

**RESOLUTION OF THE  
RESOURCES AND DEVELOPMENT COMMITTEE  
Of the 23rd Navajo Nation Council---First Year 2015**

**AN ACTION  
RELATING TO RESOURCES AND DEVELOPMENT; REQUESTING THE BUREAU OF  
INDIAN AFFAIRS (BIA) NAVAJO REGION TO RE-LET LEASE NUMBER TC-SL-  
03-318, HOUSING PROJECT MASTER LEASE.**

**BE IT ENACTED:**

**Section One. Findings**

- A. The Resources and Development Committee (RDC) is a Navajo Nation Council standing committee and shall grant final approval for non-mineral leases, subleases, modifications, assignments, leasehold encumbrances, transfers, renewals and terminations. 2 N.N.C. §§500(A), 501 (B)(2)(a)(2012) *see also* CO-45-12.
- B. On June 20, 2002, the Navajo Nation Land Board approved Jimmy Monroe's Consent to use Navajo Tribal Lands for the construction of Tolchii'Kooh, Inc.'s teacher/staff housing units. 5-0572.
- C. On June 20, 2002, the Navajo Nation Land Board approved Harold Thomas' Consent to use Navajo Tribal Lands for the construction of the Tolchii'Kooh, Inc.'s teacher/staff housing units. 5-1070.
- D. On September 25, 2002, the Resources Committee approved the above land withdrawals of 9.523 acres and granted a Lease to Tolchii'Kooh, Inc. for the construction of employee housing. RCS-146-02.
- E. On January 10, 2003, the BIA Navajo Regional Director approved the lease between the Navajo Nation and Tolchii'Kooh, Inc. TC-SL-03-318.
- F. On May 12, 2000, the Navajo Nation Housing Authority (NHA) and Tolchii'Kooh Charter School, Inc. entered into a

Subgrantee Agreement for the teacher/staff housing planning phase.

- G. On July 9, 2002, NHA and the Tolchii'Kooh Charter School, Inc. entered into a second Subgrantee Agreement this time to complete rental housing units for teacher/staff housing.
- H. Since the completion of the teacher/staff housing rental units, Tolchii'Kooh, Inc., abandoned the housing units and the leased area, as such defaulting on the BIA lease. *Id.*, at §14 (B)(2)(2003).
- I. The Tolchii'Kooh, Inc. housing units are unoccupied and vandalized.
- J. On March 22, 2010, Arizona administratively dissolved Tolchii'Kooh, Inc. <http://images.azcc.gov/>.
- K. The Navajo Nation Housing Authority resolution states NHA is willing to acquire the BIA lease and manage the rental units. EXHIBIT A.
- L. A legal notice was placed in the Flagstaff Sun concerning the attempt to contact the statutory agent for Tolchii'Kooh, Inc., This notice is attached as EXHIBIT B. The law firm of Mangum, Wall, Stoops & Warden, P.L.L.C. contacted by Office of Legislative Counsel states that "the corporation is defunct and the Arizona Corporation Commission administratively dissolved as of March 22, 2010."
- M. Re-letting the BIA Lease to NHA is in the Navajo Nation's best interest.

## **Section Two. Approval**

- A. The Navajo Nation authorizes the lease in accordance with section 14(B)(2) of Lease No. TC-SL-03-318.
- B. The Navajo Nation requests the BIA to approve BIA Leases between the Navajo Nation and Tolchii'Kooh, Inc., to Navajo Housing Authority (NHA) in accordance with Lease No. TC-SL-03-318 §14(B)(2)(2003) if feasible; otherwise, be done

accordingly to currently terms and conditions for issuing a lease.

- C. The Navajo Nation requests NHA's staff establish the necessary documents to accomplish the purpose of this legislation.

**CERTIFICATION**

I, hereby, certify that the foregoing resolution was duly considered by the Resources and Development Committee of the 23<sup>rd</sup> Navajo Nation Council at a duly called meeting at Navajo Nation Council Chambers, Window Rock, Navajo Nation (Arizona), at which quorum was present and that same was passed by a vote of 5 in favor, 0 opposed, 0 abstained this 11th day of August, 2015.

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

Alton Joe Shepherd, Chairperson  
Resources and Development Committee  
Of the 23<sup>rd</sup> Navajo Nation Council

Motion: Honorable Davis Filfred  
Second: Honorable Leonard Pete  
Vote: 5-0 (Chairman Not Voting)

# NHA Hooghan—Center of Family Growth, Strength and Beauty NAVAJO HOUSING AUTHORITY

May 4, 2015

EXHIBIT A

Honorable Delegate Walter Phelps  
P.O. Box 3390  
Window Rock, Arizona 86515

RE: Tolani Lake 36 Units

Honorable Delegate Phelps:

This letter confirms the Navajo Housing Authority ("NHA") support withdrawing the 9 (+) acre tract with the 36 dome units from the former Sub-recipient Tolchii'kooh, Inc. and reassigning the land lease for the 9 (+) acre tract and attachments back to the NHA.

It is NHA's understanding that the Tolani Lake Chapter community and officials are in agreement to the reassignment back to NHA. The decision by the community and officials of the Tolani Lake Chapter was based on limited Chapter staff, no other external organization to operate and maintain the property, lack of in depth knowledge of NAHASDA rules and regulations and no operating funds from the Navajo Nation Government, to name a few.

Once the NHA receives the land lease, the 36 dome units will be turned over to the Dilkon NHA Housing Management Office. Under the auspices of the Dilkon NHA, the 36 dome units will be modernized and refurbished, and low income families will occupy the units.

Any sponsorship that the Navajo Nation Council can do to expedite the reassignment process will help our Navajo families in attaining housing and put a halt to any further deterioration. Thank you.

Sincerely,

NAVAJO HOUSING AUTHORITY



Aneva J. Yazzie  
Chief Executive Officer

cc: Velma Huskey, Tolani Lake Chapter President  
Mike Halona, Navajo Land Department  
Nellie Gilmore, Grants Manager, Navajo Housing Authority  
Marlene Lynch, Chief Financial Officer, Navajo Housing Authority



## MEMORANDUM

TO: Honorable Walter Phelps  
Cameron, Coalmine Canyon, Birdsprings, Leupp, Tolani Lake Chapters

FROM: Mariana Kahn  
Mariana Kahn, Attorney  
Office of Legislative Counsel

DATE: June 23, 2014

SUBJECT: OLC Request No. 14-355-1 "Transfer over from non-profit back to Tolani Lake Chapter"

This request to "Transfer over from non-profit back to Tolani Lake Chapter" should be presented to the Navajo Nation Department of Justice for review before a proposed resolution is drafted. Questions for legal review:

1. Pursuant to RCS-146-02, 9.523 acres was withdrawn "and grant of a Lease... for the Tolchii' Koooh, Inc. to construct needed housing" was approved. RDS-146-02 states "that the lands being withdrawn shall remain withdrawn for so long as the premises are used for the purposes set forth." You have presented the request: "The Tolani Lake Chapter would like to make the 36 housing unit available to its community members either through Chapter management of the units or through Navajo Housing Authority; however, the Chapter would like to be re-assigned the BIA Master Lease first prior to entering into any management agreements." Does the chapter's request change the purpose of the withdrawal?
2. Is the "re-assignment" within the chapter's authorities?
3. If so, a lease evidencing the agreement between the Navajo Nation and the chapter should be attached to the resolution.

I am returning the documents submitted with your request so that they may be reviewed by the Department of Justice. When the review is complete please return the documents to the Office of Legislative Counsel for drafting of the proposed resolution.



**THE  
NAVAJO  
NATION**

P. O. BOX 9000

• WINDOW ROCK, ARIZONA 86515

• (520) 871-6000

KELSEY A. BEGAYE  
PRESIDENT

TAYLOR MCKENZIE, M.D.  
VICE PRESIDENT

**OCT 14 2002**

Ms. Elouise Chicharello, Regional Director  
Bureau of Indian Affairs  
Navajo Region  
Post Office Box 1060  
Gallup, New Mexico 87301

Land Withdrawal & Lease

Dear Ms. Chicharello:

On September 25, 2002 the Resources Committee of the Navajo Nation Council approved a Land Withdrawal & Lease to Tolchii' Kooh, Inc.:

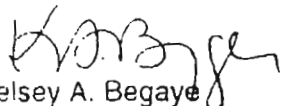
Resolution Number RCS-146-02; "Approving the Withdrawal of 9.523 Acres, More or Less, of Navajo Nation Trust Lands and Lease for Tolchii' Kooh, Inc. To Construct, Operate and Maintain Housing Units Adjacent to the School in Tolani Lake, Coconino County, Arizona."

Approval of this Land Withdrawal & Leasing is given subject to the terms and conditions stipulated in the resolution approved by the Resources Committee and exhibits attached to such resolution.

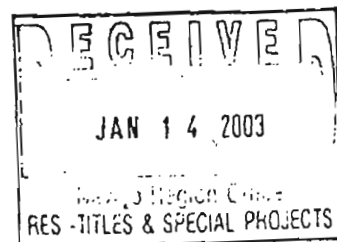
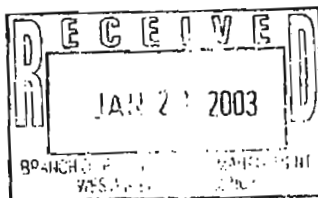
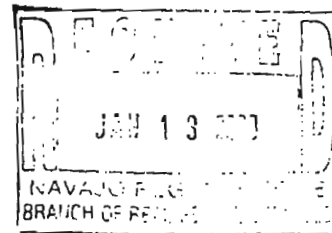
Your prompt approval of this Land Withdrawal and Leasing is greatly appreciated.

Sincerely,

THE NAVAJO NATION

  
Kelsey A. Begaye  
President

ENCLOSURES



RESOLUTION  
OF THE RESOURCES COMMITTEE  
OF THE NAVAJO NATION COUNCIL

Approving the Withdrawal of 9.523 Acres, More or Less, of Navajo Nation Trust Lands and Lease for Tolchii' Kooh, Inc. to Construct, Operate and Maintain Housing Units Adjacent to the School in Tolani Lake, Coconino County, Arizona

WHEREAS:

1. Pursuant to 2 N.N.C. § 695 (B) (2), the Resources Committee of the Navajo Nation Council is authorized to give final approval of non-mineral leases, subleases or assignments of Navajo lands; and

2. The Tolchii' Kooh, Inc., a non-profit corporation, HC-61, Box 300, Winslow, Arizona 86047, submitted a lease for 9.523 acres to establish, operate and maintain housing. A copy of said lease is attached hereto as Exhibit "A"; and

3. The proposed 9.523-acre housing site is located in an unplatted portion of Land Management District No. 5 of the Navajo Indian Reservation. The location is more particularly described on the map attached hereto as Exhibit "B", which includes a detailed legal description; and

4. Tolchii' Kooh Charter School, Inc. has entered into a Subgrantee Agreement with the Navajo Housing Authority for the implementation of the Navajo Nation NAHASDA Block Grant. See Exhibits "D-1" and "D-2"; and

5. The Project Review Section with the Navajo Land Department has obtained the consent of the affected land users (i.e. grazing permittees), which are attached hereto as Exhibit "C"; and

6. All environmental and archaeological surveys and studies have been completed and have received appropriate clearance. These documents are attached hereto and made a part hereof by this reference.

NOW THEREFORE BE IT RESOLVED THAT:

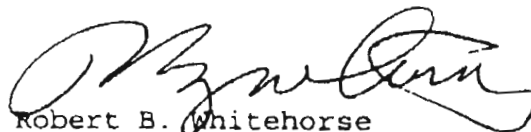
1. The Resources Committee of the Navajo Nation Council hereby approves the withdrawal of 9.523 acres, more or less, of Navajo Nation Trust lands and grant of a Lease, attached hereto as Exhibit "A", for the Tolchii' Kooh, Inc. to construct needed housing. The housing site is more particularly described on the survey plat marked Exhibit "B", attached hereto and made a part hereof.

2. The Resources Committee of the Navajo Nation Council hereby stipulates that the lands being withdrawn shall remain withdrawn for so long as the premises are used for the purposes set forth.

3. The Resources Committee of the Navajo Nation Council hereby authorizes the President of the Navajo Nation to execute any and all documents necessary to effect the intent and purpose of this resolution.

#### CERTIFICATION

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 25<sup>th</sup> day of September, 2002.



Robert B. Whitehorse  
Vice Chairperson  
Resources Committee

Motion: Henry B. Hudson  
Second: Robert B. Whitehorse





October 21, 2014

Council Delegate Walter Phelps  
Coalmine, Cameron, Leupp, Tolani Lake, Bird Springs Chapters  
P.O. Box 3390  
Window Rock, Arizona 86515

Dear Mr. Phelps:

This letter is a response to your concern regarding the housing located at Tolani Lake community. Our office contacted the Bureau of Indian Affairs Real Estate Services and received the following information. There is a lease issue to Tolchii Kooh, Inc., for school housing tract comprised of 9.523 acres. Enclosed is a map on the tract of land.

The Navajo Housing Authority (NHA) may have funded the housing project. For more information, the contact person from NHA is Ted Jensen at (928) 729-6307/6338.

If you have any questions, you can call me at (928) 283-3013 or Dawn Cody at BIA Real Estate Services at (505) 863-8312

Sincerely,

A handwritten signature in black ink, appearing to read "Genevieve Keetso-Bighorse".

Genevieve Keetso-Bighorse  
Economic Development Specialist

FORM NO. \_\_\_\_\_

LEASE NO. TC-SL-03-318

**THE NAVAJO NATION  
and  
Tolchii' Kooh, Inc.**

**HOUSING PROJECT MASTER LEASE  
(Trust or Restricted Land Only)**

**THIS LEASE** is made and entered into this 10th day of Jan. 2003, by and between THE NAVAJO NATION, hereinafter called the "Lessor," whose address is P.O. Box 9000, Window Rock, Navajo Nation (Arizona) 86515, and the Tolchii' Kooh, Inc., a non-profit corporation formed under the laws of the Navajo Nation, hereinafter called the "Lessee," whose address is HC-61, Box 300 Winslow, Arizona 86047, in accordance with the provisions of 2 N.N.C. § 695(B)(4) and 25 U.S.C. § 415, as implemented by the regulations contained in 25 CFR 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) "Encumbrancer" means the owner and holder of an Approved Encumbrance, including all successors and assigns.
- (C) "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).
- (D) "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 Tolani Lake Chapter of the Navajo Nation, Tolchii Kooh, Inc. School Tract, more particularly described in Exhibit "A," attached hereto and by this reference made a part hereof, containing approximately 9.523 acres, more or less, together with the right of reasonable ingress and egress, subject to any prior, valid, existing rights-of-way, hereinafter called the "Leased Premises." 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; GENERAL PLAN.**

- (A) Lessee shall develop, use and occupy the Leased Premises for the purpose of constructing and operating a Housing Project and its appurtenances, including constructing and operating appropriate related residential and public facilities such as roads, utilities, playgrounds, and other like facilities, consistent with a General Plan developed.
- (B) Lessee agrees not to use or permit to be used any part of the Leased Premises for any unlawful conduct or purpose.

## **4. TERM.**

The term of this Lease shall be fifty,(50) years, beginning on the date this Lease is approved by the Secretary.

## **5. RENTAL.**

In consideration of the foregoing and the covenants, agreements, terms and conditions of this Lease. Lessee hereby covenants and agrees to pay Lessor, in lawful money of the United States, an annual rental of: none. In accordance with the provisions of 25 C. F. R. §162. 5(b)(2), only nominal rental is provided for herein because this Lease is for a public purpose to an agency of local government, is for the purpose of subsidization or the benefit of the Navajo Nation, and/or is for providing houses to Tribal members or essential personnel of the Tolchii Kooh, Inc. Tolchii Kooh, Inc. is a sub-grantee of the Navajo Housing Authority, the Tribally Designated Housing Entity, for the purpose of meeting the housing needs of the Navajo Nation.

## **6. CONDITION OF LEASED PREMISES.**

Lessee has examined and knows the Leased Premises and improvements thereon and accepts the same AS-IS. 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.

## **7. IMPROVEMENTS.**

- (A) All buildings and other improvements on the Leased Premises, excluding removable personal property and trade fixtures, shall remain on the Leased Premises after termination of this Lease. At its option, Lessor may require Lessee to remove said buildings and other improvements and to restore the Leased Premises to its original state upon termination of this Lease.
- (B) Lessee shall remove all removable personal property and trade fixtures prior to termination of this Lease. Should Lessee 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 assess 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, deletions or appurtenances thereto, in good order and repair and in a safe, sanitary and neat condition.
- (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. UTILITY SERVICE LINE AGREEMENTS.**

- (A) Lessee specifically is 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 and other utilities, without further consent by Lessor, on the condition that:
  - (1) Such agreements are for the sole purposes 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.

#### **10. 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 to be enforced against the Leased Premises, any interest therein or improvements thereon. Lessee shall discharge all such liens before any action is brought to enforce same.
- (B) Lessee 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 is liable. Upon request by Lessor or the Secretary, Lessee 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 have been paid, satisfied or otherwise discharged. Lessee 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 thereof. 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 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.

#### **11. SUBLEASES AND ASSIGNMENTS; PARTIAL RELINQUISHMENTS.**

- (A) Except as otherwise provided in subsections (B) and (C) of this Section, 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 the Navajo Nation 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, the Fort Defiance Housing, but no successor in interest thereto, is hereby authorized to ~~sublease~~, month-to-month, the Leased Premises, in whole or in part, with the prior written approval of Lessor, but without further approval of the Secretary. Subleases 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. During the term of any sublease, should the sub lessee 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, the Fort Defiance Housing Corporation, but without further consent or approval of the Secretary. ~~The assignee shall agree in writing to be bound by all the covenants, agreements, terms and conditions of this Lease. Assignments to individuals 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 an executed copy of any assignment or partial relinquishment to Lessor and to the Secretary within thirty (30) days of its execution. Any assignment authorized by this Section shall be on a form approved by Lessor and the Secretary, and no assignment shall be valid unless it is on an approved form.
- (E) It is understood by the parties, that Fort Defiance Housing Corporation will assign lots to individuals once the ~~individuals have either satisfied their financial obligations under the rent-to-own program, or have been able to obtain financing necessary to purchase the home directly.~~ ?
- (F) Lessee is hereby authorized to relinquish to Lessor any part of this Lease, with the prior written approval of Lessor and the Secretary, for the purpose of Lessor issuing a Home site Lease for the part relinquished; provided, that each person to whom the Home site Lease is proposed to be issued is eligible to receive a Home site Lease and the issuance of the Home site Lease is otherwise in compliance with all applicable requirements of the Navajo Nation Home site Policy and Procedures adopted by Resolution No. RCD-189-93, including amendments or successors thereto.

## **12. 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.

## **13. ENCUMBRANCE.**

- (A) 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 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 such 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 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.
- (C) If Lessor exercises the above right, all right, title and interest of Lessee in this Lease shall terminate and Lessor shall acquire this Lease; provided, however, that such termination shall not relieve Lessee of any obligation or liability which shall have accrued prior to the date of termination. Acquisition of this Lease by Lessor under these circumstances shall not serve to extinguish this Lease by merger or otherwise.
- (D) If Lessor declines to exercise the above right and sale of the leasehold under the Approved Encumbrance shall occur, the purchaser at such sale shall succeed to all of the right, title and interest of Lessee in this Lease. It is further agreed that the purchaser at such sale if is Encumbrancer, Encumbrancer may sell and assign this Lease 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, 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.

#### **14. DEFAULT.**

- (A) Time is declared to be of the essence of this Lease. Should Lessee default in any payment of monies when due under this Lease, fail to post bond or 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 upon Lessee's default, as authorized by applicable law, 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 premises, if the Lessee has abandoned premises or has failed to conduct business for an extended period of time without notice, and remove all persons and property thereof, and re-let the 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 the 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 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 and the Secretary, as the case may be, shall give to an Encumbrancer a copy of each notice of default by Lessee at the same time as such notice of default shall be given to Lessee. Lessor and the Secretary shall accept performance by an Encumbrancer of any of Lessee's obligations under this Lease, with the same force and effect as though performed by Lessee. An Encumbrancer shall have standing to pursue any appeals permitted by applicable federal or Navajo Nation law that Lessee would be entitled to pursue. Neither Lessor nor the Secretary shall terminate this Lease if an Encumbrancer has cured or is taking action diligently to cure Lessee's default and has commenced and is pursuing diligently either a foreclosure action or an assignment in lieu of foreclosure.

#### **15. 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, presenting a good appearance both inside and outside the Leased Premises.

#### **16. 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 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.

#### **17. PUBLIC LIABILITY INSURANCE.**

- (A) At all times during the term of this Lease, Lessee shall carry a public 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 identified in Section 2 of this Lease 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 material change, cancellation or non-renewal of said policy for

any reason, including non-payment of premiums. Upon written request thereof, copies of said policy shall be furnished to Lessor and the Secretary.

- (B) 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.
- (C) 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.

#### **18. FIRE AND CASUALTY INSURANCE.**

- (A) At all times during the term of this Lease, Lessee shall carry fire and casualty insurance with an extended coverage endorsement 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 identified in Section 2 of this Lease, 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 thereof, copies of said policy shall be furnished to Lessor and the Secretary.
- (B) In the event of destruction of or damage to any improvement on the Leased Premises while an Approved Encumbrance remains in effect, the proceeds of fire and damage 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 such amount paid to Encumbrancer is sufficient to repair the destroyed or damaged improvements with respect to which it was paid, 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 or Lessee, Encumbrancer shall pay such 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.

- (C) 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.

#### **19. INSPECTION.**

The Navajo Nation and the Secretary shall have the right, at any reasonable time during the term of this Lease, 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.

#### **20. 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.

#### **21. 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 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 and Lessee 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.

#### **22. 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 accepted. Upon the written request of the Navajo Nation, Lessee shall provide to the Navajo Nation, at Lessee's sole cost and expense, an environmental audit assessment of the Leased Premises at least sixty (60) days prior to delivery of said premises.

#### **23. 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.

#### **24. INDEMNIFICATION.**

Lessee shall indemnify and hold harmless the Navajo Nation 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 or maintenance, occupancy or use of the Leased Premises by Lessee.

#### **25. ATTORNEY'S FEES.**

Lessee agrees to pay and discharge all reasonable costs, attorney's fees and expenses that may be incurred by Lessor or the Secretary in enforcing the provisions of this Lease.

#### **26. AGREEMENT TO ABIDE BY NAVAJO NATION AND FEDERAL LAWS.**

In all activities conducted by Lessee within the Navajo Nation, Lessee 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.

#### **27. 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 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 against the Navajo Nation in any court or administrative body of any State.

#### **28. 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.

#### **29. 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.

### **30. 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.

### **31. 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.

### **32. 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 hereof, but this provision shall not be construed to extend to this Lease if made with a corporation or company for its general benefit.

### **33. 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.

### **34. 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 Lessor:

President  
The Navajo Nation  
Office of the President/Vice-President  
P. O. Box 9000  
Window Rock, AZ 86515  
Fax: 1-928-871-4025

To or upon Lessee:

Tolchii Kooh, Inc.  
HC-61, Box 300  
Winslow, Arizona 86047

Fax: 1-928-686-6352

To or upon the Secretary:

Regional Director  
Navajo Regional Office  
Bureau of Indian Affairs  
United States Department of the Interior  
301 West Hill Street  
P. O. Box 1060  
Gallup, New Mexico 87305  
Fax: 1-505-863-8324.

- (B) All notices shall be given by personal delivery, by registered or certified mail, postage prepaid, 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, 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.

### **35. SUCCESSORS AND ASSIGNS.**

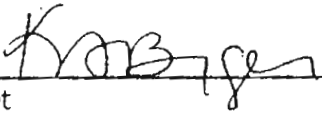
The terms and conditions contained herein shall extend to and be binding upon the successors, heirs, assigns, executors, administrators, employees and agents, including all contractors and subcontractors, of Lessee. Except as the context otherwise requires, the term "Lessee," as used in this Lease, shall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

### **36. EFFECTIVE DATE; VALIDITY.**

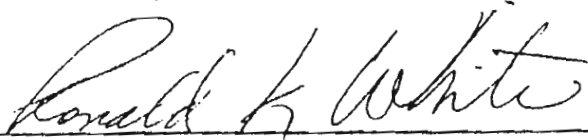
This Lease shall take effect on the date it is approved by the Secretary or his delegated representative. This Lease, and any modification of or amendment to this Lease, shall not be valid or binding upon either party until it is approved by the Secretary.

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

**THE NAVAJO NATION, LESSOR**


  
\_\_\_\_\_  
President

**Tolchii' Kooh, Inc.**

  
\_\_\_\_\_  
Superintendent

**APPROVED: Pursuant to Secretarial Redlegation 209 DM 8, 230 DM \*, 230 DM 1 and 3 IAM 4.**

Date:   JAN 10 2003  

  
\_\_\_\_\_  
Regional Director  
Navajo Region  
Bureau of Indian Affairs  
United States Department of Interior