feet to a found rebar with cap NMPS #11463, a point on the easterly boundary of tract herein described;

Thence, S 23°47'08" W, a distance of 886.46 feet to a found PK Nail NMPS #11463 a point on the easterly boundary of the tract herein described;

Thence, S 23°47'08" W, a distance of 131.50 feet to a set #4 rebar with tag marked AZ PS #22278, the southwest corner of the tract herein described;

Thence, N 72°08'46" W, a distance of 435.19 feet to a set #4 rebar with tag marked AZ PS #22278, the southwest corner of the tract herein described;

Thence, N 16°34'21" E, a distance of 1,670.23 feet to a set #4 rebar with tag marked AZ PS #22278, the northwest corner of the tract herein described;

Thence, S 39°14'58" E, a distance of 30.04 feet to a found PK Nail, a point on the northerly boundary of the tract herein described;

Thence, S 39°14'58" E, a distance of 383.78 feet to a set #4 rebar with tag marked AZ PS #22278, an angle point on the northerly boundary of the tract herein described;

Thence, S 42°43'24" W, a distance of 256.93 feet to a set #4 rebar with tag marked AZ PS #22278, to a point of curvature;

Thence, along the arc of a curve to left a distance of 79.39 feet, said curve having a radius of 268.00 feet, a central angle of 16°58'22", and a chord which bears S 34°14'13" W, a distance of 79.10 feet to a point of compound curve;

Thence, along the arc of a curve to left a distance of 47.32 feet, said curve having a radius of 30.00 feet, a central angle of 90°22'11", and a chord which bears S 19°26'04" E, a distance of 42.56 feet to a point of tangency;

Thence, S 64°37'09" E, a distance of 342.46 feet to the point of beginning;

Containing 677,178 square feet, 15.5459 acres more or less.

There is hereby reserved and excepted from the Leased Premises rights-of-way for utilities constructed by or on authority of Lessor, provided that such rights-of-way do not unreasonably interfere with Lessee's use of the Leased Premises.

3. USE OF PREMISES.

(A) Lessee shall develop, use and operate the leased premises to provide a residential development and ancillary facilities for health care employees. It is explicitly recognized by the Lessor and the Lessee that the purpose of this Lease is not economic gain, but that it is entered into to provide housing opportunities for employees of the Chinle Indian Health Service Hospital, and, by such inducement to improve the quality of health care in the central part of the Navajo Nation, ~~and providers of other professional, administrative and managerial service providers, both Indian and non-Indian, who will be residing on the Navajo Nation for an indefinite duration and whose services are beneficial to the Navajo Nation.~~ It is explicitly recognized by the Lessor that the Lessee is a Limited Liability Company formed under the laws of Arizona and registered as a foreign corporation in the Navajo Nation, ~~and that the Lessee's interest in this Lease will be managed for the benefit of the Class A Members of the Homeowner's Association who will reside on the leased premises.~~

~~(B) The Class A Members of the Homeowner's Association may have a Conditional Use Permit for a portion of the Lease, designated as a "Lot," as it may be assigned to them by the Homeowner's Association under the express language of the Conditions, Covenants and Restrictions. Only Class A Members of the Homeowner's Association may obtain a Conditional Use Permit.~~

~~(C) Class A Membership in the Homeowner's Association who are eligible for a Conditional Use Permit shall be limited, under the terms of this Lease, to 1) current or retired employees of the Indian Health Service, 2) the Indian Health Service itself, 3) Chinle Hospital Housing, LLC (Lessee), 4) the Tribally Designated Housing Entity ("TDHE") for the Navajo Nation as recognized by the U.S. Department of Housing and Urban Development. Any purported transfer of a Conditional Use Permit under this Lease, other than a temporary transfer of an equitable interest as a part of foreclosure, to anyone other than a Member or Members of the groups listed above, shall be void and have no effect.~~

~~(D) The leased premises shall not be used by Lessee, Conditional Use Permittee(s) or Assignee(s), for any purpose or purposes other than those set out above, except with the prior written consent of the Lessor. Consent may be withheld, or granted upon condition, in the sole discretion of the Lessor.~~

(E) Lessee agrees that it will not use or cause to be used any part of the leased premises for any unlawful conduct or purpose.

4. TERM.

The term of this Lease shall be sixty-five (65) years commencing upon the later of execution of ~~the amendment of this~~ Amended Lease by the Lessor and the Lessee, and the written approval of this ~~amendment to the~~ Amended Lease by the Secretary.

5. RENTAL AND PERFORMANCE BOND.

(A) It is explicitly recognized by the Lessor and Lessee that the purpose of this Lease is not economic gain, but that it is entered into to provide ~~housing opportunities~~ Homesite Leases for employees of the Chinle Indian Health Service Hospital ~~and other professional, administrative and managerial service providers~~, and by such inducement to improve the quality of health care, ~~professional, administrative and managerial services~~ in the central part of the Navajo Nation. ~~The purpose of this lease is to assist the I.H.S. (and any successors to the I.H.S. in Chinle) and other professional organizations in their efforts to recruit high level medical, professional, and managerial service providers to relocate and remain in this area. Past efforts in such recruiting have failed because an opportunity to obtain quality housing, and build equity through home ownership, is generally lacking. The purpose of this lease is to provide housing opportunities for this group similar to those which they would have outside of Indian Country and thereby encourage them to move to and remain on the Navajo Nation.~~ It is explicitly recognized by the Lessor that the Lessee is a Limited Liability Company formed under the laws of Arizona and registered as a foreign corporation in the Navajo Nation, and that the Lessee's interest in this Lease will be managed for the benefit of the Class A Members of the Homeowner's Association who will reside on the leased premises.

(B) With the recognition by all parties that the Project is a housing and community development project of benefit to the community and the Navajo Nation, it has been determined pursuant to 25 CFR ~~162.604(b)(3) (2005)~~ 162.301(a)(2) (2012) ~~that this Lease is for a public purpose (see 5(A) above)~~ that it is in the best interest of the parties to enter into this Lease for a zero (0) rental value ~~as allowed under 25 CFR 162.320(a)(1) (2012)~~ and, in the absence of a rent requirement, waive any requirement for a rental performance bond.

~~(C) The Lessee may assign, encumber, issue a Conditional Use Permit or otherwise transfer any right to, or interest in, this Lease or any interest in any improvements located or to be located upon the leased premises, without the prior approval of the Lessor or the Secretary, provided, however, that any such Conditional Use Permit, assignment, encumbrance, or other transfer, will only be made in furtherance of the intent and purpose of this Lease and under the conditions of Section 12(B) of this Lease. Any Class A Member of the Homeowner's Association may secure acquisition financing from, and deliver to, any lender, a security interest in their purchased residence and their Conditional Use Permit obtained as a Class A Member of the Homeowner's Association, in the lot on which the residence is constructed, without the prior approval of the Lessor or the Secretary. In the event of foreclosure on a security interest and/or eviction applicable Navajo Nation and federal law will apply, or in the absence of applicable Navajo Nation or federal law the law of the State of Arizona, as applied by the Navajo Courts, will apply. Proceedings for foreclosure on a security interest and/or eviction will be brought only~~

in the Courts of the Navajo Nation and only within the Chinle Judicial District, which has *in rem* jurisdiction over the property.

~~(D) If, at any time during the term of this Lease, the Lessee determines, in good faith, that the proposed residential development upon the leased premises will not permit the Lessee to effectively market, or continue the effective marketing of, the dwelling units for the Class A Members of the Homeowner's Association, the Lessee may assign and transfer this Lease to the Indian Health Service of the U.S. Department of Health and Human Services ("IHS") provided that the IHS will assume and be bound by all of the Lessee's liability and obligations hereunder.~~

6. CONDITION OF LEASED PREMISES.

Lessee has examined and knows the Leased Premises and improvements thereon and accepts the same as-is. Except as expressly set forth in this Lease, no representations as to the condition of the Leased Premises have been made by Lessor, any agent of Lessor or the United States prior to or at the time of execution of this Lease. Lessee warrants that it has not relied on any warranty or representation made by or on behalf of Lessor or the United States, but solely upon Lessee's independent investigation, except for any warranties or representations expressly set forth in this Lease.

7. IMPROVEMENTS.

(A) Lessee may destroy any buildings or other improvements currently located on the Leased Premises in preparation for the Project. All buildings and other improvements constructed by Lessee or its Sublessees on the Leased Premises, excluding removable personal property and trade fixtures, shall remain on the Leased Premises after termination of this Lease.

(B) Lessee or its Sublessees shall remove all removable personal property and trade fixtures prior to termination of this Lease. Should Lessee or its Sublessees fail to remove said personal property and trade fixtures prior to termination of this Lease, said property shall thereupon become property of Lessor, and may be disposed of in any manner by Lessor.

(C) As used in this Section, the term "removable personal property" shall not include property which normally would be attached or affixed to buildings, other improvements or land in such a way that it would become a part of the realty, regardless of whether such property in fact is so attached or affixed.

(D) All Hazardous Substances, Hazardous Substance storage systems or conveyance facilities placed on or under the Leased Premises are the property of Lessee and shall remain the property of Lessee upon termination of this Lease. Within a reasonable time prior to termination of this Lease, Lessee shall remove any such substances or improvements, shall inspect the Leased Premises for contamination, shall remediate all contamination, if any, and shall address any third party damages occasioned by any contamination or otherwise by the use or storage of such substances or improvements on the Leased Premises. Should Lessee fail to complete such responsibilities prior to the termination of this Lease, Lessee shall remain responsible therefore, and shall be required to post a bond in an amount reasonably required to

ensure that such responsibilities are completed within a reasonable time after termination of this Lease.

8. CONSTRUCTION; MAINTENANCE; REPAIR; ALTERATION.

(A) All buildings and other improvements placed on the Leased Premises shall be constructed in a good and workmanlike manner in compliance with applicable laws and building codes. All parts of buildings or other improvements visible to the public or from adjacent premises shall present a pleasant appearance and all service areas shall be screened from public view.

(B) Lessee shall maintain the Leased Premises and all buildings and other improvements thereon and any alterations, additions or appurtenances thereto, in good order and repair and in a safe, sanitary and neat condition, and shall otherwise comply with all laws, ordinances and regulations applicable to the Leased Premises.

(C) Lessee shall have the right to make reasonable alterations, additions or repairs to buildings or other improvements on the Leased Premises, consistent with other provisions of this Lease.

9. CONSTRUCTION BONDS.

(A) Before beginning construction of each improvement, the contractor performing the work for the Lessee, at the option of the Lessee, may be required to provide security to guarantee completion of the improvements and payment in full of claims for all persons for work performed on, or materials furnished for, construction either directly or indirectly through a requirement in the construction contract. The Lessee or the contractor performing the work for the Lessee may provide said security as a term of the construction contract in any of the following forms:

1. By posting a surety bond in an amount equal to the cost of each improvement. Said bond shall be deposited as required by lending institutions with a copy to the Lessee and must remain in effect until the improvement is satisfactorily completed and full payment has been made on the claims of all persons for work performed on, or materials furnished for construction of, the improvement. Said bond shall be conditioned upon the faithful performance of the contractor performing the work for the Lessee and shall give all claimants the right to recover upon said bond in any suit brought for that purpose.
2. Or by such other method as may hereafter be mutually agreed upon between the Lessor and the Lessee.

(B) All surety bonds provided in compliance with this Lease shall be provided by companies certified by the U.S. Department of the Treasury as acceptable sureties on Federal bonds.

10. UTILITY SERVICE LINE AGREEMENTS.

(A) Lessee and all Class A Members of the Homeowner's Association are specifically authorized to enter into appropriate service line agreements with utility companies for the provision of utility services to the Leased Premises, including gas, water, sewer, electricity, telephone, television, cable, broadband, fiber optic and other utilities, without further consent by Lessor, on the condition that:

1. Such agreements are for the sole purpose of supplying utility services to the Leased Premises;
2. Such agreements authorize utility service lines only within the Leased Premises;
3. Such agreements do not extend beyond the term of this Lease;
4. Executed copies of such agreements, together with plats or diagrams showing with particularity the location, size and extent of such service lines, are filed by the utility companies with Lessor and with the Secretary within thirty (30) days of their execution; and,
5. Such agreements are otherwise in accordance with the provisions of 25 C.F.R. § 169.22, including any amendments or successors thereto.

(B) Nothing contained herein shall be construed to limit the right of Lessor to enter into service line agreements with utility companies for service lines across the Leased Premises, provided that such service lines do not unreasonably interfere with Lessee's use of the Leased Premises, nor otherwise to affect the rights-of-way reserved to Lessor in Section 2 of this Lease.

11. LIENS; TAXES AND ASSESSMENTS; UTILITY CHARGES.

(A) Lessee shall not permit any liens arising from any work performed, materials furnished, or other obligations incurred by Lessee or its Sublessees to be enforced against the Leased Premises, any interest therein or improvements thereon. Lessee or its Sublessees shall discharge all such liens before any action is brought to enforce same, by payment, bond or other legal method.

(B) Lessee or its Sublessees shall pay, before becoming delinquent, all taxes, assessments and other like charges levied upon or against the Leased Premises, any interest therein or improvements thereon, for which Lessee or its Sublessees are is liable. Upon request by Lessor or the Secretary, Lessee or its Sublessees shall furnish Lessor and the Secretary written evidence duly certified that any and all such taxes, assessments and other like charges required to be paid by Lessee or its Sublessees have been paid, satisfied or otherwise discharged. Lessee or its Sublessees shall have the right to contest any asserted tax, assessment or other like charge against the Leased Premises, any interest therein or improvements thereon, by posting bond to

prevent enforcement of any lien resulting therefrom. Lessee agrees to protect and hold harmless Lessor, the Secretary and the Leased Premises and all interests therein and improvements thereon from any and all such taxes, assessments and like charges and from any lien therefore, any sale or other proceedings to enforce payment thereof, and all costs in connection therewith. Upon request by Lessee, Lessor shall execute and deliver any appropriate documents with reference to real estate tax exemption of the Leased Premises, any interest therein or improvements thereon.

(C) Lessee or its Sublessees shall pay, before becoming delinquent, all charges for water, sewage, gas, electricity, telephone and other utility services supplied to the Leased Premises.

(D) Lessor shall have the right to pay any lien, tax, assessment or other charge payable by Lessee under this Lease, or to settle any action therefore, if, within a reasonable time after written notice thereof from Lessor or the Secretary, Lessee fails to pay or to post bond against enforcement thereof. All costs and other expenses incurred by Lessor in so doing shall be repaid by Lessee to Lessor on demand, together with interest at the legal rate from the date of payment or incursion thereof by Lessor until repayment is made by Lessee.

12. SUBLEASES AND ASSIGNMENTS; PARTIAL RELINQUISHMENTS.

(A) Except as otherwise provided in Sections (B) and (C) below, this Lease may not be assigned, Subleased or otherwise transferred or conveyed, in any manner whatsoever, in whole or in part, without the prior written consent of Lessor and the Secretary, and then only upon the condition that the assignee or other successor in interest shall agree in writing to be bound by each and every covenant, agreement, term and condition of this Lease. Any such attempted assignment, Sublease, transfer or conveyance without such prior written approval shall be void and of no effect. The consent of Lessor may be granted, granted upon conditions or withheld in the sole discretion of Lessor.

(B) Notwithstanding the provisions of subsection (A) of this Section, and subject to the provisions of subsection (D) of this Section, Lessee, but no successor in interest thereto, is hereby authorized to ~~issue Conditional Use Permits for~~ **sSublease** the Leased Premises, in whole or in part, without the prior written approval of the Lessor or the Secretary. ~~Conditional Use Permits~~ **Subleases** so made shall neither serve to relieve the Lessee from any liability under this Lease nor to diminish any supervisory authority of the Secretary provided for under this Lease or under applicable federal laws and regulations. During the term of any ~~Conditional Use Permit~~ **sSublease**, should the ~~Conditional Use Permittee~~ **sSublessee** succeed to the interests of Lessee hereunder, it is hereby agreed that no merger of interests shall occur thereby.

(C) Notwithstanding the provisions of subsection (A) of this Section, and subject to the provisions of subsection (D) of this Section, this Lease may be assigned, in whole or in part, by Lessee, but not by any successor in interest thereto, with the prior written approval of Lessor, but without further consent or approval of the Secretary; provided, that the assignee shall agree in writing to be bound by all the covenants, agreements, terms and conditions of this Lease, and no such assignment shall be valid unless and until the assignee shall so agree. Assignments so made shall not serve to relieve the Lessee from any liability under this Lease nor to diminish any

supervisory authority of the Secretary provided for under this Lease or under applicable federal laws and regulations; provided, that Lessee may be relieved from its liability under this Lease, in whole or in part, with the prior written approval of the Lessor and the Secretary.

(D) Lessee shall provide a copy of any Conditional Use Permit ~~S~~sublease, assignment or partial relinquishment to Lessor and to the Secretary within thirty (30) days of its execution. No Conditional Use Permit ~~S~~sublease or assignment authorized by this Section shall be valid unless and until it is duly recorded in accordance with the provisions of 25 C.F.R. Part 150, including any amendment or successor thereto, at the Land Titles and Records Office of the Bureau of Indian Affairs, Albuquerque, New Mexico, or any successor thereto.

(E) ~~Homesite Leases shall not be considered to be s~~Subleases and shall be issued by the Navajo Nation Land Department in accordance with the Homesite Lease Policy and Procedures approved by the appropriate Committee of the Navajo Nation Council.

13. QUIET ENJOYMENT.

Lessor hereby covenants and agrees that, upon performing each of its covenants, agreements, terms and conditions contained in this Lease, ~~that~~ Lessee shall peaceably and quietly have, hold and enjoy the Leased Premises without any hindrance, interruption, ejection or molestation by Lessor or by any other person or persons claiming from or under Lessor.

14. ENCUMBRANCES.

(A) Except as provided in (B) below, this Lease or any interest therein may not be encumbered without the prior written approval of Lessor and the Secretary, and no such encumbrance shall be valid or binding without such prior written approval. An encumbrance shall be confined to the leasehold interest of Lessee, and shall not jeopardize in any way Lessor's interest in the land. Lessee agrees to furnish any requested financial statements or analyses pertinent to the encumbrance that Lessor and the Secretary may deem necessary to justify the amount, purpose and terms of said encumbrance.

(B) ~~However, in furtherance of the purpose as stated in Section 3(B) of this Lease, without the prior approval of the Lessor, the Secretary or sureties, if any, a) the Lessee, acting on behalf of a Class A Member or Members of the Homeowner's Association, may permit the Member to encumber the residence located upon a lot and the Conditional Use Permit of the Class A Member(s) of the Homeowner's Association for that lot b) the Lessee may convey any completed residence, and the accompanying Conditional Use Permit, to any Class A Member of the Homeowner's Association, c) the Lessee may secure acquisition financing on behalf of any Native American Class A Member of the Homeowner's Association from, and deliver to, any lender, either a form of a security interest, or other instrument of encumbrance, upon their purchased residence and Conditional Use Permit for the lot where the residence is located, in a form acceptable to the U.S. Department of Housing and Urban Development under the Section 184 program, or any successor programs to the Section 184 program, and d) the Lessee may permit non-Indian Class A Members of the Homeowner's Association to secure acquisition financing utilizing a Collateral Assignment of their Conditional Use Permit in substantially the~~

~~same form as that attached to this lease as Exhibit "C."~~ In the event of default by Lessee of the terms of an Approved Encumbrance, Encumbrancer may exercise any rights provided in such an Approved Encumbrance, provided that prior to any sale of the leasehold, Encumbrancer shall give to Lessor and the Secretary notice of the same character and duration as is required to be given to Lessee by the terms of the Approved Encumbrance and by applicable law. In the event of such default, Lessor shall have the right, which may be exercised at any time prior to the sale, to pay to Encumbrancer any and all amounts secured by the Approved Encumbrance, plus unpaid interest accrued to the date of such payment, plus expenses of sale incurred to the date of such payment.

(C) In the event of default by ~~Permittee~~ a Sublessee and/or the holder(s) of a ~~Homesite Lease~~ of the terms of an Approved Encumbrance, Encumbrancer may exercise any rights provided in such Approved Encumbrance, provided that prior to any sale of ~~the residence and equitable use interest in the lot~~ sSublease or hHomesite Lease on which the residence is located under the terms of the Covenants, Conditions and Restrictions, the Encumbrancer shall give to the Lessee, the Association as defined in the Covenants, Conditions and Restrictions, the Indian Health Service, Lessor and the Secretary, notice of the same character and duration as is required to be given to Sublessee by the terms of such Approved Encumbrance and by applicable law. In the event of such default, Lessee, the Association as defined in the Covenants, Conditions and Restrictions, the Indian Health Service, Lessor and the Secretary, in that order, shall have the right, which may be exercised at any time prior to the completion of sale, to pay to Encumbrancer any and all amounts secured by the Approved Encumbrance, plus unpaid interest accrued to the date of such payment, plus expenses of sale incurred to the date of such payment.

(D) If the Lessee, the ~~Home Owners~~ Association as defined in the Covenants, Conditions and Restrictions, the Indian Health Service, Lessor and the Secretary, in that order, decline to exercise the above right and a sale of the residence under the Approved Encumbrance shall occur, the purchaser at such sale shall succeed to all of the right, title and interest of the ~~Permittee~~ Sublessee or hHomesite Lease holder in this Lease. It is further agreed that if the purchaser at such sale is Encumbrancer, Encumbrancer may sell and assign the ~~residence and Conditional Use Permit~~ hHomesite Lease to a either a Class A Member of the Homeowner's Association, or a person eligible to be a Class A Member of the Homeowner's Association, without any further approval by Lessor and the Secretary, provided that the assignee shall agree in writing to be bound by all the covenants, agreements, terms and conditions of this Lease, including the Covenants, Conditions and Restrictions, and no such assignment shall be valid unless and until the assignee shall so agree. If Encumbrancer is the purchaser, it shall be required to perform the obligations of this Lease only so long as it retains title thereto. If the purchaser is other than Encumbrancer, the purchaser shall agree in writing to be bound by all the covenants, agreements, terms and conditions of this Lease, ~~including the Covenants, Conditions and Restrictions attached hereto as Exhibit "B"~~ and no such purchase shall be valid unless and until purchaser shall so agree.

15. DEFAULT.

(A) Time is declared to be of the essence of this Lease. Should Lessee or any Sublessee be in violation of any other provision of this Lease, said violation may be acted upon

by the Secretary in accordance with the provisions of 25 C.F.R. Part 162, including any amendments or successors thereto.

(B) In addition to the rights and remedies provided by the aforementioned regulations, Lessor and the Secretary, either jointly or severally, may exercise the following options after giving notice of Lessee's default and a reasonable opportunity to cure the default, subject to the provisions of subsection (D) below:

1. Collect, by suit or otherwise, all monies as they become due hereunder, or enforce by suit or otherwise, Lessee's compliance with all provisions of this Lease; or
2. Re-enter the Leased Premises and remove all persons and property therefrom, and re-let the Leased Premises without terminating this Lease as the agent and for the account of Lessee, but without prejudice to the right to cause the termination of this Lease under applicable law thereafter, and without invalidating any right of Lessor or the Secretary or any obligations of Lessee hereunder. The terms and conditions of such re-letting shall be in the sole discretion of Lessor, who shall have the right to alter and repair the Leased Premises as it deems advisable and to re-let with or without any equipment or fixtures situated thereon. Rents from any such re-letting shall be applied first to the expense of re-letting, collection, altering and repairing, including reasonable attorney's fees and any reasonable real estate commission actually paid, insurance, taxes and assessments and thereafter toward payment to liquidate the total liability of Lessee. Lessee shall pay to Lessor monthly when due, any deficiency and Lessor or the Secretary may sue thereafter as each monthly deficiency shall arise; or
3. Take any other action authorized or allowed under applicable law.

(C) No waiver of a breach of any of the terms and conditions of this Lease shall be construed to be a waiver of any succeeding breach of the same or any other term or condition of this Lease. Exercise of any of the remedies herein shall not exclude recourse to any other remedies, by suit or otherwise, which may be exercised by Lessor or the Secretary, or any other rights or remedies now held or which may be held by Lessor in the future.

(D) Lessor, Lessee and the Secretary, as the case may be, shall give to an Encumbrancer a copy of each notice of default by Lessee, ~~or a Sublessee, or the holder(s) of a~~ Homesite Lease, at the same time as such notice of default shall be given to the Lessee or Sublessee. Lessor, Lessee and the Secretary, as the case may be, shall accept performance by an Encumbrancer of any of Lessee's or a Sublessee's obligations under this Lease, with the same force and effect as though performed by Lessee or Sublessee. An Encumbrancer shall have standing to pursue any appeals permitted by applicable federal or Navajo Nation law that Lessee, ~~Permittee or a Sublessee, or holder of a~~ Homesite Lease would be entitled to pursue. Neither Lessor nor the Secretary shall terminate this Lease, a ~~Conditional Use Permit~~ Sublease issued

under this Lease ~~or a Sublease~~ if an Encumbrancer has cured or is taking action diligently to cure Lessee's, ~~Permittee's or Sublessee's~~, ~~or the holder(s) of (a) a~~ ~~Homestead Lease(s)~~, default and has commenced and is pursuing diligently either a foreclosure action or an assignment in lieu of foreclosure.

16. SANITATION.

Lessee hereby agrees to comply with all applicable sanitation laws, regulations or other requirements of the United States and the Navajo Nation. Lessee agrees to dispose of all solid waste in compliance with applicable federal and Navajo Nation law. Lessee further agrees at all times to maintain the entire Leased Premises in a safe and sanitary condition.

17. HAZARDOUS SUBSTANCES.

Lessee shall not cause or permit any Hazardous Substance to be used, stored, generated or disposed of on or in the Leased Premises, other than Hazardous Substances that are typically used, stored, generated or disposed of by the occupants of facilities similar to the improvements on the Leased Premises, without the prior written approval of Lessor, which approval may be given, given upon conditions or denied in the sole discretion of Lessor. Without limitation of the foregoing, if Lessee causes or permits the presence of any Hazardous Substance on the Leased Premises and such results in contamination to the Leased Premises or any building or other improvement thereon, Lessee shall promptly take any and all actions necessary or appropriate to restore the Leased Premises or building or other improvement to the condition existing prior to the presence of any such Hazardous Substance on the Leased Premises. Lessee shall obtain written approval from Lessor prior to commencement of any such remedial action.

18. LIABILITY INSURANCE.

(A) At all times during the term of this Lease, except as provided in part (B) of this Section, Lessee shall carry a commercial general liability insurance policy in the amount of at least \$1,000,000 for personal injury to one (1) person and \$3,000,000 per occurrence, and \$500,000 for damage to property. Said policy shall be obtained from a reliable insurance company authorized to do business in the Navajo Nation and in the State of Arizona and shall be written to protect Lessee, Lessor and the United States and shall provide for notification to Lessor and the Secretary prior to any cancellation or non-renewal of said policy for any reason, including non-payment of premiums. Upon written request therefore, copies of said policy shall be furnished to Lessor and the Secretary.

(B) The Lessee shall be bound by all of the terms of this Section with respect to its development and marketing of residential housing upon the ~~Leased~~ ~~premises~~ for rental and ultimate ~~purchase~~ ~~Homestead Leasing~~ by eligible Class A Members of the Homeowner's Association. However, any such Class A Members of the Homeowner's Association who have completed the ~~purchase~~ ~~construction~~ of their residence shall be required to maintain such liability and personal property insurance coverage upon their purchased residence as they, in their discretion and with the approval of the Association, may ~~be deemed~~ necessary, or which may otherwise be required to be obtained by any lender providing acquisition financing to such Class

A Members of the Homeowner's Association.

(C) Lessor or the Secretary may require that the amount of the insurance policy required by subsection (A) of this Section be increased at any time, whenever either shall determine that such increase reasonably is necessary for the protection of Lessor or the United States.

(D) With the prior written approval of Lessor and the Secretary, the insurance obligation under this Section may be satisfied by a self-insurance program maintained by Lessee or by other means of alternative performance satisfactory to Lessor and the Secretary.

19. FIRE AND CASUALTY INSURANCE.

(A) At all times during the term of this Lease, Lessee shall carry Causes of Loss-Special Form property insurance covering not less than the full insurable value of all improvements on the Leased Premises **not subject to individual hHomesite lLeases**. Said policy shall be obtained from a reliable insurance company authorized to do business in the Navajo Nation and in the State of Arizona, and shall be written to protect Lessee, Lessor, the United States and an Encumbrancer, if any, and shall provide for notification to Lessor, the Secretary and any Encumbrancer prior to any material change, cancellation or non-renewal of said policy for any reason, including non-payment of premiums. Upon written request therefore, copies of said policy shall be furnished to Lessor and the Secretary.

(B) The Lessee shall be bound by all of the terms of this Section (A) above with respect to its development and marketing of residential housing upon the leased premises for rental and ultimate purchase by Class A Members of the Homeowner's Association. However, any such Class A Members of the Homeowner's Association who have ~~purchased their residence~~ **a hHomesite lLease** shall only be required to maintain such fire and casualty insurance coverage upon their purchased residence as is required to be obtained a) by any lender providing acquisition financing to such Class A Member of the Homeowner's Association and upon such terms and conditions as are required by any such lender, b) by the Lessee, in the absence of any lender, and upon such terms as are required by the Lessee.

(C) In the event of destruction of or damage to any improvement on the Leased Premises or upon any ~~Conditional Use Permit or Sublease~~ while an Approved Encumbrance remains in effect, the proceeds of property insurance equal to the amount of destruction or damage to the encumbered improvements (but not exceeding the remaining balance of the Approved Encumbrance) shall be paid to Encumbrancer on the condition that Encumbrancer agrees to promptly replace or repair the destroyed or damaged improvements to a condition as good **as** or better than before the destruction or damage occurred. If the amount paid to Encumbrancer is sufficient to repair the destroyed or damaged improvements, or, if within three (3) months after such payment by the insurer to Encumbrancer, Lessor or Lessee shall deposit with Encumbrancer sufficient additional funds, if any, required to completely replace or repair the destruction or damage, upon written order of Lessor, Lessee, or Sublessee, Encumbrancer shall pay the costs of such replacement or repair, and such payment shall not be deemed a payment or credit on the Approved Encumbrance. Otherwise, at the expiration of such three (3)

months said sum so paid by the insurer to Encumbrancer shall be applied and credited on the Approved Encumbrance.

(D) With the prior written approval of the Lessor and the Secretary, the insurance obligations under this Section may be satisfied by a self-insurance program maintained by Lessee or by other means of alternative performance satisfactory to Lessor and the Secretary.

20. INSPECTION.

The Lessor and the Secretary shall have the right, at any reasonable time during the term of this Lease, subject to the rights of ~~Permittees under their Conditional Use Permits~~ **Sublessees**, to enter upon the Leased Premises, or any part thereof, to inspect the Leased Premises and any buildings and other improvements erected or placed thereon.

21. MINERALS.

All minerals, including sand and gravel, contained in or on the Leased Premises are reserved for the use of Lessor. Lessor also reserves the right to enter upon the Leased Premises and search for and remove minerals located thereon, paying just compensation for any damage or injury caused to Lessee's personal property or improvements constructed by Lessee, so long as Lessor uses reasonable efforts to minimize any interference with the activities of Lessee and the subtenants of the Leased Premises.

22. EMINENT DOMAIN.

If the Leased Premises or any part thereof is taken under the laws of eminent domain at any time during the term of this Lease, Lessee's or Sublessee's interest in the Leased Premises or the part of the Leased Premises taken shall thereupon cease. Compensation awarded for the taking of the Leased Premises or any part thereof, including any improvements located thereon, shall be awarded to Lessor, Lessee, and Sublessee as their respective interests may appear at the time of such taking, provided that Lessee's right to such awards shall be subject to the rights of an Encumbrancer under an Approved Encumbrance. Lessor and Lessee shall then enter into a lease for the new premises on the same terms as this Lease, except that the term of the replacement lease shall be the number of years remaining on this Lease at the time of relocation.

23. DELIVERY OF PREMISES.

At the termination of this Lease, Lessee shall peaceably and without legal process deliver up the possession of the Leased Premises in good condition, usual wear and tear excepted. Upon the written request of the Lessor, Lessee shall provide to the Lessor, at Lessee's sole cost and expense, an environmental audit assessment of the Leased Premises at least sixty (60) days prior to delivery of the Leased Premises.

24. HOLDING OVER.

Holding over by Lessee after termination of this Lease shall not constitute a renewal or extension thereof or give Lessee any rights hereunder or in or to the Leased Premises or to any improvements located thereon.

25. INDEMNIFICATION.

Lessee shall indemnify and hold harmless the Lessor and the Secretary and their authorized agents, employees, land users and occupants, against any liability for loss of life, personal injury and property damages arising from the construction on, maintenance, occupancy or use of the Leased Premises by Lessee, except to the extent that the loss or damage is caused or contributed to by the indemnified party.

26. ATTORNEY'S FEES.

In any suit or action arising under or related to this Lease each party shall bear its own costs and **attorney's** fees incurred in such an action and no claim for such costs and attorney fees may be made by either party.

27. AGREEMENT TO ABIDE BY NAVAJO NATION AND FEDERAL LAWS.

In all activities conducted by Lessee, ~~and Conditional Use Permittees~~ **Sublessees, and holders of hHome-site lLeases** within the Navajo Nation, Lessee, ~~and Conditional Use Permittees~~ **Sublessees, and holders of hHomesite leases,** shall abide by all laws and regulations of the Navajo Nation and of the United States, now in force and effect or as hereafter may come into force and effect.

28. GOVERNING LAW AND CHOICE OF FORUM.

Except as prohibited by applicable federal law, the law of the Navajo Nation shall govern the construction, performance and enforcement of this Lease. Any action or proceeding brought by Lessee, ~~or Conditional Use Permittees~~ **Sublessees, or hHomesite Lease holders,** against the Navajo Nation in connection with or arising out of the terms and conditions of this Lease shall be brought only in the courts of the Navajo Nation, and no such action or proceeding shall be brought by Lessee, ~~or Conditional Use Permittees~~ **Sublessees, or hHomesite Lease holders,** against the Navajo Nation in any court or administrative body of any State.

29. CONSENT TO JURISDICTION.

Lessee hereby consents to the legislative, executive and judicial jurisdiction of the Navajo Nation in connection with all activities conducted by the Lessee within the Navajo Nation.

30. COVENANT NOT TO CONTEST JURISDICTION.

Lessee hereby covenants and agrees never to contest or challenge the legislative, executive or judicial jurisdiction of the Navajo Nation on the basis that such jurisdiction is inconsistent with the status of the Navajo Nation as an Indian nation, or that the Navajo Nation government is not a government of general jurisdiction, or that the Navajo Nation government does not possess full police power (i.e., the power to legislate and regulate for the general health and welfare) over all lands, persons and activities within its territorial boundaries, or on any other basis not generally applicable to a similar challenge to the jurisdiction of a state government. Nothing in this Section shall be construed to negate or impair federal responsibilities with respect to the Leased Premises or to the Navajo Nation.

31. NO WAIVER OF SOVEREIGN IMMUNITY.

Nothing in this Lease shall be interpreted as constituting a waiver, express or implied, of the sovereign immunity of the Navajo Nation.

32. TERMINATION OF FEDERAL SUPERVISION.

Nothing 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, or otherwise, during the term of this Lease, however, such termination shall not serve to abrogate this Lease. Lessor, Lessee and an Encumbrancer, if any, shall be notified of any such change in the status of the Leased Premises.

33. INTEREST OF MEMBER OF CONGRESS.

No member of or delegate to Congress or any Resident Commissioner shall be admitted to any share or part of this Lease or to any benefit that may arise herefrom, but this provision shall not be construed to extend to this Lease if made with a corporation or company for its general benefit.

34. OBLIGATIONS TO THE UNITED STATES.

It is understood and agreed that while the Leased Premises are in trust or restricted status, all of Lessee's obligations under this Lease are to the United States as well as to Lessor.

35. NOTICES AND DEMANDS.

(A) Any notices, demands, requests or other communications to or upon either party or the Secretary provided for in this Lease, or given or made in connection with this Lease, (hereinafter referred to as "notices,") shall be in writing and shall be addressed as follows:

To or upon the Lessor:	President
	The Navajo Nation
	Post Office Box 9000
	Window Rock, Navajo Nation (Arizona) 86515

Telefax: 1-928-871-7381

To or upon the Lessee: Manager
Chinle Hospital Housing, LLC
Post Office Box 2060
Chinle, Navajo Nation (Arizona) 86503

Telefax: 1-928-674-3417

Copies to: To or upon the Secretary:
Regional Director
Navajo Region
Bureau of Indian Affairs
United States Department of the Interior
301 West Hill Street
P.O. Box 1060
Gallup, New Mexico 87305
Telefax: —1-505-863-8324

(B) All notices shall be given by personal delivery, by registered or certified mail, postage prepaid, or by facsimile transmission. Notices shall be effective and shall be deemed delivered: if by personal delivery, on the date of delivery if during normal business hours, or if not during normal business hours on the next business day following delivery; if by registered or certified mail, by facsimile transmission or by telegram, on the next business day following actual delivery and receipt.

(C) Copies of all notices shall be sent to the Secretary.

(D) Lessor, Lessee and the Secretary may at any time change its address for purposes of this Section by notice.

36. SUCCESSORS AND ASSIGNS.

The terms and conditions contained herein shall extend to and be binding upon the successors, heirs, assigns, executors, administrators, employees and agents, including all contractors and subcontractors, of Lessee. Except as the context otherwise requires, the term "Lessee," as used in this Lease, shall be deemed to include all such successors, heirs, executors, assigns, employees and agents.

37. EFFECTIVE DATE; VALIDITY.

This Lease shall take effect on the date it is approved by the Secretary. This Lease, and any modification of or amendment to this Lease, shall not be valid or binding upon either party until it is approved by the Secretary.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed as of the date first above written.

LESSOR: THE NAVAJO NATION

By: _____ Date _____

_____, President

LESSEE: CHINLE HOSPITAL HOUSING, LLC
By: DCI Housing, LLC, its Managing Member

By: _____ Date _____

Jon D. Colvin, On behalf of
DCI Housing, LLC, Manager of
Chinle Hospital Housing, LLC

APPROVED pursuant to Secretarial
Redelegation 209 DM 8, Secretarial Redelegation
Order Nos. 3150 and 3188, and 10 BIAM
Bulletin 13, as amended.

Date: _____

By: _____

Regional Director
Navajo Region
Bureau of Indian Affairs
U.S. Department of the Interior

Exhibit “A”

Chinle Hospital Housing, LLC Lease

LEASE MAP