

**POARCH BAND OF CREEK INDIANS HOUSING DEPARTMENT**

**POLICIES AND PROCEDURES FOR  
TRIBALLY ASSISTED HOME OWNERSHIP PROGRAM**

**I. INTRODUCTION**

- A. The Poarch Band of Creek Indians Housing Department (Department) was established by the Tribal Council to, among other things:
1. Promote and protect the general welfare of the Poarch Band of Creek Indians (Tribe) and its members by providing Tribal Members with decent, safe and sanitary homes;
  2. Remedy unsafe and unsanitary housing conditions which are injurious to the public health, safety and morals of Tribal Members; and
  3. Alleviate the acute shortage of decent safe and sanitary dwellings for Tribal Members.
- B. To further that purpose, the Department operates the Tribally Assisted Home Ownership (TAHO) Program.
- C. These procedures for the TAHO Program are to govern the eligibility and occupancy of homes offered. More specifically, these procedures are designed to:
1. Serve as a guide for the Department to use in determining eligibility of applicants, in the selection process, and in maintaining occupancy standards;
  2. Ensure the consistent, equitable, and uniform treatment of Applicants and Residents;
  3. Act as a basis for decisions by the Department; and
  4. Serve as a training manual for newly-hired Housing staff and/or newly-appointed Housing Advisory Committee members.

**II. APPLICATION OF PROCEDURES**

These procedures apply to Applicants for, Residents in, and properties in the TAHO Program.

### III. DEFINITIONS

- A. "Agreement" or "Lease Agreement" means this Agreement between the Department and the Resident, which constitutes a lease agreement with an option to purchase. The Resident is a tenant during the term of the agreement and acquires no equitable interest in the Home until the option to purchase is exercised.
- B. "Applicant" means the Head of Household seeking admission into the TAHO Program.
- C. "Application Period" is October through mid-December of the funding year.
- D. "Department" means the Poarch Band of Creek Indians Housing Department.
- E. "Escrow Account" means the account into which Resident's Escrow Fees are deposited and from which payments for insurance, termite bond, any applicable homeowners' association dues, and taxes or payment in lieu of taxes (PILOT) are made.
- F. "Escrow Fee" means one-twelfth (1/12) of the estimated yearly cost of those fees included in the Escrow Account. The amount collected for the Escrow Fee shall be the actual cost of homeowner's insurance, termite bond, homeowners' association dues and taxes and will fluctuate from year to year.
- G. "Family" means a single person or two or more persons related by blood or marriage.
- H. "Federal Over Income" means that Applicant's household income is between 80% to 100% of the median income for the area or the United States, as determined by HUD, whichever is greater, when federal funds are used in whole or in part to construct the Home.
- I. "FICO Credit Score" means a Fair Isaacs credit score.
- J. "Head of Household" means the Tribal Member. In the case of both adult members being Tribal Members, the Tribal Member who has the higher income shall be designated as the Head of Household.
- K. "Home" shall mean the dwelling unit occupied by the Resident.
- L. "Homeless" means an individual who does not hold title to real property upon which a permanent structure that could be used as a residence is located.
- M. "Household Income" means the income of all members of the household, including the Head of Household, the spouse of the head of household, and

children 18 and older, except for those children between the ages of 18 to 26 that are full time students.

- N. "Initial Escrow Deposit" means the estimated cost of escrow items during the first year of occupancy. The deposit may be paid at the time of occupancy or paid over the life of the loan.
- O. "Low Income" means that Applicant's Household Income is between 40% to 80% of the median income for the area or the United States, as determined by HUD, whichever is greater.
- P. "Overcrowded" means more than two (2) children of the same sex per bedroom or two (2) children over the age of six (6) of the opposite sex sharing the same bedroom.
- Q. "Over Income" means either "Federal Over Income" or "Tribal Over Income," depending upon the funding source used.
- R. "Resident" means an individual who is leasing a Home in the TAHO Program as evidence by his/her signature on the Lease Agreement and who is working toward homeownership.
- S. "Substandard" means (1) using a mobile home for a residence; (2) documented problems with utilities (i.e. water or sewer); (3) a home not holding a standard temperature; (4) the head of household's bedroom is less than 120 square feet; or (5) the bedrooms are less than 100 square feet.
- T. "TAHO Program" means the Tribally Assisted Home Ownership Program.
- U. "Tribal Member" means an enrolled member of the Poarch Band of Creek Indians.
- V. "Tribal Over Income" means that Applicant's Household Income exceeds 100% of the median income when Tribal funds totally fund the construction of the Home.
- W. "Tribe" means the Poarch Band of Creek Indians.
- X. "Total Development Cost" (TDC) means the total cost that a Resident is responsible for paying back to the Tribe. This amount shall include any cost related to building or purchasing a Home, such as title examination, title insurance, deed preparation, surveys, blue prints, construction cost, septic tank installation or refurbishing, installation of wells, etc.
- Y. "Very Low Income" means that Applicant's Household Income is between 35% to 40% of the median income for the area or the United States, as determined by

HUD, whichever is greater.

#### **IV. ELIGIBILITY FOR HOUSING**

- A. To be eligible for the TAHO Program, Applicants must meet all the following requirements:
1. Must be an enrolled member of the Poarch Band of Creek Indians;
  2. Must be at least 21 years of age;
  3. Must live in the Tribe's service area (Escambia County, Alabama; Monroe County, Alabama; Baldwin County, Alabama; Mobile County, Alabama; Elmore County, Alabama; Montgomery County, Alabama; and Escambia County, Florida);
  4. Must not have participated in any homeownership program within the previous five (5) years;
  5. Shall not have withdrawn from the TAHO Program or declined to participate in the TAHO Program after being selected within the past twelve (12) months. (If an Applicant is ineligible because of this requirement, the Applicant may petition the Housing Director to waive this requirement if the Applicant can show good cause as to why the Applicant withdrew or declined to participate in the TAHO Program.);
  6. Shall have a FICO Credit Score of 550 or higher. Applicants must sign an authorization for the Department to request a credit report and score on the Applicant. If the Applicant is married, his/her spouse must also authorize a credit report to be requested. The FICO Credit Scores of the Applicant and spouse will be reported, and the higher of the two scores will be used in determining whether the applicant meets the minimum score established by the Department. (If an Applicant is ineligible because of this requirement, the Applicant may petition the Housing Director for a waiver of this requirement if the Applicant can provide documentation that the Applicant was a party to a divorce, had an eligible FICO credit score for at least twenty-four (24) consecutive months immediately prior to the divorce, and the divorce was the primary reason for the Applicant's FICO Credit Score to no longer meet the 550 requirement.); and
  7. Must qualify as a Very Low Income, Low Income, or Over Income.

#### **V. RECEIPT OF APPLICATIONS AND DETERMINATION OF ELIGIBILITY**

- A. Application

1. The application is the basic record for each Applicant applying for admission and/or services. The Application is attached hereto as "Exhibit A". Each Applicant will be required to provide all information requested. If the Applicant is married, his/her spouse's information must be included, and the spouse must also sign the Application. Applications shall be received at the Department office. Upon receipt, the application will be date/time stamped, and initialed by the Department staff.
2. Applications may be submitted during the Application Period; however, the Department may set submission deadlines for inclusion in a particular project, program, or funding year.
3. *Suspending the Taking of New Applications.* The Department reserves the right to close the waiting list and suspend the taking of new applications at any given time.

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B. Verification of Eligibility and Documentation Required for Points and Household Size

An Applicant must submit the following in order for the Department to verify eligibility and to award points for selection purposes:

1. *Income Verification.* Current wage statements, social security statements, retirement statements, and IRS tax returns shall be used to verify Household Income. Per capita benefits and elder benefits shall be automatically added to all Tribal Members' income. General Welfare benefits are not considered income.
2. *Proof of Tribal Membership.* The Applicant must furnish proof of membership for each family member claiming Tribal membership.
3. *Proof of First Generation Indian Descent.* The Applicant must furnish a letter from the Poarch Band of Creek Indians for each family member claiming to be a First Generation Indian Descendant.
4. *Identity Verification.* The Applicant must furnish copies of driver's licenses for all adult family members and/or social security cards for all family members listed on the application.
5. *Custody Verification.* The Applicant must furnish custody verification described below for the Applicant or Applicant's spouse to receive points:
  - a. The children's birth certificate; and (if applicable)
  - b. Any documentation from a court awarding the Applicant or Applicant's current spouse physical custody of the children; or

- c. If the Applicant does not have a court order or legal documentation, the Applicant may provide a notarized statement from the child's custodial parent verifying the visitation/custody arrangement and/or schedule for the child(ren).
- 6. Household Size Verification.
  - a. In order for a spouse to be counted as part of the household, the Applicant must submit a marriage certificate.
  - b. In order for children to be counted as part of the household, the Applicant or Applicant's current spouse must have physical custody of the children. Applicant must submit the same information as required for custody verification.
  - c. Additionally, the Department may request additional information or may visit the family's current home in order to verify household size.
- 7. Homeless Verification. Applicant shall submit a statement to the Department in which the Applicant swears or affirms that he or she meets the definition of Homeless as set forth in these Policies. Additionally, if the Applicant is Homeless because he or she rents, then the Applicant shall submit a lease, rental invoice, or statement from the landlord regarding the rental arrangement.
- 8. Substandard Living Verification. Applicant must submit information from one or more of the following categories:
  - a. *Mobile Home as a Residence.* A member of the Department shall visit the Applicant's residence and confirm that the Applicant's residence is a mobile home.
  - b. *Documented problems with Utilities.* The Applicant shall furnish the Department with the documentation regarding the history of the utility issue.
  - c. *Home not Holding a Standard Temperature.* A member of the Department shall visit the Applicants residence to observe and take necessary readings, and the Applicant shall submit utility bills for the last six months.
  - d. *Less than Acceptable Square Footage.* A member of the Department shall visit the Applicant's residence and confirm that

the Head of Household's bedroom is less than 120 square feet and/or that the bedrooms are less than 100 square feet.

9. Overcrowding Verification. A member of the Department shall visit the residence to confirm the number of bedrooms and compare number of family members actually living in the residence to the number of family members listed on the application.
10. Disability Verification. Applicant shall submit documentation from the Social Security Administration or Veteran's Administration proving that Applicant or a member of Applicant's household receives disability benefits.
11. Veteran Verification. Applicant shall submit the "Certificate of Release or Discharge from Active Duty" (DD Form 214), which is based upon a military service member's retirement, separation or discharge from active-duty military.

C. Applicant File

The Department shall maintain a file for each Applicant completing an application. All applications shall be placed in an eligible or ineligible file along with all information supplied by the Applicant.

1. Eligible File. This file contains those applications which have met initial eligibility requirements.
2. Ineligible File. This file contains those applications which have not met initial eligibility requirements. Applications which are not completed or updated in a timely manner will be placed in this file. After twelve (12) months the applications will be destroyed.

D. Waiting List

The Department maintains the waiting list. The eligible Applicants will be placed on the waiting list. Any Applicant on the eligible waiting list who wishes to be removed from the list must submit a written request to the Department. Otherwise, no eligible Applicant may be removed from the waiting list except for failure to update in a timely manner.

E. Updating the Eligible Waiting List

The eligible waiting list shall be updated on a regular basis. The Department may issue a reminder notice annually to Applicants to inform them to update their application. Applicants must update their applications upon receiving a notice from the Department.

At the time of updating the application, the Applicant will be interviewed by the Department staff. Failure to update an application upon request is grounds for removing the Applicant from the waiting list and placing the application in the ineligible file.

## VI. SELECTION CRITERIA

For each income category, eligible Applicants from the waiting list are selected for participation in a project according to a point system. The point system is designed to identify need. Applicants who have not previously participated in the TAHO or Mutual Help programs shall be given priority in selection.

The following points shall be awarded for the following criteria:

2 Points	For each time Applicant has updated his/her application in response to an update notice sent by the Department
5 Points	For each PBCI Tribal Member in the household unless the Tribal Member is an adult child. (If an adult child resides in the household, points may be awarded only if the adult child is between the ages of 18 and 26 and enrolled as a full-time student.) (Applicants may only receive ½ of the points available if the Applicant or Applicant's current spouse shares joint physical custody of children.)
2 Points	For each PBCI First Generation Indian Descendant in the household unless the First Generation Indian Descendant is an adult child. (If an adult child resides in the household, points may be awarded only if the adult child is between the ages of 18 and 26 and enrolled as a full-time student.) (Applicants may only receive ½ of the points available if the Applicant or Applicant's current spouse shares joint physical custody of children.)
2 Points	For meeting the minimum FICO Credit Score
3 Points	For each member of the household with a verifiable disability
6 Points	For a family living in a Homeless situation
3 Points	For a family living in an Overcrowded situation
Up to 5 Points	For a family living in Substandard living conditions as defined in this Policy (1 point for each condition)
2 Points	For Veterans

- 4 Points For Applicants who already have title to property free and clear of all encumbrances and liens, except for any ad valorem taxes and mineral reservations, if any
- 5 Points For Applicants who have participated in prior Homeowners Programs (TAHO/Mutual Help)

## VII. NOTIFICATION TO SELECTED APPLICANTS

Once selected, the Applicant will be notified in writing by certified mail within five (5) business days of selection. The standard notification letter is attached as “Exhibit B”.

At a minimum, a list will be posted in writing at the Department’s office no later than ten (10) business days after the Department Director confirms the selection.

## VIII. CONDITIONS FOR PARTICIPATION

- A. The Applicant must maintain the house which is part of the TAHO Program as the Applicant’s primary residence, with the exception of any sublease approved by the Housing Director and allowed pursuant to the Lease Agreement.
- B. Conditions in Standard Notification Letter
  - 1. No later than thirty (30) calendar days after notification of selection is sent to the Applicant, the Applicant shall provide all of the information requested and complete all of the counseling/training sessions required in the standard notification letter. If extenuating circumstances prevent the Applicant from submitting the required information within the thirty day period, Applicant shall submit a written request for an extension to the Department Director prior to the expiration of the thirty (30) day period, and the Director may grant the Applicant an extension.
  - 2. Submission of the requested information and completion of the required counseling/training sessions does not guarantee participation in the TAHO program. The documentation shall be used to confirm that the Applicant is still eligible for participation.
  - 3. Build or Purchase. The standard notification letter requires that the Applicant provide a written statement to the Department informing the Department if Applicant will build a home or purchase an existing home.
    - a. *Build.* If the Applicant plans to build a home, then the Applicant must provide proof of ownership (i.e., a deed) to at least one acre of property within thirty (30) calendar days or shall identify property that can be transferred to the Department within 30 calendar days. Under extenuating circumstances, the Applicant

shall submit a written request for the Department to accept less than one acre, and the Department Director may approve such a request. If the land cannot be transferred within 30 calendar days, the Applicant shall submit a written request to the Department for additional time and shall outline the extenuating circumstances, and the Department Director may approve such a request. If through no fault of the Department or its agent, the property is not transferred within the next 30 calendar days after the extension, then the Applicant shall be removed from participation in the Program. The Applicant must convey the property to the Department before the construction contract is signed.

- b. *Purchase.* If the Applicant plans to buy a home, then the Applicant must provide the Department with an executed purchase agreement for the home no later than sixty (60) calendar days after notification of selection is sent to the Applicant. If additional time is needed, the Applicant shall submit a written request to the Department for an extension and, the Department Director may grant the extension. Any time an Applicant is purchasing an existing home, the seller of the existing home must provide a home warranty. For any home purchased that is less than three (3) years old, the seller must provide a one (1)- year home warranty. Any home purchased that is three (3) or more years old must have a three (3)- year home warranty provided by the seller. Any home built prior to 1978 must be inspected and certified as free from asbestos and lead-based paint prior to the purchase being approved. Additionally, Applicant shall be required to sign a waiver and/or release.
  - c. *Land.* The Applicant is not allowed to include in the TDC any land outside of an identified lot in a Tribal subdivision, or more than one (1) acre of land if located elsewhere, which shall be used for the home site.
4. *Participation in Tribe's Renovation Loan Program.* Participants and homes in the TAHO Program are not eligible for participation in the Renovation Loan Program for two (2) full years from the date of occupancy.
5. *Counseling.* All Applicants shall be required to participate in and cooperate fully in all official pre-occupancy counseling activities in order to participate in the TAHO Program. The purpose of the counseling program shall be to develop:
  - a. A full understanding by Applicants of his or her responsibilities as Residents in the TAHO Program;

- b. Ability on the Applicant's part to carry out these responsibilities;  
and
- c. A cooperative relationship with the other Residents.

C. Inspection before Move-In

1. To establish a record of the condition of the Home on the date of occupancy, the Resident, a representative of the Department and a certified inspector (if the Department representative is not a certified inspector) shall make an inspection of the Home. The inspection report is computerized and will identify any unsatisfactory items in the Home. Any identified items shall be resolved by the Department representative, and a copy of the signed Inspection Report shall be kept at the Department office. A copy shall also be given to the Resident. (A sample listing of items included in the inspection is attached as "Exhibit C".)
2. No Resident shall be permitted to occupy the Home until all items on the Inspection Report have been determined to be satisfactory. Upon completion of all inspection report items, a Certificate of Occupancy (see "Exhibit D") shall be given to the Resident with a copy to be filed with the Department.

D. Lease Agreement

Prior to occupancy, the Resident shall execute a Lease Agreement with the Department (see "Exhibit H"). This Lease Agreement is a legal document which describes rights, duties, obligations, and responsibilities of the parties. The Head of Household and his or her spouse shall sign the Lease Agreement, and the Housing Director shall sign on behalf of the Tribe.

E. Escrow Account

1. Participants must maintain a positive balance in the escrow account at all times. The funds in the escrow account will be used to pay the cost of homeowner's insurance, termite bond, property taxes, and any applicable homeowners' association fees for the year. The escrow account will be funded by an amount equal to 1/12 of the total fees being added to the Participant's monthly payments.
2. The amount charged for Escrow Fee will be a "true escrow" amount, meaning it will fluctuate from year to year and will reflect the actual cost of homeowner's insurance, termite bond, property taxes and any applicable homeowners' association fees for the year.

3. An Initial Escrow Deposit will be added to each new TAHO loan to cover the cost of the first year escrow payment. The deposit may be paid in full by the Applicant upon occupancy or it may be paid over the life of the loan. If the first year escrow is less than estimated, the positive balance will be applied to the principal loan balance.

## **IX. MONTHLY PAYMENT**

### **A. Determination of Monthly Payment**

1. Total Development Cost (TDC) shall be repaid through minimum monthly payments. The Total Development Cost of each home shall be amortized for no more than a thirty (30) year period for all Residents. The cost to purchase a lot/land for Participants who are building a home may be included as part of the TDC but shall not cause the total TDC to exceed the amount for which a Participant is approved. Once the minimum monthly payment is determined, an escrow fee will be added. After the escrow fee is added, this will then become the Resident's monthly payment.
2. NAHASDA Adjusted Income Regulation
  - a. For Residents who qualify for federal funding, the payment shall not exceed the maximum permitted by the NAHASDA Adjusted Income Regulation. Adjusted annual income is determined by applying the standard deductions and exclusions required by NAHASDA and any other Tribal exclusions and/or deductions.
  - b. To verify that a Resident is not paying over the maximum allowed, multiply the adjusted income by 30%. Then divide that amount by 12 months. Compare monthly payment with the allowable amount. If the allowable amount is lower than the required monthly payment, the allowable amount must be used.
  - c. In circumstances where NAHASDA Adjusted Income is a factor, the escrow payment shall take priority over payment of the Total Development Cost. If the monthly payment is not sufficient to pay both the escrow account and the TDC, the TDC will remain outstanding and due by the expiration of the Lease. Any shortfall at the expiration of the Lease will be considered a Tribal Obligation Default.
  - d. The NAHASDA Adjusted Income regulation shall not apply to Residents who qualify for tribal funding.

3. The monthly payment will remain in effect until a re-certification is completed and a new payment amount is established.

B. Payroll Deduction

A Resident may opt for payroll deduction for their monthly payment if payroll deduction is offered through his/her employer. Residents must set up the payroll deduction through their employers and shall direct that payments be made to the Poarch Band of Creek Indians Accounting Office. Any Resident who opts for payroll deduction shall not incur any late fees associated with this Program.

C. Annual Re-certification

1. No later than forty five (45) calendar days prior to the due date for submission of re-certification documentation, the Department shall send all Residents a written Notice of Annual Certification (see "Exhibit E"). The Notice shall specify the date when the documents are due and shall be delivered to each Resident by U.S. mail.
2. Residents shall mail, e-mail, facsimile or hand deliver information required for re-certification to the Department office. When hand delivered, the Department staff shall issue the Resident a dated receipt for the documents.
3. If recertification documents are not returned to the Department by the specified due date, non-compliance fees will be assessed and added to the monthly house payment as follows:
  - a. Within first 30 calendar days past due date: \$50.00
  - b. Two months past due date: \$75.00
  - c. Three months past due date: \$100.00
  - d. Four months past due date: \$225.00

If recertification documents are not received by the Department by the first day of the fourth month, Resident will be in default of the Lease Agreement and the Department may terminate the Lease Agreement.

4. Information Required for Re-certification.
  - a. Residents shall provide the Department with documents (tax returns, W-2, 1099, current check stub, etc.) that will establish their annual and current income.

- b. Residents shall also sign a Statement of Certification (attached as "Exhibit F").
- c. The Resident may be required to submit additional information at recertification, if the Department deems it necessary to complete the family's records or to assist in determining income and payments.

D. Payback Agreements

1. The Housing Director may negotiate a payback agreement with a delinquent Resident as an alternative to termination and eviction. The standard Payback Agreement is attached as "Exhibit G".
2. The Payback Agreement will be on a short term basis, **not to exceed ninety (90) calendar days.**
3. The amount agreed to in the Payback Agreement shall be paid **in addition to the Resident's monthly payment.**
4. Residents shall **not** be allowed to execute more than one (1) Payback Agreement within a twelve (12) month period. In extenuating circumstances, the Department Director, with the concurrence of the Legal Department, may allow an exception to this policy.

E. Adjustment/Abatement of Payments

A Resident experiencing a financial hardship due to a short-term disability or loss of employment (through no fault of the employee) may submit a written request to the Department Director asking for the monthly payments to be reduced or suspended. The written request shall include a description of the hardship and supporting documentation of the disability and financial hardship. The Director may set a hearing on the matter. With or without a hearing, the Director may determine whether to temporarily suspend or reduce payment(s). Any temporary suspension or reduction of payments shall not exceed **ninety (90) calendar days** and may necessitate an addendum of the Lease Agreement in order to extend the term of the Lease Agreement. Late fees shall be waived during the temporary suspension.

F. Overpayments

Residents who have an overage or credit balance at the end of the year will have the credit applied to the principle balance.

X. **CONVEYANCE OF HOME**

A. To Residents

Residents will be given the opportunity to purchase their Home in accordance with the Lease Agreement.

B. To Successors

Successors shall be able to purchase the Home in accordance to the Lease Agreement.

C. To Third Parties

For conveyances to other parties, the Department Director should evaluate factors such as market value, condition/age of the home, and depreciation/appreciation in order to arrive at a purchase price.

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**XI. EVICTION PROCEEDINGS**

The Department may initiate eviction proceedings for failure to pay the monthly payment, failure to comply with the terms of the Lease Agreement or failure to submit documents requested by the Department.

A. If the Resident does not pay the monthly payment amount for three (3) months, the Resident's account will be frozen and a notice will be sent to the Resident via certified mail, regular mail or hand delivery demanding payment. If the Resident wishes to settle the matter with the Department, the resident shall contact the Tribe's Legal Department within fourteen (14) calendar days from the date of the notice.

B. If the account is not brought current or a Payback Agreement is not signed within the time allowed in the notice letter, eviction proceedings will be initiated and the Department will seek an order of eviction as well as payment of the past due loan amounts and court costs.

C. For all other violations, reasonable attempts will be made to bring the Resident into compliance before eviction proceedings are initiated.

D. If eviction is ordered, it will be the responsibility of the evicted Resident to remove all personal property from the residence. If any property is left in the residence after the deadline in the eviction order, the Department's staff may dispose of any such abandoned personal property by any legal means.

**XI. USE OF HOME AFTER TERMINATION**

After termination of a Resident's interest in the Home and/or eviction of the Resident, the Home remains a part of the TAHO project. The Department must follow its policies and

for selection of another Resident for the Home under the TAHO program. If the Department is unable to successfully place another Resident in the Home, the Department may transfer the Home from the TAHO Program to the rental program, or the Department and Tribe may sell the Home.

## **XII. AMENDMENTS TO PROCEDURES**

The Department may revise these Procedures at any time. If these Procedures are amended, the Resident's obligations under the Lease Agreement may be affected. Such changes do not require the execution of an addendum to the Lease Agreement or a new Lease Agreement. The Resident shall be notified of any changes to the Procedures affecting the Resident's obligations.

## **XIII. IMPLEMENTATION OF POLICY**

These policies and procedures are adopted by the Poarch Band of Creek Indians Housing Department on this the 20 day of December, 2018. These Policies and Procedures will apply to any applications or leases approved after the date of adoption. Any allegation of a violation of this Policy should be directed to the Tribal Grievance Board. Any other adverse decision, or any instance/decision in which the Department Director has a conflict of interest, should be directed to the Tribal Member Services Division Director.



Susan M. Wicker, Housing Director  
Poarch Band of Creek Indians

**EXHIBIT A  
APPLICATION**

**EXHIBIT B  
STANDARD NOTIFICATION LETTER FOR SELECTION**

[DATE]

Jane Smith  
5811 Jack Springs Road  
Atmore, AL 36502

Dear Ms. Smith:

You have been tentatively selected for the Tribally Assisted Home Ownership (TAHO) Program. A thorough screening process must be completed on each applicant. In order to be in the TAHO Program, you must provide the following information to the Housing Department office no later than \_\_\_\_\_:

1. A statement of whether you will be **building or buying**. If you will be building, you must bring in a copy of the deed to the land where you plan to build. Unless previously approved by the Department Director, the land must be at least one acre.
2. You must bring proof of your current income. This proof should be in the form of two months of check stubs or disability checks.
3. You must bring your marriage certificate, copy of divorce papers (if applicable), and a copy of any court documentation detailing the custody of any children in the home (if applicable).

This notification will serve as a formal rejection in the program if you do not respond by the date listed above. If formal rejection occurs, you will be placed in the inactive file.

This notification is not a contract and does not obligate the Tribe in any way. Submission of the requested information and completion of the required counseling/training sessions does not guarantee participation in the TAHO program. The documentation shall be used to confirm that the Applicant is still eligible for participation.

**Home buyers are required to attend mandatory counseling.**

**NOTE: A home buyer lease will be executed. An Initial Escrow Deposit will also be added to the Total Development Cost.**

If you have any questions concerning this matter, please contact me at (251) 368-9136, ext. 2257.

Sincerely,

Wendy Davis  
Housing Coordinator

cc: Susan M. Wicker, Housing Director  
File

**EXHIBIT C**  
**ANNUAL INSPECTION REPORT**

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**EXHIBIT D**  
**CERTIFICATE OF OCCUPANCY**

## CERTIFICATE OF OCCUPANCY

The Poarch Band of Creek Indians Housing Department hereby issues this Certificate of Occupancy. At the time of issuance, the following structure is in compliance with the various ordinances of the applicable jurisdictions regulating building construction or use.

**Project:**        Single Family Dwelling

**Permit Type:** Residential

**Sub-Type:** \_\_\_\_\_

**Owner:**        Poarch Band of Creek Indians

**Occupant:** \_\_\_\_\_

**Address:** \_\_\_\_\_

\_\_\_\_\_

**Contractor:** \_\_\_\_\_

**Date Issued:** \_\_\_\_\_

**Issued by:** \_\_\_\_\_

**EXHIBIT E**  
**NOTICE OF ANNUAL RE-CERTIFICATION**

[DATE]

ALL TAHO PARTICIPANTS

WENDY DAVIS, HOUSING COORDINATOR

[YEAR] RE-CERTIFICATION

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It's time for annual re-certifications and we need you to please provide a copy of your [YEAR] income tax returns and recent paycheck stubs to the housing office by **October 30, 20** . **You must furnish copies of all income for all family members living in the home.**

If you receive Disability, Social Security, SSI, AFDC, Workman's Compensation, Unemployment, etc., please provide copies of your award letter and copies of your checks in addition to your income tax returns.

In order for you to qualify for mileage and/or childcare deductions, please contact the office so that I can send you the forms that need to be completed.

For those of you that had to file an extension, please provide a copy of the letter you sent to the IRS or a copy of the form you submitted.

I have also enclosed an authorization for release of information form and a questionnaire (Exhibit 1 & 2). Please complete these forms. **Please sign and return all forms** along with your tax returns and paycheck stubs.

Annual re-certifications are required by federal law, the TAHO Policies and Procedures, and the terms of your Lease Agreement.

**Remember that if the tax returns are not turned in by the above date you will be charged a non-compliance fee in addition to your monthly house payment.** The fees will be as follows: \$50.00 dollars will be added the first month, \$75.00 dollars added the second month, \$100.00 added the third month, and \$225.00 will be added on the fourth month. **Also, if you have not submitted your documentation for annual re-certification by the first day of the fourth month, you will be in default of your Lease Agreement, and the Housing Department may terminate your Lease Agreement.**

Thank you for your cooperation.

If you have any questions, please feel free to give me a call at (251) 368-9136, ext. 2257

cc: Susan M. Wicker, Housing Director  
File

**RE-CERTIFICATION EXHIBIT 1  
RELEASE OF INFORMATION**

**RE-CERTIFICATION EXHIBIT 2  
QUESTIONNAIRE**

**EXHIBIT F**  
**STATEMENT OF CERTIFICATION**

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**STATEMENT OF CERTIFICATION**

By signing below, I certify that the information provided, including, but not limited to, the income tax returns, is true and correct. I understand that if the Housing Department later learns that the information provided herein or submitted is false, that the Housing Department may initiate any civil or criminal actions in any appropriate jurisdiction. If the Department or Tribe initiates any civil litigation, I agree that the civil litigation be governed by the laws of the Poarch Band of Creek Indians and that the Tribal Court of the Poarch Band of Creek Indians shall have original and exclusive jurisdiction involving any litigation.

\_\_\_\_\_  
Signature of Resident

\_\_\_\_\_  
Signature of Resident

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

Sworn to and subscribed before me this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

**EXHIBIT G**  
**PROMISSORY NOTE**

**PROMISSORY NOTE**

**RECITATIONS:**

Borrower: \_\_\_\_\_ Term (in days): Days  
Borrower's Address: \_\_\_\_\_  
Principal Amount: \_\_\_\_\_ Payment: \$ \_\_\_\_\_

**Acknowledgement:** For Value Received, I/we, \_\_\_\_\_, by execution of this instrument acknowledge and recognize that I/we am/are indebted to the Poarch Band of Creek Indians Housing Department, an unincorporated subdivision of the Poarch Band of Creek Indians ("Department"), for the principal sum of \$\_\_\_\_\_. I/We acknowledge and recognize this indebtedness represents a violation of the Lease Agreement that I/we have with the Housing Department. I/We acknowledge that I/we do not have the ability to pay the principal sum in one payment. At this time, the Department is agreeable to temporarily extending payment of the amount due based entirely on my promises contained in this Promissory Note. I/We agree to make the payment of amount due and I/we understand and acknowledge that these payments are in addition to my normal monthly house payment, which is due and payable on the first day of each month.

**Payment Terms:** This Promissory Note is due and payable in \_\_\_\_ equal installments of \$\_\_\_\_\_. The first payment is due and payable on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and each payment thereafter is due on the \_\_\_\_ day of each month thereafter until the Principal Amount shall be paid in full.

**Default and Acceleration Clause:** If Borrower defaults in the payment of this Promissory Note or in the performance of any obligation related to this Promissory Note, the Department will not provide Borrower with any notification but will immediately declare the unpaid principal balance and earned interest on this Promissory Note immediately due. The Department may consider the default a Tribal Obligation Default as defined in Titles 41 and 44 of the Poarch Band of Creek Indians' Tribal Code and recover the entire unpaid principal balance in accordance with the governing Revenue Allocation Ordinance. As a Tribal Obligation Default, the Department shall, upon written notice, have the right and authority to retain and apply Borrower's share of any assistance and/or distributions paid to the Borrower from the Poarch Band of Creek Indians, including, but not limited to, per capita distribution, General Welfare, or any other

monies paid to the Borrower, without any further action, proceeding or authorization by the Tribal Court or any other authority. If the Department chooses not to recover the unpaid principal balance under the governing Revenue Allocation Ordinance, it may seek judgment against Borrower for the entire unpaid principal balance, all earned interest and all reasonable attorney's fees associated with the collection and/or enforcement of this Promissory Note through probate, bankruptcy or other judicial proceeding, including Tribal Court. No judgment made by any other court, including Bankruptcy, shall release Borrower from the obligations herein. This Promissory Note is binding until all accumulated charges owed to the Department by Borrower are paid in full.

**Right of Setoff:**

In the event the loan shall remain in default for more than thirty (30) days, the Housing Department shall have the right to setoff any per capita payments and/or General Welfare payments against any amounts due and owing as a result of any default in the loan.

**Waiver:** Borrower hereby waives demand, presentment, notice of dishonor, diligence in collecting, grace and notice of protest. I understand that this means that the Housing Department shall not provide me with any further notification if I fail to make this payment, but the Housing Department may immediately seek a judgment against me.

**Governing Law:** This Promissory Note shall be governed, construed and interpreted by, through and under the Laws of the Poarch Band of Creek Indians. All actions for non-payment shall be commenced in the Tribal Court for the Poarch Band of Creek Indians.

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Borrower's Signature

\_\_\_\_\_  
Borrower's Print Name

WITNESSED:

\_\_\_\_\_  
Witness' Signature

\_\_\_\_\_  
Witness' Printed Name

**EXHIBIT H  
LEASE AGREEMENT**

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**TRIBALLY ASSISTED HOMEOWNERSHIP (TAHO) PROGRAM  
LEASE AGREEMENT**

This Tribally Assisted Home Ownership Lease Agreement ("Lease Agreement") is entered into by and between the **POARCH BAND OF CREEK INDIANS HOUSING DEPARTMENT (formerly known as the Poarch Creek Indians Housing Authority), an unincorporated subdivision of the Poarch Band of Creek Indians**, a federally recognized Indian tribe ("Department"), and \_\_\_\_\_ ("Resident").

NOW THEREFORE, in consideration of the mutual promises and covenants, and for other good and valuable consideration as set forth herein, the receipt and sufficiency of which are expressly acknowledged, the Parties agree to the following:

**ARTICLE I DEFINITIONS**

For the purposes of this Lease Agreement, the following terms shall have the meanings provided below:

- A. "Agreement" or "Lease Agreement" means this agreement between the Department and the Resident, which constitutes a lease agreement with an option to purchase. The Resident is a tenant during the term of the agreement and acquires no equitable interest in the Home until the option to purchase is exercised.
- B. "Department" means the Poarch Band of Creek Indians Housing Department.
- C. "Event" means the death or mental incapacity of the Resident.
- D. "Escrow Account" means the account into which Resident's Escrow Fees are deposited and from which payments for insurance, termite bond, any applicable homeowners' association dues, and taxes or payments in lieu of taxes (PILOT) are made.
- E. "Escrow Fee" means one-twelfth (1/12) of the estimated yearly cost of those fees included in the Escrow Account. The amount collected for the Escrow Fee shall be the actual cost of homeowner's insurance, termite bond, homeowners' association dues and taxes and will fluctuate from year to year.
- F. "Immediate Family Member" means the Resident's parents, siblings, children, and grandchildren.
- G. "Initial Escrow Deposit" means the estimated cost of escrow items during the first year of occupancy. The deposit may be paid at the time of occupancy or added to total development cost.
- H. "Family" means a single person or two or more persons related by blood or

marriage.

- I. "Home" means the dwelling unit occupied by the Resident.
  - J. "Resident" means an individual who is leasing a Home in the TAHO Program as evidence by his/her signature on the Lease Agreement and who is working toward homeownership.
  - K. "TAHO Program" means the Tribally Assisted Home Ownership Program.
  - L. "Total Development Cost" means the total cost that a Resident is responsible for paying back to the Department. This amount shall include any cost related to building or purchasing a Home, such as title examination, title insurance, deed preparation, surveys, blue prints, construction cost, septic tank installation or refurbishing, the installation of wells, etc.
- 
- M. "Tribal Member" means an enrolled member of the Poarch Band of Creek Indians.
  - N. "Tribe" means the Poarch Band of Creek Indians.

## **ARTICLE II LEASED PREMISES**

For and in consideration as hereinafter stated and under the terms and conditions hereinafter expressed, the Department does hereby lease to the Resident, and the Resident does hereby lease from the Department the home and property more particularly described in Exhibit 1 attached hereto and made a part hereof (herein called "Home").

## **ARTICLE III RESIDENT'S MONTHLY PAYMENTS**

### **A. Establishment of Payment**

- (1) Resident shall be required to make a monthly payment computed by:
  - a) Dividing the Total Development Cost (as set forth on Exhibit 2 attached hereto and made a part hereof) by \_\_\_\_\_ years ; and
  - b) Adding to that amount the Escrow Fee.

If the Resident qualifies for federal funding, the monthly payment shall not exceed the maximum allowed under the NAHASDA Adjusted Income Regulation. If the monthly payment is not sufficient to pay both the escrow account and the TDC, the escrow account will be paid first and the TDC will remain outstanding and

due by the expiration of the Lease. Any shortfall at the expiration of the Lease will be considered a Tribal Obligation Default.

The NAHASDA Adjusted Income regulation (f/k/a the 30% Rule) shall apply only to federal funding and shall not apply to Residents who qualify for tribal funding.

- (2) If the monthly payment from the Resident exceeds the established minimum payment, the amount of the excess shall be credited toward payment of the Total Development Cost.

B. Payments

Payments are due on the 1<sup>st</sup> day of the month beginning the first month after occupancy. Partial payments shall be accepted, but in no event shall the entire amount due be received later than the 15<sup>th</sup> of the month, unless payroll deducted. All payments shall be in the form of cash, money order, or personal checks and directed to the Tribal Government Accounting Office.

C. Late Payments

If the full monthly payment is not received by the 15<sup>th</sup> of the month, a late fee of 10% of the monthly payment that is due and payable shall be assessed. If the 15<sup>th</sup> of the month falls on a Saturday or Sunday, the payment may be made on the next scheduled business day without a late fee being assessed. Resident shall not be assessed a late fee if Resident pays his or her monthly payment by payroll deduction.

D. Annual Re-certification

- (1) Residents shall re-certify on an annual basis by submitting the information requested in the Notice of Annual Certification and in accordance with the TAHO Policies and Procedures.
- (2) *Failure to Re-certify.* If the documents are not received by the due date set in the Notice of Annual Certification, a non-compliance fee shall accumulate as follows:
  - a) \$50.00 for the first month;
  - b) \$75.00 for the second month;
  - c) \$100.00 for the third month; and
  - d) \$225.00 for the fourth month.

If recertification documents are not received by the Department by the first day of the fourth month, Resident will be in default of this Lease Agreement and the Department may terminate this Lease Agreement.

- (3) *Effect of Re-certification.* After the annual re-certification process is complete, if there is a decrease in the payment amount it will be made effective the month immediately following the re-certification. Increased payment adjustments will be made thirty (30) calendar days immediately following the completion of the re-certification.

E. Resident Requests to Re-evaluate Monthly Payment

- (1) The Resident may voluntarily submit a written request for a re-examination of income if he or she feels that circumstances have occurred which would affect the required monthly payment.
- (2) The information required for the re-evaluation of monthly payment shall be the same as that required for annual recertification. The Department will process these requests on a first-come, first serve basis.
- (3) *Effect of Re-examination.* After the process is complete, if there is a decrease in the payment amount it will be made effective the month immediately following the re-certification. Increased payment adjustments will be made thirty (30) calendar days immediately following the completion of the re-examination.

F. Error in Payment Calculations

- (1) If the Department made an error in calculating a Resident's payment which was subsequently discovered by either the Department or the Resident, a retroactive adjustment to the monthly payment shall be made effective the date of the change.
- (2) Errors which are caused by the Resident and result in an increase in the Resident's payment may also be made retroactively if the Department determines that the errors were committed willfully and in an effort to receive a reduced payment.

**ARTICLE IV LEASE TERM**

Unless terminated in accordance with Article 16 or purchased by the Resident in accordance with Article 14, the term of the Lease Agreement shall commence upon the issuance of the Certificate of Occupancy and shall expire at the end of thirty (30) years.

**ARTICLE V MAINTENANCE**

A. Responsibility

The Resident shall be responsible for routine and non-routine maintenance of the Home, including all repairs and replacements not covered by manufacturer warranty.

B. Responsibility of Items Covered by Warranties

No later than forty-five (45) calendar days after the certificate of occupancy of the Home, the Department shall furnish the Resident with a list of applicable warranties indicating the items covered and the periods of the warranties. It is the responsibility of the Resident, during the period of the applicable warranties to promptly inform the Department in writing of any deficiencies arising during the warranty period (including manufacturers' and suppliers' warranties). This is done so that the Department may enforce any rights under the applicable warranties. If a Resident fails to furnish such a written report in time, and the Department is subsequently unable to obtain redress under the warranty, correction of the deficiency shall be the responsibility of the Resident.

C. Resident's Failure to Perform Maintenance

If the Department determines (1) that the condition of the Home creates a hazard to the life, health or safety of the occupants or (2) that there is a risk of damage to the Home if the condition is not corrected immediately, the staff shall notify the Resident of the conditions that exist and shall provide the Resident a plan of action for corrective maintenance work. The corrective maintenance work shall be completed or substantially completed within a reasonable time by the Resident but in no event shall the time frame be more than forty-five (45) calendar days. A follow-up inspection shall be scheduled after the deadline for the correction of the conditions. Failure to correct the conditions by the follow-up inspection shall be a breach of this Agreement and the Department may terminate the Lease Agreement.

## ARTICLE VI INSPECTIONS

A. Notification of Inspection

The Department shall provide the Resident with written notification of the date and time set for the inspection no later than fourteen (14) calendar days prior to the date.

B. Resident Permission for Inspections; Participation in Inspections

Resident shall permit Department staff to enter the Home and the surrounding property at reasonable times and upon reasonable notice for the purpose of inspecting the same. The Resident shall have the opportunity to participate in any

inspection made in accordance with this Article. If the Resident does not participate in the inspection, the Resident will be given an opportunity to review the inspection report. If the Resident disagrees with any portion of the inspection, he or she must submit his or her written objections no later than five (5) business days after receiving the inspection report. If the Resident does not submit any written objections to the report, the Resident waives his or her right to object to the condition of the Home at a later time.

C. Inspection Prior to Expiration of Home Warranty

No later than thirty (30) calendar days prior to the one year warranty expiration from the contractor, a certified inspector shall inspect the home for any deficiencies.

D. Annual Inspection

The Department shall perform inspections annually unless the Resident meets the exception set forth in this Article.

E. Exception to Annual Inspection

After the first annual inspection, the Department may inspect the Home once every three (3) years if:

- (1) The Resident is in full compliance with the terms of this Agreement, including monthly payments; and
- (2) The Home is maintained in a decent, safe, and sanitary condition as reflected in the last inspection by the Department.

However, at any time if the Department determines that the Resident is not in compliance with this Lease Agreement, it must reinstate annual inspections.

F. Special Inspections

The Department may schedule special inspections if the Resident has received unfavorable inspection reports in the past or if the Department has been informed of potential damage to the Home.

G. Deficiencies

- (1) If the inspection reveals any deficiencies in the condition of the Home, the Resident shall be notified of the deficiencies and shall be given no more than thirty (30) calendar days to correct the deficiencies if they are not a hazard to the life, health or safety of the occupants or present a risk of damage to the Home if not corrected immediately. A follow-up inspection

shall be scheduled after the deadline for the correction of the deficiencies. Failure to correct the deficiencies by the follow-up inspection shall be a breach of this Agreement.

- (2) If the inspection reveals any deficiencies in the condition of the Home (1) that create a hazard to the life, health or safety of the occupants or (2) that create a risk of damage to the Home if not corrected immediately, then the Department shall proceed in accordance with Section 5.3.

## **ARTICLE VII ADDITIONAL RESIDENT OBLIGATIONS**

### **A. Generally**

The Resident covenants to:

- (1) Keep the Home and all appliances in a clean and sanitary condition;
- (2) Not engage in illegal or disorderly conduct or commission of a nuisance or in conduct that is a hazard to health or safety, or disturbs other residents in the quiet enjoyment of their dwelling;
- (3) Dispose of all refuse, garbage, rubbish and other waste in a safe sanitary manner;
- (4) Abide by such reasonable and necessary regulations promulgated by Department for the benefit of the Resident and to comply with all obligations upon Resident by applicable provisions of building and housing codes affecting health and safety; and
- (5) Comply with all statutes, ordinances and requirements of all municipal, state, federal, and Tribal authorities now in force, or which may hereafter be in force, pertaining to the Home or affecting the use thereof.

### **B. Utilities**

The Resident shall ensure that the Home has utility services and shall be responsible for the cost of furnishing such services for the Home.

### **C. Use of Home**

- (1) The Home shall be used as Resident's primary residence.
- (2) If the Resident desires to operate a small business in the Home, the Resident must submit a written request for permission to the Department and receive approval prior to beginning operation of the small business. The Department Director may grant permission where the Resident

provides the following assurances and may rescind its permission upon violation of any of the following assurances:

- a) The Home will remain the Resident's principal residence;
  - b) The business activity will not disrupt the basic residential nature of the Home; and
  - c) The business will not require permanent structural changes to the Home that could adversely affect a future Resident's use of the Home.
- (3) The Home is not eligible for renovation under the Tribe's Renovation Loan Program for two (2) years from the date of occupancy.

D. Counseling

During the term of this Lease Agreement, the Department may require attendance at counseling sessions. If so required, the Resident shall attend.

E. Assignment; Transfer

The Resident agrees not to assign this Agreement nor transfer possession of the Home.

## ARTICLE VIII ESCROW ACCOUNT

A. Determination of Escrow Fee

Each year, the Department shall set the Escrow Fee at one-twelfth (1/12) the estimated yearly cost of those fees included in the Escrow Account.

B. Initial Escrow Deposit

An Initial Escrow Deposit will be added to each TAHO loan to cover the cost of the first year escrow payment. The deposit may be paid in full by the Applicant upon occupancy or it may be added to the Total Development Cost and paid over the life of the loan. If the first year escrow is less than estimated, the positive balance will be applied to the principal loan balance.

C. Deposit of Escrow Fee into Escrow Account

The portion of the monthly payment that is attributable to the Escrow Fee shall be deposited in an escrow account established for each Resident.

D. Refund of Escrow Account Balance

Any balance remaining in the Escrow Account in excess of the required amounts at the end of the lease term will be returned to the Resident.

## **ARTICLE IX STRUCTURAL CHANGES**

### **A. Request for Changes**

A Resident shall submit a written request along with detailed information (e.g. plans or specifications) to the Department for approval prior to making any permanent structural changes or additions.

### **B. When Changes Are Allowed**

A Resident shall not make any permanent structural changes in or additions to the Home unless the Housing Director has determined that such change would not:

- (1) Impair the value of the Home, the surrounding homes, or the project as a whole; or
- (2) Affect the use of the Home for residential purposes.

Approved changes or additions include, but are not limited to, modifications to aid with energy conservation, addition of alternative heat and air sources, enclosing a carport/garage, adding storage space, adding living space, permanent fencing, and cosmetic interior structural changes.

### **C. Responsibility for Cost of Changes**

Any changes made to the Home in accordance with this Article shall be at the Resident's expense, including but not limited to insurance or property tax, and in the event of termination of this Lease Agreement, the Resident shall not be entitled to any compensation for such changes or additions.

### **D. Department to Monitor Changes**

If approved by the Department, all phases of construction on the Home shall be monitored by the Department staff until the construction is complete.

## **ARTICLE X INSURANCE**

### **A. Responsibility**

The Department agrees to insure the Home against loss or damage by fire or other casualty insurable under standard fire and extended coverage insurance. The Resident shall be responsible for the payment of the insurance.

B. Resident to Report Damages

It is the Resident's responsibility to report all damages to the Home in a timely manner so that an insurance claim can be made.

C. Personal Property and Contents Coverage

It is the Resident's responsibility to secure his or her own insurance for personal property and contents. The Resident agrees that the Department and Tribe shall not be responsible for any damage or destruction of any personal property or contents in the Home and waives any claims against the Department and Tribe for such damage.

## ARTICLE XI SUBLEASING

A. General Prohibition

The Resident agrees not to sublease the Home without written permission from the Department Director.

B. Circumstances that May Warrant Subleasing

The Department Director may grant permission to sublease the Home if:

- (1) The Resident is in compliance with the Lease Agreement; and
- (2) The Resident has a legitimate need to vacate the Home, including, but not limited to:
  - a) Temporarily relocating because of employment;
  - b) Temporarily relocating because of a pursuit of a higher education;
  - c) Temporarily relocating because of Resident's or an immediate family member's illness or need for medical treatment; or
  - d) Temporarily relocating because of military service.

C. Procedure for Requesting a Sublease

The request to sublease must be in writing, state the reason for the request, and the requested length of the sublease.

D. Conditions on Subleasing

If the Department Director agrees to allow Resident to sublease the premises,

then:

- (1) The length of the sublease shall not exceed five (5) years, but shall be eligible for review by the Director for possible approval of a renewal sublease;
  - a) The sublease shall be executed on a form provided by the Department and in triplicate original with the Department, Resident, and sub-lessee each receiving an original;
  - b) The Resident payment will continue to be calculated based on the Resident's income in accordance with re-certification procedures;
  - c) The Director's approval of a sublease temporarily waives the Resident's obligation to reside in the Home and use the Home as a principal residence for the length of the sublease. Subleasing does not waive or otherwise exempt the Resident from any other requirements or obligations of this Agreement; and
  - d) The Department shall continue to have all rights under this Agreement, including the right to terminate this Agreement.

## **ARTICLE XII SUCCESSION UPON DEATH OR MENTAL INCAPACITY**

### **A. Conditions for Succession**

- (1) Upon occurrence of an Event, the person designated as the successor shall succeed to the former Resident's rights and responsibilities under this Agreement if the designated successor meets the following conditions:
  - a) The successor is an Immediate Family Member and will make the Home his or her residence or, if the estate is probated, will do so within 180 days after the estate is probated;
  - b) The successor is willing and able to pay the payment and to perform the obligations of a Resident under this Agreement; and
  - c) The successor executes a new Lease Agreement.
- (2) If a designated successor is not an Immediate Family Member or the Home will not be the primary residence, the successor may execute an outright purchase of the Home for the remaining balance owed.
- (3) At the time of the Event, if the Resident's spouse is named as the successor, the spouse shall succeed to the Resident's rights and responsibilities under this Agreement as long as he/she makes the Home

his or her primary residence. If the spouse remarries, he or she must execute an outright purchase of the Home for the remaining balance owed or terminate this Agreement, at which time the home will revert back to the Housing Department.

**B. Designation of Successor by Resident**

- (1) A Resident may designate a Primary and Secondary successor who, at the time of the Event, would assume the status of Resident. The designation shall be made at the time of this Agreement, and the Resident may change the designation at any later time by written notice to the Department.
- (2) The designated Primary successor as of the date of execution of this Agreement is:

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First Name	Initial	Last Name
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Street & Number

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City	State	Date
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Relationship

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Resident Signature

Only in the event that the Primary successor predeceases the Resident, the designated Secondary successor as of the date of execution of this Agreement is:

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First Name	Initial	Last Name
------------	---------	-----------

---

Street & Number

---

City	State	Date
------	-------	------

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Relationship

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Resident Signature

If the Primary and Secondary successors both predecease the Resident, successorship shall be determined by the Resident's Last Will and Testament.

If at any time the designated successor changes, a new form will be completed and will be maintained by the Department. A copy of the new form will be given to the Resident.

C. Occupancy by Appointed Guardian

If at the time of the Event, there is no qualified successor designated by the Resident and a minor child or children of the Resident are living in the Home, the Department may, in order to protect their continued occupancy and opportunity for acquiring ownership of the Home, allow the legal guardian of the children to become the successor and assume the status of Resident if the legal guardian meets all of the conditions for succession in Section 12(A).

### ARTICLE XIII DAMAGE TO HOME

A. Damage to Resident's Property

The Department, Tribe and its agents shall not be liable, by abatement in monthly payment or otherwise, for any damage either to the person or property of the Resident, or for the loss of or damage to any property of the Resident by theft or from any other cause whatsoever. The Department, Tribe or its agents shall not be liable for any injury or damage to persons or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water, rain, snow, or leaks from any part of the Home, or from the pipes, appliances, or plumbing works, or from the roof, street, or subsurface, or from any other place, or by dampness, or by any cause of whatsoever nature.

B. Damage to Landlord's Property

The Resident shall be liable for any damage to the Home.

C. Repair or Rebuilding

(1) *Repair or Rebuilding.* In the event the Home is damaged or destroyed by fire or other casualty, the Department staff shall make the final determination as to whether to rebuild or repair the Home. In making this determination, the Department staff shall consult with the Resident as to whether the Home shall be repaired or rebuilt. The Department shall use the insurance proceeds to have the Home repaired or rebuilt.

- (2) *Relocation.* If the Home must be vacated during a repair period, the Department shall:
  - (a) Move the displaced Resident and his or her family to an available rental unit, if possible. The Resident will be responsible for paying the monthly cost of the rental unit.
  - (b) If at the time of displacement a rental unit is not available, the Resident shall be placed in a hotel at the Tribe's expense until a rental unit becomes available.
- (3) The Resident's responsibility for homeownership monthly payments shall be suspended until the Resident is in a rental unit.

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## ARTICLE XIV PURCHASE OF HOME

### A. General

The Department provides the family an opportunity to purchase the Home pursuant to this Lease Agreement.

### B. Purchase Prior to Expiration of Lease Term

The Resident may exercise the option to purchase the Home on or after five (5) years from the date of occupancy but only if the Resident has met all obligations under this Lease Agreement, including full payment of the Total Development Cost. The Resident can exercise the option to purchase only by written notice to the Department. Upon receipt of notice, the Department shall provide a statement of the balance owed as of a particular date and an estimate of all required charges, fees and costs to purchase the Home.

### C. Purchase at the Expiration of the Lease Term

At least sixty (60) calendar days prior to the end of the lease term, the Department shall provide written notification of the TDC owed and the estimate of all required charges, fees and costs to satisfy the terms of the Agreement.

### D. Closing

- (1) Once the Resident has satisfied the terms of the Agreement and other necessary costs to transfer title are paid, including, but not limited to, attorney's fees, deed preparation, and recording fees, the Department shall notify the Resident of the closing date.
- (2) At the closing, the Department shall provide all of the necessary

documents to complete the transaction. The Resident shall receive a copy of the settlement statement detailing all charges and a copy of the warranty deed.

- (3) Once the transaction is completed, the Department shall file and record all of the necessary legal instruments. The original recorded deed shall be mailed to the Resident within thirty (30) calendar days of closing. Any remaining balance due to the Resident after closing, if any, shall be mailed to the Resident within thirty (30) calendar days after closing.

## **ARTICLE XV TRIBAL OBLIGATION DEFAULT**

### **A. Tribal Member Benefits**

If Resident defaults by failing to pay the monthly payments outlined herein or in the performance of any obligation or covenant herein or any obligation under the Policies and Procedures for this Program which are incorporated herein, the Tribe will not provide Resident with any notification but will immediately declare the unpaid amounts hereunder immediately due. The Tribe may consider the default a Tribal Obligation Default and recover the entire unpaid amount in accordance with Title 41 and Title 44 of the Poarch Band of Creek Indians' Tribal Code. As a Tribal Obligation Default, the Housing Department shall, upon written notice, have the right and authority to retain and apply Resident's share of any distributions paid to the Resident from the Tribe, including per capita distribution, General Welfare, or any other monies paid to the Participant, without any further action, proceedings or authorization by the Tribal Court or any other authority.

If the Tribe chooses not to recover the unpaid principal balance and earned interest under the Tribal Obligation Default process, it may seek judgment against Resident for the entire unpaid amount and all reasonable attorneys' fees associated with the collection and/or enforcement of this Agreement through probate, bankruptcy or other judicial proceeding, including Tribal Court. No judgment made by any other court shall release Resident from the obligations herein. This Agreement is binding until all accumulated charges owed to the Tribe by Resident are paid in full.

### **B. Right of Setoff**

In the event that any amount shall remain in default for more than thirty (30) calendar days, the Department shall have the right to setoff any per capita and General Welfare payments against any amounts due and owing as a result of any default.

## **ARTICLE XVI DEFAULT AND TERMINATION**

A. Default by Resident

Any of the following events or conditions shall constitute a default by Resident under this Agreement:

- (1) Any breach of the covenants, obligations, promises, or terms and conditions of this Agreement;
- (2) The commencement of a proceeding in bankruptcy;
- (3) Documents for annual recertification are not received by the first day of the fourth month after the established due date in the Notice of Annual Recertification;
- (4) The vacancy or abandonment of the Home for a period of thirty (30) calendar days or more without approval from the Housing Department Director;
- (5) A materialmen's lien is placed on the Home by a contractor, subcontractor, or supplier;
- (6) Misrepresenting or withholding of material information in applying for admission or in connection with any subsequent re-examination of income and family composition; or
- (7) Information, statements, representations, or documentation furnished by Resident proves to be false in any material respect.

B. Cure

If Resident is in default under this Agreement because of any of the following, the Resident shall have the right to cure the breach by following the procedures set forth in this Section:

- (1) *Maintenance.* If the Department determines (1) that the Resident has failed to perform its maintenance obligations, (2) that the condition of the Home does not create a hazard to the life, health or safety of the occupants, and (3) that there is not a risk of damage to the Home if the condition is not corrected, the Resident may cure the breach by entering into a specific plan of action with the Department staff. The plan of action shall provide for maintenance work to be done within a reasonable time by the Resident but in no event shall the time frame be more than thirty (30) calendar days.
- (2) *Bankruptcy.* If the Resident commences a proceeding in bankruptcy, the Resident or his or her attorney shall have fifteen (15) calendar days from

the commencement of the proceeding to notify the Housing Department Director that the Resident desires to reaffirm its obligations under the Agreement.

- (3) *Failure to Pay the Monthly Payment.* If the Resident fails to pay the monthly payment, the Resident shall have ninety (90) calendar days to cure the breach by paying the delinquent monthly payments and any late charges or entering into a payback agreement if such agreement is available to Resident and is requested in accordance with the TAHO Program Policies and Procedures.

C. Remedies upon Resident Default

Upon the happening of any event of default by Resident as set forth in this Article or failure to cure a default as allowed under this Article, the Department shall have the right, but not the obligation, to do the following, in addition to, and not in limitation of, any other rights and remedies that the Department may have under applicable law:

- (1) Terminate this Agreement; and/or
- (2) If the default is because of Resident's failure after notification to correct a condition of the Home that creates (1) a hazard to the life, health or safety of the occupants or (2) a risk of damage to the Home if the condition is not corrected immediately, the Department may perform the corrective maintenance work. Any maintenance work by the Department shall be accounted for through work orders. The Department shall provide the Resident copies of all work orders for the Home. The cost of any maintenance work performed shall be paid within sixty (60) calendar days of completion of work order.

D. Termination of Lease Agreement by Resident.

- (1) The Resident may terminate this Lease Agreement by giving the Department written notice. Notice of the termination shall be effective on the date received or the date stated in the notice, whichever is later.
- (2) *Inspection upon Termination.* The Resident may schedule an inspection with the Department prior to vacating the Home. No later than five (5) business days after such inspection the Department shall notify the Resident of damages and maintenance required to put the Home in satisfactory condition for the next occupant. The Department may grant the Resident a reasonable amount of time to repair the damages and perform the required maintenance. If the Department does not grant the Resident such ability or if the Resident does not perform the repairs and maintenance, the Department shall charge the Resident for the cost

thereof.

- (3) *Failure to Submit Written Notice.* If the Resident vacates the Home without notice to the Department, the Resident shall remain subject to the obligations of this Agreement, including the obligation to make monthly payments, until the Department terminates the Agreement in writing.

E. Termination by the Department when Resident is not in Default.

- (1) The Department may terminate this Agreement if Resident is not in default as set forth in this Article if and only if the Office of Housing and Urban Development decides not to proceed with the development of the TAHO project in whole or in part.
- (2) The Department shall terminate this Agreement if there is no qualified successor in accordance with the provisions of this Agreement or the Department's approved TAHO Program Policies and Procedures.

F. Termination by the Department when Resident is in Default.

The Department may initiate eviction proceedings for failure to pay the monthly payment, failure to comply with the terms of this Lease Agreement or failure to submit documents requested by the Department.

- (1) If the Resident does not pay the monthly payment amount for three (3) months, the Resident's account will be frozen and a notice will be sent to the Resident via certified mail, regular mail or hand delivery demanding payment. If the Resident wishes to settle the matter with the Department, the Resident shall contact the Tribe's Legal Department within fourteen (14) calendar days from the date of the notice.
- (2) If the account is not brought current or a Payback Agreement is not signed within ten (10) calendar days of demand for payment, eviction proceedings will be initiated and the Department will seek an order of eviction as well as payment of the past due loan amounts and court costs.
- (3) For all other violations, reasonable attempts will be made to bring the Resident into compliance before eviction proceedings are initiated.
- (4) If eviction is ordered, it will be the responsibility of the evicted Resident to remove all personal property from the residence. If any property is left in the residence after the deadline in the eviction order, the Department's staff may dispose of any such abandoned personal property by any legal means.

G. Disposition of Personal Property

Upon termination by either party to this Agreement, the Department may dispose of any item of personal property abandoned by the Resident in a lawful manner deemed suitable by the Department. After such disposition, proceeds, if any, may be applied to the payment of amounts owed by the Resident to the Department.

**ARTICLE XVII AGREEMENT OF TRIBAL JURISDICTION**

A. Governing Law; Venue

This Agreement and any related documents shall be construed according to the laws of the Poarch Band of Creek Indians. Exclusive venue and jurisdiction shall be in the Tribal Courts of the Poarch Band of Creek Indians. Nothing contained in the Agreement or any related documents shall be construed or deemed to waive sovereign immunity or provide recourse to tribal government assets.

B. Consent to Jurisdiction; Waiver of Trial by Jury

Furthermore, Resident, whether or not a member of the Poarch Band of Creek Indians, consents to the civil jurisdiction of the Tribal Court of the Poarch Band of Creek Indians. Resident further waives any right that Resident may have to a trial by jury.

\_\_\_\_\_  
Resident

\_\_\_\_\_  
Resident

**ARTICLE XVIII MISCELLANEOUS**

A. Indemnification

Resident agrees to indemnify and hold harmless the Department, Tribe and its agents from any loss or liability arising out of, relating to, or in connection with damage to property of or injury to Resident or any other person, occurring on the premises, or any part thereof, arising out the Resident's occupancy or use of the Home. Resident also agrees to indemnify and hold harmless the Department, Tribe and its agents from any clean-up costs or environmental damages or liabilities assessed during the lease term or after the expiration of the lease term arising out of Resident's use of the Home during the lease term.

B. Notices

Any notices by the Department to the Resident required under this Agreement or by law shall be hand delivered or be sent by certified mail, return receipt requested, properly addressed, and postage prepaid. Notice to the Department shall be in writing and either hand delivered to an employee at the Department

office or mailed to the Department, properly addressed and postage prepaid.

C. Waiver

The failure of the Department to insist upon a strict performance of any of the terms, conditions, and covenants herein contained shall not be deemed to be a waiver of any of the rights or remedies the Department may have and shall not be deemed a waiver of such rights or remedies in the event of any subsequent breach or default in the terms, conditions, and covenants of this Agreement.

D. Attorney's Fee and Costs

The Resident agrees to pay reasonable attorney's fees and all reasonable costs incurred by the Department to employ an attorney to collect any payments, to enforce the performance of any obligation or covenant of Resident, or to evict Resident.

E. Severability

In the event any provision or any portion of any provisions of this Agreement is held invalid, the other provisions of this Agreement and the remaining portion of said provision shall not be affected thereby and shall continue in full force and effect.

F. Counterparts

This Agreement may be signed in any number of counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one agreement.

G. Entire Agreement

This Agreement represents the entire agreement between the parties and supersedes all prior negotiations, representations and agreements, either oral or written. No modification to the terms hereof shall be made unless agreed to in writing by both parties.

This Lease Agreement has been executed in duplicate, and the Resident hereby acknowledges receipt a completely executed original of this Lease Agreement.

**POARCH BAND OF CREEK INDIANS**

By: \_\_\_\_\_  
Susan M. Wicker, Housing Director

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

**RESIDENT**

Printed Name: \_\_\_\_\_

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

Printed Name: \_\_\_\_\_

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

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**LEASE EXHIBIT 1  
DESCRIPTION OF LEASED PREMISES**

The following describes the leased premises:

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**POARCH BAND OF CREEK INDIANS**

By: \_\_\_\_\_  
Susan M. Wicker, Housing Director

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

**RESIDENT**

\_\_\_\_\_  
Printed Name: \_\_\_\_\_

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

\_\_\_\_\_  
Printed Name: \_\_\_\_\_

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

**LEASE EXHIBIT 2  
TOTAL DEVELOPMENT COST**

**PURCHASE PRICE SCHEDULE**

HOME BUYER NAME: \_\_\_\_\_  
ACCOUNT #: \_\_\_\_\_

CONSTRUCTION COST TO CONTRACTOR:	\$	XXX,XXX.XX
INFRASTRUCTURE:	\$	XX,XXX.XX
SUBTOTAL:	\$	<u>XXX,XXX.XX</u>
LOT/LAND PURCHASE PRICE (if included in TDC)	\$	<u>X,XXX.XX</u>
<b>TOTAL CONTRACT:</b>	<b>\$</b>	<b>XXX,XXX.XX</b>

DATE	DESCRIPTION OF CHARGES	AMOUNT
XX-XX-XXXX	Debt Counseling Class	\$ XX.XX
XX-XX-XXXX	Environmental Assessment	\$ XXX.XX
XX-XX-XXXX	Survey	\$ XXX.XX
XX-XX-XXXX	House plans	\$ X,XXX.XX
XX-XX-XXXX	Deed preparation	\$ XXX.XX
XX-XX-XXXX	Title search	\$ XXX.XX
XX-XX-XXXX	Septic tank permit	\$ XXX.XX
XX-XX-XXXX	Request for draw #1 Start Up	\$ X,XXX.XX
XX-XX-XXXX	Request for draw #2 Slab	\$ XX,XXX.XX
XX-XX-XXXX	Request for draw #3 Framing	\$ XX,XXX.XX
XX-XX-XXXX	Request for draw #4 Sheet Rock	\$ XX,XXX.XX
XX-XX-XXXX	Request for draw #5 Flooring	\$ XX,XXX.XX
XX-XX-XXXX	Request for draw #6 Final	\$ XX,XXX.XX
XX-XX-XXXX	Install septic tank	\$ X,XXX.XX
XX-XX-XXXX	Appliances	\$ X,XXX.XX
XX-XX-XXXX	Landscaping	\$ X,XXX.XX
SUBTOTAL		\$ <u>XXX,XXX.XX</u>
<b>TOTAL DEVELOPMENT COST</b>		<b>\$ XXX,XXX.XX</b>

HOME BUYER SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

HOME BUYER SPOUSE: \_\_\_\_\_ DATE: \_\_\_\_\_