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Skagit County Auditor

6/2/2011 Page 1 of 10 10:51AM

**LEASE OF LAND OWNED BY
THE SWINOMISH INDIAN TRIBAL COMMUNITY**

Lease No. _____

THIS Lease is made and entered into by and between the **Swinomish Indian Tribal Community**, hereinafter designated as "Lessor" or "Tribe" and the **Swinomish Housing Authority**, hereinafter designated as "Lessee" or "SHA".

WITNESSETH

1. DEFINITIONS

As used in this Lease, the terms below have the specified meanings:

- (a) "Secretary" means the Secretary of the United States Interior or his or her duly authorized representative.
- (b) As used in the context of this Lease, the terms "Tribe" or "Tribal" refer to the Swinomish Indian Tribal Community.

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 (hereinafter designated as the "Leased Premises"):

Portions of P20911 and P126705: Tallawhalt Lots 4 – 8 located on Squi Qui Lane, Swinomish Indian Reservation, La Conner, Washington, 98257, constituting approximately three and one-half (3 ½) acres, legally described as follows: Lots Number 4 – 8 shown on Record of Survey of the Plat of Tallawhalt Phase I, located in 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 construct and operate a community residential housing development, including dwellings and related structures, on the Leased Premises, and otherwise to use said premises as a residential development. 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 Premises.

4. TERM.

Lessee shall have and hold the Leased Premises for a term of fifty (50) years beginning on the effective date of this Lease, as determined in accordance with Section 13. The parties may extend the term of this Lease, or may renew 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 the Leased Premises may be leased at a nominal rent. 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, (4) payment by Lessee of the Subdivision Development Fee as provided in Section 6, and (5) other good and valuable considerations, the receipt of which is hereby acknowledged by Lessor. Current annual rent shall be \$1 per year. Neither the annual rent nor the Subdivision Development Fee shall be adjusted during the term of the Lease. Rent after the termination of the Lease period may be subject to adjustment in accordance with law applicable at that time.

There shall be no adjustment of the rental payments in the event that any part of the Leased Premises is taken by condemnation for any public purpose. Neither this Lease nor any part thereof, including this paragraph, shall be construed to prejudice the rights or impair the prosecution of any claim of the Lessee arising out of any such condemnation proceedings.

6. SUBDIVISION DEVELOPMENT FEE.

Lessee shall reimburse Lessor for acquisition and subdivision development costs incurred by Lessor that are attributable to the Leased Premises by paying a Subdivision Development Fee of five hundred forty-seven thousand, and thirty dollars (\$547,030.00) that shall be due and paid within 30 days of the effective date of this Lease as determined in accordance with Section 13.

7. IMPROVEMENTS.



Lessee will construct 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 and remain the property of the Lessee or its assignee during the term of this Lease, including any extension or renewal thereof. All such improvements shall become the property of the Lessor at the expiration of this lease; *provided*, however, that Lessor and Lessee may transfer their interests in such improvements to a sublessee or assignee in connection with the Mutual Help or other homeownership program operated by Lessee.

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 Lessee places or causes to be placed on the Leased Premises, and Lessee, its sublessees and its assignees shall comply with all laws applicable to the construction and use of improvements.

8. 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. 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. After notification of revocation of the use right, 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.

9. FEDERAL SUPERVISION.

- (a) If the Leased Premises are taken into trust or restricted status by the Secretary, all of Lessee's obligations under this Lease, and the obligations of its sublessees, assignees and sureties, shall be 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 Leased 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 Leased Premises and the Lessee, its sublessees and assigns 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 Leased Premises are taken into trust or restricted status by the Secretary and the Secretary 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; provided, however, that such rescission and revision shall not result in an increase of annual rent or Subdivision Development Fees under this Lease.

10. 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 its sublessee and assignees are subject to all the laws of the Swinomish Tribe that have been or may be enacted.

11. 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.
- (b) Lessee may sublease or assign its leasehold interest in and deliver possession of a lot or lots, or a portion of a lot, in the Leased Premises to a member of the Swinomish Tribe or a Swinomish Tribal entity for residential purposes.
- (c) Lessee may sublease its leasehold interest in and deliver possession of all or a part of any improvements constructed on the Leased Premises for residential purposes.
- (d) During the term of any sublease or assignment, should a sublessee or assignee be or become an owner of the Leased Premises it is hereby agreed that a merger of interests shall not occur.
- (e) Any sublessee or assignee shall comply with all applicable laws of the Swinomish Tribe and the United States.

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 Leased Premises.

Water: The Lessor reserves all rights, as owned by the Lessor, to water on, under, for the use of or reserved by the United States in connection with the reservation of the Leased 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, ENVIRONMENTAL REVIEW AND BINDING EFFECT.

This Lease shall be effective and its term shall commence upon execution by both the Lessor and Lessee.

14. OBLIGATION TO THE UNITED STATES.

It is understood and agreed that if the Leased Premises are taken into trust or restricted status, all of the Lessee's obligations under this Lease, and the obligation of its sublessees, assignees and sureties, are to the United States as well as to Lessor.

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 and, if the Leased Premises are taken into trust or restricted status and in the absence of any applicable Swinomish Tribal authority, according to the regulations in 25 C.F.R. Part 162 and all other applicable Federal statutory and regulatory provisions.

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 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 Lessor and if the Leased Premises are taken into trust or restricted status the Secretary, 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 its employees or any further sublessees or assignees 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 of the Leased 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, or if any installment of the Subdivision Development Fee is not paid in accordance with the provisions of Section 6, 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 on rental payments will become due and payable from the date such rental becomes due and will run until said rental is paid. Interest on Subdivision Development Fee installments will become due and payable from the date such installment is due as provided in Section 6, and will run until said installment is paid. The interest rate formula is Interest = (Prime rate + 3%) times (x) amount due.

23. 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, which approval shall not be unreasonably withheld. The insurance policies and any renewals shall include loss payable clauses in favor of, and in a form acceptable to, Lessor and if the Leased Premises are taken into trust or restricted status the United States, to the extent of their interests. 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 additional rent due and owing. Lessee shall pay all premiums and other charges payable in respect to such insurance. *Provided*, however, 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 any lender, and premium payments provided for per specific requirements of such lender.

24. NOTICES.

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

For Lessor:

Swinomish Indian Tribal Community
11404 Moorage Way
La Conner, WA 98257

With a copy to:

Office of Tribal Attorney
Swinomish Indian Tribal Community
11404 Moorage Way
La Conner, WA 98257

For Lessee:

Swinomish Housing Authority
PO Box 677
La Conner, WA 98257

SKAGIT COUNTY WASHINGTON
REAL ESTATE EXCISE TAX

JUN 02 2011

Amount Paid \$
Skagit Co. Treasurer
By *MF* Deputy



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Skagit County Auditor

And, if the Leased Premises are taken into trust or restricted status, a copy to:
United States Department of the Interior
Bureau of Indian Affairs
Puget Sound Agency
2707 Colby Avenue, Suite 1101
Everett, Washington 98201

25. 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: Swinomish Indian Tribal Community, Lessor

By: Brian Chaddesby
Chairman

WITNESS: Swinomish Housing Authority, Lessee

By: J. Petrucci
Executive Director
Title

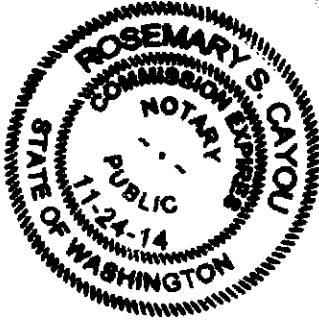


NOTARY ACKNOWLEDGEMENT

STATE OF WASHINGTON)
)
COUNTY OF SKAGIT) SS.

I, Rosemary S. Cayou Notary Public in and for the State of Washington, do hereby certify that on this 10th day of May, 2011, personally appeared before me Brian 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 10th day of May, 2011.



Rosemary S. Cayou
Print Name: Rosemary S. Cayou

Notary Public in and for the State of Washington

My appointment expires: 11-24-14



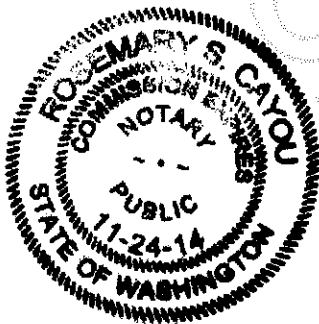
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NOTARY ACKNOWLEDGEMENT

STATE OF WASHINGTON)
)
COUNTY OF SKAGIT) SS.

I, Rosemary S. Cayou Notary Public in and for the State of Washington, do hereby certify that on this 10th day of May, 2011, personally appeared before me John Petrich 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 10th day of May, 2011.



Rosemary S. Cayou

Print Name: Rosemary S. Cayou

Notary Public in and for the State of Washington

My appointment expires: 11-24-14



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Skagit County Auditor