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Tunica-Biloxi Housing Department

Lease with Option to Purchase Program Policy

These policies and procedures were reviewed and approved by the Tunica-Biloxi Housing Board Committee: November 16, 2021 (date)

These policies and procedures were reviewed and approved by the Tunica-Biloxi Tribal Council on: _____ (date) Resolution # _____

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I. Policy Statement

The Sections contained in this policy describe the specific program requirements for the Tunica-Biloxi Housing Department (TBHD) Lease with Option to Purchase (LWOP) program. General admissions and occupancy information is contained in the TBHD Admissions and Occupancy Policy.

II. Goal

The Tunica-Biloxi Housing Department (TBHD) is aware that not all members of the Tunica-Biloxi Tribe may credit qualify for home loan programs offered by private lenders. To overcome this obstacle, TBHD has developed the Lease with Option to Purchase (LWOP) Program to assist individuals or families who are truly committed to owning a home and willing to work with staff to achieve mortgage readiness within a three-year period.

III. Purpose

This policy establishes the program specific criteria upon which a family can achieve homeownership through TBHD's LWOP Program. It also provides direction to staff for admission of applicants into the LWOP Program and for administering the requirements governing their occupancy.

IV. Applicability of Policies

1. This policy describes the LWOP program specific eligibility criteria and requirements for continued participation in the program. General requirements are described in the General Admissions and Occupancy (AO) Policy, although the LWOP policy contains stricter program requirements.
2. All Participants are subject to the policies of the TBHD as they now exist or as they may hereafter be revised or added by the TBHD. The TBHD Admissions and Occupancy Policy (AOP), TBHD Client Action Plan (CAP), the TBHD Housing Counseling Policy, the TBHD Collection & Eviction Policy, the TBHD Grievance Policy, which are attached hereto, or as they may hereafter be amended, are by this reference made a part hereof.
3. The Tribal Council, Advisory Committee, and staff will comply with all applicable laws and regulations of the Department of Housing and Urban Development (HUD), Additionally, council members, committee members, and staff must be in compliance with the Tunica-Biloxi Tribal codes and Ordinances, applicable state and federal laws and regulations, and TBHD policies. Failure for staff to comply will be addressed through action that could result in termination of employment or other disciplinary action.

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V. Eligibility and Underwriting Criteria

A. Overview

This section describes specific program eligibility criteria for the admission to the LWOP program and continued occupancy.

1. Be an enrolled member of the Tunica-Biloxi Tribe,
2. Be owner-occupant,
3. Use the home as their principal residence,
4. Be of legal age capacity to enter into an agreement as defined by the TBHD,
5. Demonstrate capacity to become mortgage-ready with-in three years or less,
6. Comply with mandatory housing counseling requirements,
7. Demonstrate stability in employment and income,
8. Demonstrate ability to pay debt service and meet the obligations of homeownership, and
9. Comply with additional requirements stated in the AO Policy

B. Tunica-Biloxi Tribal Preference

1. The applicant must be a member of the Tunica-Biloxi Tribe to be considered as the Lessee with the right to exercise the option to purchase.
2. Non-Indian and non-member spouses/partners may be considered as an occupant of the household during the rental period but will not have the right of successorship during the rental period.
3. Although non-member and non-Indian spouses/partners may have their income and credit considered for qualifying purposes, they are not eligible to exercise the option.
4. In the event the qualifying participant is no longer able to continue as the Lessee during the rental period for any reason, the non-member or non-Indian spouse/partner will have 90 days to vacate.

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C. Rental Period

The maximum rental period is three years, during which the home will be considered as a rental. Failure to purchase in the three (3) year period will deduct the equity by 50%, if an extension is allowed. An extension is allowed up to two (2) additional years under extreme circumstances determined by the Housing Board with supporting documentation.

D. Option Period

1. The option period is established in the Client Action Plan (CAP) but not to exceed three years.
2. Participant may earn equity during the three years of lease-purchase and apply it for down payment assistance (DPA) and/or closing costs of the new loan at the final closing of the loan.
3. Failure to continue with purchase option, the participant will forfeit all equity back to the housing department.

E. Income

1. Determination of Income eligibility will be in accordance with the TBHD AO Policy.
2. At a minimum, the family must have sufficient household income and demonstrate the capacity to meet the minimum rent of \$400 during the rental period and maintain the debt service and maintenance costs during the homeownership period.
3. Moderate-income applicants may be admitted to the LWOP Program if the TBHD determines that there is a documented need for housing for such families that cannot reasonably be met without such assistance. In all instances, assistance and benefit cannot be the same as for a low-income family. Payment requirements and any other assistance will be according to rates established by the TBHD for moderate-income families.

F. Employment Stability

For an applicant to be financially eligible for the LWOP Program, they must have at least two years stable income and also demonstrate the ability to maintain at least their present level of income. This will be verified by staff and may be satisfied by a written statement from the applicant's employer. If it is not feasible to determine income potential from an employer, this verification may come from copies of the applicant's income tax returns for the last three years prior to the

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application date. The applicant must sign an IRS Form 4506t or other forms as reasonably necessary, authorizing the IRS to release the information to the TBHD. These income tax returns will be kept on file and new ones will be submitted each year thereafter until the option is exercised.

G. Affordability Analysis

1. The following diagnostic tools will be used to evaluate the Applicant's affordability:
 - Debt-to-income ratio of 41% and "front" ratio of 33%
 - Credit report analysis
 - Non-traditional credit
 - Personal financial information
 - Monthly spending plan
2. Departure from ratio guidelines will be considered when compensating factors are present, such as
 - Reduces housing burden – history of rental payments exceeds amount of mortgage payment
 - Family has demonstrated ability to establish alternative credit.
 - Family has adopted a corrective action plan.
 - Evidence of establishment of a payment plan to treat collections more as a liability.
 - Proven ability to devote a larger amount of income to housing expense.
 - Demonstrated ability to maintain a good payment or credit history.
 - Potential for future increased earnings and job stability.
 - Substantial down payment on the purchase of the property or strong equity position for an existing homeowner.
 - Cost-efficient property characteristics (such as documented energy-efficient items) that make more income available for repaying mortgage debt.

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3. Affordability analysis shall also be based on a careful assessment of the Applicant's income, employment, assets, liabilities, credit history, and upfront costs to determine residual income.
4. Successful Applicants must have adequate residual income to repay the loan and have demonstrated the willingness to repay credit obligations. TBHD staff shall assist Applicants with preparing letters of explanation if necessary.
5. The staff will submit a recommendation with supporting documentation to the TBHD Housing Director for a final decision. There must be compelling factors documenting that the family would be able to fully meet the obligations of homeownership.

VI. Application Process

A. Qualifying Applicant

An eligible applicant must submit a full and complete application, including authorizations and evidence of prior attendance in Housing Counseling classes and one-on-one sessions, before they can be determined eligible for placement on the waiting list.

B. Process

1. The Application process requires the Applicant must pay fees for the following:
 - Credit Report
 - Background Check
2. In order to be considered for occupancy in any housing program offered by TBHD, a written (legible) application must be completed.
3. All application data processed by staff are entered into the Housing Data Systems (HDS).
4. Staff members receiving an application must note the date and time of receipt of the application.
5. All information provided in the application will be immediately verified and documented.
6. When no units are available, a preliminary review for application completeness is performed to determine "apparent eligibility" for placement on the waiting list.

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7. Applicants with incomplete applications will be notified and provided an opportunity to complete the application for a maximum of 30 days.
8. In the event of a rejection, the staff will notify the Applicant in writing of the basis of the determination and the right to appeal the decision in accordance with the grievance policy, hereinafter, by reference, made a part of this policy.
9. In the event of a favorable determination, the TBHD Housing Director will notify the Applicant in writing of apparent eligibility and place them on the Waiting List using the date and time the Applicant originally applied.

C. Forms

The LWOP Program requires additional forms to determine suitability for the LWOP Program and to maintain continued assistance. Additional forms include, but are not limited to the following:

1. Prequalification
2. Consent for Credit Report
3. Participant Counseling Agreement
4. Setting Goals Worksheet Statement
5. Financial History
6. Budgeting Worksheets
7. Client Assessment and Action Plan

D. Waitlist

1. The TBHD will maintain a separate Waiting List for the LWOP Program.
2. The waitlist will be organized by priorities.

VII. Verification

Procedures for verification will be in accordance with the verification guidelines outlined in the TBHD AOP.

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VIII. Selection Process

1. Applicants must first be determined to be eligible which includes completing the initial Home Buyer Education class. Applicants must be able to qualify for mortgage readiness within a maximum of three years (36 months).
2. Once eligibility and qualification requirements have been met, applicants are placed on a waiting list.
3. Selection will be made in the order of earliest date of mortgage readiness to the latest date of mortgage readiness.

Preferences in Selection of Homebuyers

1	Credit	50 pt
2	Stability in Employment (2 or more years) (5 additional points for each year after 2)(i.e. 4 years=50 points)	40 pt
3	Income	30 pt
4	Housing Ratios	20 pt
5	Housing Counseling	10 pt
6	Savings	10 pt

PREFERENCES FOR HOMEBUYERS

1. **Ability to Qualify in 12 months**
2. **Ability to Qualify in 24 months**
3. **Ability to Qualify in 36 months**
4. **Ability to Qualify in 48 months**
5. **Savings**
6. **First-time Homebuyer**

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IX. Housing Counseling Requirements

A. Completion of Required Actions

All participants and each occupant of the premises will complete all "Required Actions" as described in the (CAP), which shall become a part of the Lease Agreement. The Participants must agree that all actions will be completed in a period of time not to exceed 36 months from the effective date of the Lease Agreement.

B. Condition of Participation

As a condition of participation in the TBHD housing program, the participant will attend and satisfactorily complete Participant Education classes provided by the TBHD.

C. One-on-One Housing Counseling:

If TBHD deems it necessary, the Participant will attend as many One-on-One Housing Counseling sessions as needed to meet the requirements with respect to property maintenance, financial management, compliance with the CAP, and such other matters as may be appropriate.

D. Failure to Comply:

Non-compliance with the Housing Counseling requirements or the CAP will result in termination of participation in the LWOP Program.

X. LWOP Program Rent & Other Payments

This section describes the rental payments required during the rental phase of the program and, if applicable, any additional required payments.

A. Rent Payment for Low-Income Families

During the rental phase of the LWOP program, low-income families will be charged a monthly minimum rent payment of \$400 per month.

B. Rent Payments for Moderate Income Families

The rental payment will be calculated in accordance with the TBHD AO Policy for non-low-income families. Monthly rental payments will be determined by the TBHD on a case by case basis based on at least the following:



1. The Fair Market Rent as published by HUD annually or
2. The debt service for the home based on the appraised price for a term of 30 years, at the current prime rate plus 2%

XI. Recertification Process

Procedures for recertification will be guided by the recertification guidelines outlined in the TBHD Admissions and Occupancy Policy.

Should the participant's income fall below their calculated monthly rental payment, the participant shall have 60 days to increase their monthly income.

If the participant fails to increase their monthly income within the 60 days, the Lease to Purchase Agreement will be terminated, and the participant shall be required to:

- Vacate the home
- Move into a Rental Program Unit (if available)

TBHD may terminate the agreement in its entirety with 30 day written notice to the tenant in accordance with TBHD's Eviction Policy.

XII. Option to Purchase & Purchase Prices

A. Option to Purchase Period:

TBHD, in consideration of the Lease Agreement, grants to the Participant the exclusive option to purchase the home on the leased premises, provided that the participant shall have duly fulfilled all of the provisions and conditions of the Lease Agreement, pursuant to the terms and provisions hereinafter stated: The option to purchase shall be available for a period as determined by the CAP but not to exceed 36 months.

B. Notice of Exercise of Exclusive Option

The exercise must be executed by written notice to the TBHD, either delivered or mailed to the following address:

Tunica-Biloxi Housing Department
PO Box 1589
Marksville, LA 71351

A notice which is mailed shall be deemed to be timely in the event the notice is mailed within the option period as evidenced by the U. S. postmark.



C. Failure to Exercise Purchase Option

If the participant fails to exercise the option to purchase within the designated option period, the Lease Agreement will terminate and TBHD shall retain all rental payments received and the participant shall have no right to receive back any part of the rent and shall have no further rights or claims hereunder.

Should the participant's fail to exercise the option to purchase within the option period, the Lease-Purchase Agreement will terminate and the participate will be required to:

- Vacate the home
- Move into a Rental Program Unit (if available)

TBHD may terminate the agreement in its entirety with 30 day written notice to the tenant in accordance with TBHD's Eviction Policy, if participant fails to proceed with purchase option and return to rental program.

D. Exercising the Purchase Option

If the participant exercises the purchase option, the purchase/process shall occur within sixty (60) days of LP agreement expiring. The purchase shall be subject to all of the following terms and conditions:

1. The Participant has preapproval from a private lender for the purchase of the home.
2. The Lease Agreement has not been terminated prior to the exercise of the purchase option.
3. The participant shall not have the right to assign the purchase option.
4. No portion of the rental payments shall be refunded to the participant in the event the participant fails to exercise said purchase option.
5. In the event the participant exercises the option to purchase, the participant shall pay all settlement costs incidental to acquiring ownership, including but not limited to, costs and fees for credit report, field survey, title examination, title insurance, inspections, attorney fees, closing, recording, transfer taxes, finance fees, mortgage loan discount and appraisals.
6. The Tunica-Biloxi Tribe will assist the participant continued affordability by reducing the cost of the home by up to 30% of the appraised value or construction cost whichever is less for the low/moderate income family. The percentage may vary based on the family's income at pre-approval of mortgage.

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E. Purchase Price Formula for Low-Income Participants

1. First mortgage.

The Participant must obtain their own mortgage in an amount sufficient to satisfy the appraised price. Likewise, the Participant may pay cash in an amount sufficient to satisfy purchase of the home.

2. Closing Cost Assistance

Participants who successfully meet all the requirements of the LWOP Program will be eligible for TBHD's Closing Cost Assistance not to exceed \$8,000. If the eligible Participant successfully exercises their option and remains in the home for the affordability period of five years, then the Closing Cost Assistance will be forgiven. If the homeowner sells the home prior to the expiration of the affordability period, they are required to reimburse TBHD for the amount of funds granted at closing. The TBHD Closing Cost Assistance reimbursement shall be secured to TBHD through a lien process which includes a Promissory Note entered into at the time of the closing. For more information on TBHD's Closing Cost Assistance Program, a copy of the program policy can be provided upon request.

F. Purchase Price Formula for Moderate-Income Participants

1. First mortgage.

The Participant must obtain their own mortgage in an amount sufficient to satisfy the appraised price. Likewise, the Participant may pay cash in an amount sufficient to satisfy purchase of the home.

2. Closing Cost Assistance

Participants who successfully meet all the requirements of the LWOP Program will be eligible for TBHD Closing Cost Assistance. The amount awarded is not to exceed \$8,000. Participants must meet the HUD median income requirements at the time of the pre-approval mortgage notice.

If the moderate-income Participant successfully exercises their option and remains in the home for the affordability period of 5 years, then the Closing Cost Assistance will be forgiven 5 years from the date funds are granted at closing. If the applicant sells, or transfers the home prior to the 5-year period, the participant will be required to reimburse TBHD the amount they had been awarded for the Closing Cost Assistance.

For more information on TBHD's Closing Cost Assistance Program, a copy of the program policy can be provided upon request.

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XIII. Succession

A. Rental Period

Succession is not applicable during the rental period.

B. Death or Incapacity

Upon the death of the participant during the rental period, the Rental participant's interest in the Lease Agreement may NOT be inherited. No non-Tribal citizen will be allowed to move into unit.

XIV. Restrictions

A. Restrictions on Ownership Interest

Only an individual who is eligible under the laws and customs of the Tunica-Biloxi Tribe can lease TBHD owned land for residential purposes shall be eligible to be a Participant(s) under this Agreement or have any ownership interest in the right to acquire a leasehold interest in a home under this Agreement. Any purported sale, conveyance or other transfer to such a person, including pursuant to a divorce decree or by will or intestate succession, shall be null and void. Any Participant(s) whose enrollment status is changed subsequent to the execution of this Agreement and who would thereby not be eligible to lease tribally owned land for residential purposes shall be considered as having terminated this Agreement. These provisions shall continue after and survive the term of this Agreement.

B. Restrictions on Sale, Transfer or Conveyance by Participant

In no case shall the Participant(s) sell, transfer or convey any interest in the right to acquire a leasehold interest in a home under this Agreement, including pursuant to a divorce decree or by will or intestate succession, except as may be specifically provided for in the policies. Any such purported sale, transfer or conveyance shall be null and void. This restriction shall apply to liens and encumbrances of all types and kinds.

XV. Inheritance

Once the option is exercised, if the Tribal member dies or becomes divorced from the non-Indian or the non-member, the non-Indian or non-member spouse may not inherit the property in the case of death or be granted the property by consent of the



parties or by the Courts in the event of a divorce. Likewise, during the rental phase of the program if the Tunica-Biloxi Tribal member dies, the non-Indian or non-member spouse cannot be the beneficiary or remain in possession of the unit; nor may the parties or the Courts allow the non-Indian or non-member spouse to remain in possession of the rental unit in the event of divorce.

XVI. Life Estate

A. Death of Homeowner: In the event of the death of the homeowner, the provisions of the following Life Estate Code may apply.

1. Enrolled members of the Tunica-Biloxi Tribe, may bequeath by a Will a life-estate to their non-enrolled spouse and or their non-enrolled children. The non-enrolled spouse and or the non-enrolled children shall be permitted to use and occupy the home during the course of their lifetime subject to the same terms and conditions of the enrolled deceased member, which may include any outstanding mortgage. The non-enrolled spouse and or non-enrolled children can never inherit the land or any improvements thereon. Upon the expiration of these life estates the leasehold interest in the land and any improvements thereon shall be transferred and conveyed to an enrolled member pursuant to the terms of the deceased enrolled member's Will.
2. In the event that an enrolled member dies intestate (without a will), his non-enrolled surviving spouse and or non-enrolled children may elect to take a life estate in the home and any improvements thereon. The non-enrolled spouse and or the non-enrolled children shall be permitted to use and occupy the home during the course of their lifetime subject to the same terms and conditions of the enrolled deceased member, which may include any outstanding mortgage.
3. The non-enrolled spouse and or non-enrolled children can never inherit the land or any improvements thereon. Upon the expiration of these life estates the home and any improvements thereon shall be transferred, conveyed and sold to TBHD pursuant to 43 CFR Part 4 at the appraised value. The non-enrolled spouse and or non-enrolled children may decline to take a life estate in the home and sell to TBHD the home pursuant to 43 CFR Part 4, Tribal Purchase of Interests Under Special Statutes.
 - a. Since this is a rent to own program, no equity accrues until the home is purchased. If the rent agreement is terminated for whatever reason, the payments made by the Participant will be treated as rent to the TBHD.

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