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Skagit County Auditor

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**RESIDENTIAL LEASE
OF LAND OWNED BY THE SWINOMISH TRIBE**

Lease No. 020

THIS Lease is made and entered into by and between the **Swinomish Indian Tribal Community**, hereinafter designated as "Lessor," and Anthony Cladoosby, member(s) of the Swinomish Tribe and residing upon the Swinomish Indian Tribal Community Reservation, hereinafter designated as "Lessee," as approved by **the United States of Department of the Interior, Bureau of Indian Affairs**, acting on behalf of the Swinomish Indian Tribal Community ("BIA"). It is understood and agreed between the parties hereto that this Lease shall be binding only after approval by the BIA, which approval is evidenced, as to all of the terms hereof, by execution of this Lease below by the BIA or its authorized delegee.

P20911 - Tallawhault Lot 21

WITNESSETH

**1. SECRETARIAL APPROVAL; FEDERAL AGENCY APPROVAL;
DEFINITIONS OF FEDERAL AGENCY, TRIBE, and LENDER.**

- a. As used in this Lease, the term "Secretary" means the Secretary of the Interior or his or her duly authorized representative.
- b. The form of this Lease has been accepted by the Secretary of Housing and Urban Development (HUD) pursuant to 24 C.F.R. § 203.43h(c), which implements Section 248 of the National Housing Act, 12 U.S.C. § 1715z-13, for use in connection with Federal Housing Administration (FHA) insurance of a mortgage on the interest created by this Lease, and pursuant to 24 C.F.R. § 1005.107, which implements Section 184 of the Housing and Community Development Act of 1992 (Pub. L. 102-550) for use in connection with HUD's issuance of a loan guarantee of a mortgage on the interest created by this Lease.
- c. The form of this Lease has also been accepted by the Secretary of the United States Department of Agriculture (USDA) for use in connection with the issuance by USDA or its Rural Housing Service (RHS) of a direct or

guaranteed loan pursuant to section 502 of the Housing Act of 1949 as amended, 42 U.S.C. § 1472, and accepted by the Secretary of the Veterans Affairs (VA) for use in connection with the issuance by VA of a direct or guaranteed loan pursuant to chapter 37 of Title 38, United States Code, secured by the interest created by this Lease.

- d. As used in the context of this Lease, the term "Tribe or Tribal" refers to the Swinomish Tribe.
- e. For future reference, "Federal Agency" refers to HUD, VA, and USDA.
- f. When used in this Lease, the "lender" is any mortgagee that a Federal Agency has approved, the Swinomish Indian Tribal Community making a direct loan or a Federal Agency which makes a direct loan. With respect to mortgages which are insured under Section 248 of the National Housing Act, the lender must be approved by the Federal Housing Administration. The term "lender" also includes any of the lender's successors or assigns of the lender's right, title to, or interest in, the Mortgage and any subsequent noteholder secured by the Mortgage.

2. PREMISES.

Lessor hereby Leases to the Lessee all that tract or parcel of land situated on the Swinomish Indian Tribal Community Reservation, County of Skagit, State of Washington, and described as follows (the Leased Premises):

Talawhalt Lot 21 located at 17175 Squi-Qui Lane, Swinomish Indian Reservation, La Conner, Washington, 98257, constituting less than one acre legally described as follows: Lot Number 21 located at the Northwest Quarter of the Northwest Quarter and Government Lot 6, Section 36, Township 34 North, Range 2 East, WM, lying Westerly of Reservation Road, plat recorded September 20, 2007, with Skagit County auditor document number 200709200143.

3. USE OF PREMISES.

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

Under no circumstances may any fire works stand be stored outside on the leased property.

Conviction for the violation of Swinomish Tribal law related to the use and possession of alcohol, drugs and narcotics occurring on the Leased Premises is expressly acknowledged as constituting a violation of this Lease.

4. TERM.

Lessee shall have and hold the Leased Premises for a term of forty (40) years beginning on the effective date of this Lease. This Lease may not be terminated by either or both parties during its term if, and as long as, the Lease and/or any improvements on the premises, or any interest therein, is mortgaged or otherwise pledged as security for any loan made by a Federal Agency in accordance with the provisions hereof, unless consent in writing to such termination is



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given by the Federal Agency and, if the loan is guaranteed or insured by a Federal Agency, a written consent of that agency is also required. Except as expressly provided herein, this Lease shall not be subject to any forfeiture or reversion and shall not be otherwise terminable, if such event would adversely affect any interest in the Leased Premises, including improvements thereon, acquired in accordance with the provisions hereof by the holder of any mortgage or other lien, or of any purchaser at a foreclosure sale under such mortgage (or lien) or under any conveyance given in lieu of foreclosure, or of any holder subsequent to such purchase. In the event a Federal Agency acquires a mortgage on the interest created by this Lease by assignment from a lender, the Lessor shall not terminate the Lease without the written consent of the respective Federal Agency, as long as the mortgage is in force. The parties may extend the term of this lease by mutual agreement in writing.

5. RENT.

The improvement of housing for Swinomish Tribal families is a public purpose of the Lessor, and thus may be leased at a nominal rent pursuant to 25 C.F.R. §162.604(b)(2). The consideration for this Lease is (1) the obligation of Lessee to further said purpose, (2) the promise hereby given by Lessee to pay the Lessor annual rent at the rate established by the Swinomish Indian Tribal Community or its successor in interest from the commencement of the Lease, (3) the extinguishment, hereby agreed to by Lessee, of any and all use rights heretofore held by Lessee in the Leased Premises, so that Lessee shall hereafter hold rights only by virtue of this Lease, and (4) other good and valuable considerations, the receipt of which is hereby acknowledged by Lessor. Current annual rent shall be \$1 per year. The Swinomish Senate may adjust the annual rent every fifth year from the date of commencement of the Lease. Rent after the termination of the Lease period may be subject to adjustment pursuant to 25 CFR 162.

6. IMPROVEMENTS.

Lessor has constructed improvements on the Leased Premises for the public purpose of housing Swinomish Tribal families. All buildings or other improvements now existing or hereafter constructed on the Leased Premises shall be the leasehold property of the Lessee during the term of this Lease, including any extension or renewal thereof.

If Lessee seeks to or purports to sell, re-sell, lease, Lease, gift, will, convey, transfer, dispose of or part with through any mode, direct or indirect, absolute or conditional, voluntary or involuntary, the improvements existing at the time of initiation of this Lease agreement, including any interest in said improvements, to persons or entities who are not enrolled Swinomish Tribal members, then Lessee shall be in default of this Lease and any such action shall have no effect. In the event of such default, Lessor may, at its discretion, pay Lessee the amount of principal Lessee has paid on the Promissory Note to the Swinomish Tribe or Housing Authority or the original purchase price as indicated on the Promissory Note, whichever is less, less any costs required to repair damage done to said improvements beyond normal wear and tear to terminate the lease.

Borrower hereby expressly indicates agreement with the terms of the restriction described in the paragraph above after having read or been read the above paragraph by writing Borrower's initials here:



During the term of this Lease, Lessee shall obtain any necessary governmental permits, approvals or authorization required, specifically those issued by the Swinomish Indian Tribal Community, for the construction and use of all improvements they place or cause to be placed on the Leased Premises, and shall comply with all laws applicable to the construction and use of improvements.

7. USE RIGHT.

Upon expiration of this Lease, or upon its termination in accordance with the terms hereof, unless such termination is due to breach of the requirements of this Lease or other default upon the part of Lessee, Lessee or any successors in interest shall be entitled to use rights in the Leased Premises if Lessee or any successor in interest is an enrolled Swinomish Tribal member and is otherwise qualified under the laws of the Swinomish Tribe. Lessee's use after the expiration of this Lease or the use of any successor in interest after the expiration of this lease shall be subject to all the terms and conditions of this Lease and may be revoked by Lessor with thirty (30) days written notice. If not so eligible or after notification of revocation of the use right, Lessee, his or her (their) Lessee and any successors in interest shall, upon demand, surrender to Lessor upon expiration or other termination of this Lease complete and peaceable possession of the Leased Premises and all improvements thereon which have not been relocated as permitted under Paragraph 23 of this Lease, which shall be the property of the Swinomish Tribe.

8. FEDERAL SUPERVISION.

- (a) While the Premises are in trust or restricted status, all of Lessee's obligations under this Lease, and the obligations of its sureties, are to the United States as well as to Lessor. Nothing contained in this Lease shall operate to delay or prevent a termination of federal trust responsibilities with respect to the Premises by the issuance of a fee patent or otherwise during the term of the Lease; however, such termination shall not serve to abrogate the Lease. In the event of such termination, all powers, duties or other functions of the BIA or its authorized representative shall terminate, and the responsibilities for enforcing compliance with the covenants of this Lease shall be assumed by the Lessor or successors in interest. Nothing contained in this Lease shall operate to delay or prevent an assumption of federal trust responsibilities with respect to the Premises during the term of the Lease by the termination of the fee patent; however, such assumption shall not serve to abrogate the Lease. The owners of the Premises and the Lessee and their sureties shall be notified of any such change in the status of the Premises.
- (b) No member of Congress or any delegate thereto shall be admitted to any share or part of this Lease or to any benefit that may arise herefrom.
- (c) In the event that the BIA requires any revisions to the terms or conditions of this lease, Lessee agrees to rescind this lease and execute a revised lease at request of the Lessor.



9. QUIET ENJOYMENT.

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

10. ASSIGNMENT AND SUBLEASE.

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

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

(b) Notwithstanding that the term sublease is used herein, the Lessee shall not sublease the premises if the Lease is the security for a mortgage insured under Section 248 of the National Housing Act. The lessee may assign the Lease in



accordance with the terms hereunder.

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

- (1) The appropriate Federal Agency, (the Agency involved in this transaction) will notify the Swinomish Tribe of the availability of the Lease for sale, the sales price of the home and other terms of sale.
- (2) The Lease may only be assigned to another Swinomish Tribal member or Swinomish Tribal entity, except that the appropriate Federal Agency may Lease the Leased Premises to a non-member under the conditions specified herein. Any such Lease or assignment shall be executed to be consistent with Swinomish Tribal law and Federal law.
- (3) If a purchaser is found, the Lease will be transferred by the Federal Agency, to the purchaser, with the prior written consent of the Lessor or the Swinomish Tribe.
- (4) If a purchaser cannot be found, the appropriate Federal Agency, shall be entitled to sublease the Leased Premises and improvements without the prior written approval of the Swinomish Tribe. Such sublease shall be to a member of the Swinomish Tribe. The term of the initial Lease period and any succeeding period shall not exceed one year each. Any purchase of the Lease shall be subject to any sublease by the Federal Agency pursuant to this subsection.
- (5) No mortgagee (except a Federal Agency as mortgagee or assignee of a mortgagee) may obtain title to the interest created by this Lease without the prior written consent of the Swinomish Tribe.

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

11. OPTION.

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



Lender. Such option is subject to the following conditions:

- (a) If the Lessee or any assignee of Lessee fails to cure the default, the lender shall give written notice to the Lessor and the Swinomish Indian Tribal Community or its successor in interest of Lessee's or its assignee's failure,
- (b) If the Lessee fails to cure the default, said notice shall be given before the lender or successor invokes any other remedies provided under the mortgage or by law. Thereafter, the lender may issue an acceleration notice to the Lessee, its Lessees or assigns, under the mortgage or other security instrument, requiring the Lessee, its Lessees or assigns to pay all sums secured by the mortgage or other security instrument. If the Lessee, its Lessees or assigns fail to cure the default in accordance with the terms of the lender's acceleration notice, the lender shall give the Lessor written notice of said failure to cure. The Lessor may exercise its option at any time within thirty (30) days of the date of the lender's written notice to the Swinomish Tribe of said failure to cure. This option shall be exercised by notice in writing from the Lessor to the Lessee and the lender.
- (c) Notwithstanding the Lessor's option to acquire the Lessee's interest in the Leased Premises, such option shall be subject to any right the Lessee may have under the mortgage or by law to reinstatement after the acceleration, and the right to bring appropriate court action to assert the non-existence of a default or any other defense to acceleration and sale or foreclosure.
- (d) The estate acquired by the Lessor through the exercise of the option shall not merge with any other estate or title held by the Lessor as long as the Leasehold interest or any improvements on the Leased Premises, or any interest therein, are mortgaged or otherwise pledged as security for any loan, and the Leasehold interest shall remain subject to any valid and subsisting mortgage or other security instrument.

12. RESERVATIONS.

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

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

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

Water: The Lessor reserves all rights, as owned by the Lessor, to water on or under the premises.

Easements and Rights of Way: The Lessor reserves the right to establish and utilize such easements, rights of way or service line areas as shall be reasonably necessary from time



to time for the provision and installation of public infrastructure including but not limited to conveyances for water, sewer, gas, electrical, cable television, fiber optic, telephone and any other utility benefiting the Swinomish Indian Tribal Community.

13. EFFECTIVE DATE.

This Lease and all its terms and provisions shall be binding upon the successors, and assigns of the Lessee and any successor in interest to the Lessor, and shall take effect on the 29th day of May, 2008.

14. OBLIGATION TO THE UNITED STATES.

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

15. ASSENT NOT WAIVER OF FUTURE BREACH OF COVENANTS.

No assent, express or implied, to any breach of any of the Lessee's covenants, shall be deemed to be a waiver of any succeeding breach of any covenants.

16. VIOLATIONS OF LEASE.

It is understood and agreed that violations of this Lease shall be acted upon in accordance with the laws of the Swinomish Tribe, the policies and procedures of the Swinomish Housing Authority, and, in the absence of any applicable Swinomish Tribal authority, according to the regulations in 25 C.F.R. Part 162.

17. CARE OF PREMISES.

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

18. FORCE MAJEURE.

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

19. INSPECTION OF THE PREMISES.

The Secretary, lender, applicable Federal Agency, if involved, and the Lessor and their authorized representative shall have the rights, at any reasonable times during the term of this Lease, and with reasonable notice, to enter upon the Leased premises, or any part thereof, to inspect the same and all buildings and other improvements erected and placed thereon.

20. INDEMNIFICATION.

Neither the Lessor nor the United States, nor their officers, agents, and employees shall



be liable for any loss, damage, or injury of any kind whatsoever to the person or property of the Lessee or any further sublessees or any other person whomsoever, caused by any use of the Leased premises, or by any defect in any structure erected thereon, or arising from any accident, fire, or other casualty on said premises or from any other cause whatsoever; and Lessee, as a material part of the consideration for this Lease, hereby waives on Lessee's behalf all claims against Lessor and/or the United States and agrees to hold Lessor and/or the United States free and harmless from liability for all claims for any loss, damage, or injury arising from the use for the premises by Lessee, together with all costs and expenses in connection therewith.

21. UTILITIES.

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

22. LATE PAYMENT INTEREST.

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

23. RIGHT OF REMOVAL.

Upon the termination of the Lease and complete satisfaction of the terms of the associated Promissory Note, the Lessee of the Leased premises at the time of the commencement of this Lease shall be entitled, within 30 days, to remove the dwelling and related structures from the Leased premises and relocate such improvements to an alternative site, not located on the Leased premises. Any Lessee who exercises such a right shall be required to pay all costs related to the relocation of the dwelling unit. Lessee shall leave the land in good order and condition. All improvements not removed at the termination of this Lease shall become the property of the Lessor at the expiration of this Lease. This paragraph does not apply to National Housing Act Section 248 insured mortgage loans.

24. INSURANCE.

The Lessee agrees, so long as this Lease is in effect, to insure all improvements on the Leased Premises, whether now in existence or subsequently erected, against any hazards, casualties, and contingencies, including but not limited to loss, flood and fire, with extended coverage endorsements in an amount equal to the full insurable value of the buildings and improvements insured. All insurance shall be carried with companies approved by Lessor. The insurance policies and any renewals shall be held by Lessor and shall include loss payable clauses in favor of, and in a form acceptable to Lessor. If Lessee purchases insurance, certificates of insurance evidencing said policy or policies shall be provided to Lessor on an annual basis. To ensure that the buildings and improvements on the Leased premises are



adequately and continuously insured, Lessor may purchase insurance against loss or damage by fire, and charge such costs to Lessee as rent. Lessee shall pay all premiums and other charges payable in respect to such insurance. Except, during such time that a mortgage is in effect against this Leasehold interest when the terms of the leasehold mortgage related to insurance shall apply, said insurance is to be made jointly payable to the Lessee and the Lender, and premium payments provided for per specific requirements of the Lender.

25. NOTICES.

Notices related to this Lease shall be sent to the following addresses:

For Lessor:

Swinomish Indian Tribal Community
P.O. Box 817
La Conner, WA 98257

For Lessee:

Anthony Cladoosby
17175 Squi-Qui Lane
La Conner WA 98257

With a copy to:

Office of Tribal Attorney
Swinomish Indian Tribal Community
P.O. Box 817
La Conner, WA 98257

And a copy to:

United States Department of the Interior
Bureau of Indian Affairs
Puget Sound Agency
2707 Colby Avenue, Suite 1101
Everett, Washington 98201

SKAGIT COUNTY WASHINGTON
REAL ESTATE EXCISE TAX

JUL 22 2009

Amount Paid \$
By Skagit Co. Treasurer Deputy
mf

26. ADDITIONS.

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

WITNESS: Brian Cladoosby, Lessor

Brian Cladoosby
Swinomish Indian Tribal Community

June 16, 2008
Date



200907230126
Skagit County Auditor

WITNESS:

Anthony Cladoosby, Lessee

5-29-08
Date

Date of Execution: _____

As Approved by:

**THE UNITED STATES DEPARTMENT
OF THE INTERIOR, BUREAU OF
INDIAN AFFAIRS, acting on behalf of the
Swinomish Indian Tribal Community**

By: _____

Its _____

NOTARY ACKNOWLEDGEMENT

STATE OF WASHINGTON)
COUNTY OF SKAGIT)

SS.

INDIVIDUAL ACKNOWLEDGEMENT

I, Shelley A. Preston, Notary Public in and for the State of Washington, do hereby certify that on this 29th day of May, 2008, personally appeared before me Anthony Cladoosby, to me known to be the individual described in and who executed the within instrument and acknowledged that he signed the same as a free and voluntary act and deed for the uses and purposes herein mentioned.

Signed and sworn to before me this 29th day of May, 2008.

Shelley A. Preston

Printed Name: Shelley A. Preston

Notary Public in and for the State of Washington

My appointment expires: June 19, 2010.

