

**APPENDIX H
LEASE RECOMMENDATIONS**

PINE NUT ALLOTMENTS LEASE ANALYSIS
SUMMARY OF ISSUES

The following document is an analysis of issues found in the Master Lease granted to the developers of the Pine View Estates, with recommendations for changes in future leases made to developers on allotments in the Pine View Mountains of Western Nevada.

The recommendations are based on the assumptions that:

1. The land that is leased will be held in Trust and not made available for sale as it was in the Pine View Estates Master Lease.
2. All developments will conform to standards written specifically for that purpose in lieu of County zoning ordinances or other regulations that do not apply on Trust lands.
3. Leases will be written that will ensure long term revenues for the allotment holders that are based on market values and returns comparable to those that could be achieved by outright sale.
4. Leases will be made to developers who can demonstrate capability to perform the projects for which the leases are written, including financial capability.
5. Provisions will be made to ensure specific performance of the accepted development proposals.
6. Remedies for default will protect the allotment holders to preserve the values and integrity of the land.

It may not be possible to write a single Master Lease form that will apply to all leases because of variations in suitability of the land, proposed land uses, densities of development, infrastructure issues, and other factors. Also, there may be specific provisions required under the Federal Code and administrative rules that will need to be written by legal counsel for the Bureau of Indian Affairs. Following the discussion of issues arising from the Pine View Estates Master Lease, a sample lease is provided as a guideline for further development. Input is needed from BIA staff and Counsel to complete that sample lease in an acceptable form.

That input should include direction on some specific issues. Recognizing that the leases need to protect the allotment holders but still provide incentives for developers, the length of term of the leases has to be long enough to enable conventional financing of projects, probably through Deeds of Trust on the leasehold interests. The current policy of 50-year leases is adequate for a first conventional mortgage of 30 years, but it becomes a serious detriment to further financing as that term approaches. Any lender will want to be assured that sufficient time remains on the lease to ensure resale of the improvements if the original owner defaults. If only 20 years remains on the ground lease, it will be impossible to place a 30-year mortgage on the owned improvements.

For that reason, the BIA should work toward gaining legal authority to write leases for either a period extending to 99 years or with escalating terms, especially for residential developments. For example, if an original Lessee should default, desire to sell, or die during the term of the lease, then the lease might have a provision that any second owner could obtain an extension of the lease sufficient to obtain a new 30-year mortgage.

There is also the question of how the allotment lands should be valued to ensure that the lease revenues provide market rates of return over the full period of those leases. The standard method is to obtain a qualified appraisal to set the beginning market value and apply a base lease rate that produces a fair market return. For example, if the land is valued at \$40,000 per acre, setting the rate of return at 6.25% would translate into an annual lease rate of \$2,500 or a little over \$208 per month. The full value of the land would be recaptured by the allotment owner every 16 years during the term of the lease.

It is also necessary to apply an escalator that assures the lease revenues at least match rates of inflation over the term of the lease. A standard index used for that purpose is the consumer price index as calculated by the U.S. Bureau of Labor Statistics. Specific guidelines are provided by the BLS on its web site on how to use the CPI to adjust contract terms over time (<http://www.bls.gov/cpi/cpi1998d.htm>).

A cash flow projection based on CPI adjustments may appear to end up with a net present value equal to the original market value, which will be less than the value of proceeds from a sale that are invested at above-CPI rates of interest. For example, the annual CPI-adjusted increase in rents may be 3%, but principal funds from a sale could be invested in a Certificate of Deposit at a rate of 4% or higher. However, there is a major difference in the analysis because the leasing model includes the return of the land at the end of the lease period, at the then current market value, to the allotment holder. That adds the full value of market appreciation into the net present value of the leasing cash flows. That adds another 6% to 7% of annual returns to the leasing model.

The recommendations made in the accompanying document address the issues described above, but some of them will depend on policy decisions. A final Master Lease model can be developed to incorporate those policy decisions.

PINE NUT ALLOTMENTS LEASE RECOMMENDATIONS

Introduction

This document was prepared by Elesco Limited for the U.S. Bureau of Indian Affairs, Western Regional Office, to assess pertinent issues and provide recommendations for new master land leases for the Pine Nut Allotments in Western Nevada. **This document was not prepared by a licensed attorney and the development of any lease contracts will require the services of qualified legal counsel.** Instead, this document was prepared by individuals who have been licensed to provide real estate services in Arizona and California and who have had extensive experience in negotiating land leases in those states.

This document represents findings from a combination of sources that were studied in the research for this project and which are listed in the Appendix. These include the US Code – Title 25 – Indians, as well as several examples of leases entered into by the BIA or individual Indians and/or Tribes; court cases involving disputes arising from some of those leases; municipal land leases; and best practices for private-sector commercial land leases.

Two key assumptions underlie these findings: (1) the Pine Nut Allotments will remain in Trust status, and there will be no provisions for granting fee title to the land to any parties; and (2) the leases are expected to return fair market value to the allotment owners over the periods of those leases.

Important issues are identified for each of the lease provisions, with discussion of their potential implications and recommendations for their resolution.

Perspectives on Land Leases

A land lease is a contractual financial arrangement by which the ground on which a proposed structure is to be built is leased to a builder/developer (Lessee) instead of being sold, meaning that the land and the structure(s) are owned independently. Instead of acquiring title in fee ownership, the builder/developer acquires certain leasehold rights in the property. The most common reason for a land lease contract is that the property owner (Lessor) wants to retain ownership of the land but not take on the responsibilities for its development. That right is contractually assigned to the builder/developer in exchange for lease payments that provide an income stream to the owner.

Generally, the contract for a land lease runs for at least 50 years although leases up to 99 years are also common. The Lessor may renew a lease as it approaches termination, usually at renegotiated amounts of rent; however, that is not automatic and therein lies one of the greatest difficulties in leasing land on which other parties are expected to make capital improvements. If the lease is not renewed, the standard practice is that any improvements made on the land revert

to ownership by the Lessor. Other arrangements may include removal of those improvements by the Lessee, or a fixed-sum payment from the Lessor to the Lessee in lieu of removal.

For commercial developments, this provision affects the quality of the investment in terms of the Lessee's ability to finance, refinance, or sell the capital improvements. The primary recourse of a lender if the Lessee defaults is to take back ownership of the property and find some other party to cover the debt service obligations. The closer the default is to the end of the lease period, the more difficult it becomes to find a third party willing to assume that debt or to collateralize new financing. Anyone considering buying the property will likely expect a deeply discounted price to reflect the shortened period for recovering the purchase price.

Despite this concern, commercial projects are the most likely uses for land that is leased because of two factors: (1) the income stream that can be produced by renting facilities or space to subtenants; and (2) the tax advantages that can be gained from depreciating income properties as well as deducting the interest payments. The investment in the project will be analyzed for its after-tax rate of return on equity capital and the decision to go forward will be based on the outcome of that analysis.

It is a different story for residential properties, especially those that are owner-occupied such as primary or second-home developments. In addition to the psychological aversion to giving up their homes at the end of the lease period, owner-occupants do not have the advantage of depreciating their investment although they can still deduct mortgage interest. They will not have income streams from their homes unless they rent them as income properties. Instead, they are more likely to consider their principal payments as wealth-building investments and value appreciation because an internal rate of return (IRR) analysis is not applicable. If the residence reverts to the landowner at the end of the lease term, then both the accrued principal payments and the appreciation also revert to the land owner. These concerns make it an advantage to offer a longer-term lease for development of residential properties than for commercial properties.

From the Lessor's perspective, two of the main concerns are (1) obtaining specific performance from the builder/developer, i.e., ensuring that the Lessee will construct, maintain and manage the improvements according to the terms specified in the lease; and (2) ensuring that the Lessor retains or recaptures the value of the land in the event the Lessee defaults on the terms of the lease. Many of the provisions in the lease are intended to protect the Lessor's interests in these two very important areas.

There is no single format for writing land leases as each one has to be tailored to the specific property being leased, the uses that are proposed on it, and the unique interests of the parties entering into the lease. The Master Lease written for the Pine View Estates contained 47 provisions with their individual sub-paragraphs. The Lease Provision Checklist provided by the American Society of Real Estate Counselors (ASREC) contains 33 sub-paragraphs under four primary headings: (1) Fundamental; (2) Desirable; (3) Options; (4) Special and Miscellaneous. These apply more broadly than just to a land lease but include provisions for leasing structures as well as land. The list below is a modified version showing only those provisions that would normally apply to land leases.

Land Lease Provisions Checklist (American Society of Real Estate Counselors)

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|---|---|
| <p>A. Fundamental</p> <ol style="list-style-type: none">1. Name and legal address of parties2. Description of property3. Term of agreement4. Rental and method of payment <p>B. Desirable</p> <ol style="list-style-type: none">1. Use – limitations & restrictions2. Utilities3. Damages4. Indemnification5. Inspection6. Notices7. Assignment and/or subletting8. Ad valorem taxes9. Remedies for Default10. Remedies in Bankruptcy | <p>C. Options</p> <ol style="list-style-type: none">1. Renewal2. Cancellation <p>D. Special & Miscellaneous</p> <ol style="list-style-type: none">1. Inducements2. Postponement and/or holdover3. Subordination4. Security5. Escalator clauses<ol style="list-style-type: none">a. Rentsa. Taxesb. Insurance6. Percentage rents7. Arbitration8. Applicable laws |
|---|---|

Discussion of Lease Provisions for the Pine Nut Allotments

The discussion below follows the format of the Pine View Estates master lease between the allotment owner (Lessor) and PTP, Inc. (Lessee), with references as appropriate to the above checklist and to other documents that were examined for this report. Its purpose is to highlight major issues that will need to be considered in the lease agreement form that is drafted by legal counsel.

Name and Legal Address of Parties

This appears to be straight-forward but may be more complicated. Many of the Pine Nut Allotments are held in multiple ownerships, due in part to deaths and inheritances, marriages, and distribution through extended families. Some of these allotments show more than 50 owners! For those allotments not held in single ownerships, there needs to be an express provision designating who can sign the lease on behalf of the other owners. It may be desirable to have the multiple owners form an L.L.C. or other legal entity to perform this function, or have the owners agree to a limited Power of Attorney assigning the responsibility to one individual. In any case, many real estate transactions have come apart because it was later determined that the person who signed the lease or sale agreement did not have the legal authority to do so.

1. *Definitions*

This section of the Pine View Estate master lease contains provisions that are unique to the legal requirements of leasing land held in Trust and managed through the Secretary of the U.S. Department of the Interior. There do not appear to be any issues needing resolution.

2. *Leased Premises (Description of Property)*

This can be any legal method for accurately describing the land (property) being leased, including Assessor's maps and parcel numbers, tax lot numbers, surveyed allotment numbers, or metes and bounds descriptions. Any exclusion of portions of the property from the lease needs to be stated in this paragraph. Also, any structures, such as wells, need to be specifically referenced as part of the lease to avoid disputes over whether they are included.

3. *Term (of Agreement)*

The Pine View Estates master lease provided for a fifty-year (50) lease beginning on the Approval Date, but allowed for automatic extension for another forty-nine (49) years from the end of that period. That was subsequently amended to state that the automatic extension would occur with approval by the Superintendent. It is strongly recommended that the BIA obtain approval to grant 99-year leases to make the properties more marketable, especially for residential uses. Another common form of stating the term is to use specific starting and ending dates. Because the Approval Date may not be known when the lease documents are written and signed, those specific dates might be added by notation after the lease is approved.

4. *Condition of Leased Premises*

This provision calls for a satisfactory Due Diligence investigation by the Lessee, through an independent investigation, and declaration that the subject premises are satisfactory. It would be desirable to have a declaratory form, signed by both parties and attached to the lease, describing any discrepancies or non-standard conditions found on the property during the Due Diligence that are accepted by both the Lessor and the Lessee. This would be similar to the common practice among car rental agencies to note any damages, no matter how minor, before the renter takes possession to avoid future disputes. Disclaimers can also be made in this section, such as the disclaimer that the Lessor does not guarantee the availability of long term water supplies on the property.

5. *Appraisal*

In the Pine View Estates Master Lease, the Lessee is required to "provide an appraisal of the subject property at his sole expense satisfactory to the Secretary". This could be useful to the Lessee if a Deed of Trust is to be created on the leasehold interest, but otherwise it is not certain why this is made a requirement of the Lessee. In any dispute over loss of value due to carelessness or other actions by the Lessee, it would be to the Lessor's advantage to have an independent appraised value to use in setting damages.

6. *Miscellaneous Terms*

With one exception, this paragraph is used in the Pine View Estates Master Lease to address provisions of the Lessor's rights and obligations regarding participation in a Homeowner's Association and being able to hook up to the utility systems developed by the Lessee. The one exception is subparagraph #1 whereby the Lessor states that he is the sole owner of the allotment. As discussed above, this would be established more appropriately in the opening paragraph (Name and Legal Address of Parties) where it can be stated whether the Lessor is a sole owner, a legal representative of a group of owners, an officer who can legally bind an L.L.C., etc. The other provisions of this paragraph should be stated under a defined heading such as "Right to Access Infrastructure Improvements" rather than classified as "Miscellaneous".

7. *Purpose*

Paragraph 7 is a general statement of the proposed use(s) of the property similar to stating the uses allowed under a zoning ordinance. It does not establish specific development guidelines or restrictions: Those are cited in Paragraph 10 – General Plan, and Paragraph 12 – Plans and Designs, with the stipulation that they must be developed within a specified time frame.

Leases often allow for flexibility in the development of properties to adjust for changing markets and other circumstances that are unforeseen when the lease is negotiated. However, the Bureau should consider having a general plan for development provided by the Lessee *prior to* the execution of the lease. That can be accomplished with an option to lease that gives the Lessee the right to execute the lease when certain provisions have been satisfied, such as providing an acceptable development plan and showing financial capability to complete the development within a specified time frame. It is generally much simpler to work with an expired option than with a terminated lease.

Even for a single family residence, it would be desirable to have an approved site plan and building plan showing elevations with square footage, materials, landscaping, or other provisions normally included in CC&Rs (Covenants, Conditions and Restrictions). Paragraph 42 stipulates that CC&Rs will be developed only for subleases but these need to apply to primary leases as well. These do not necessarily have to be drawn by designers or engineers, but should give some idea of what the finished product will look like on the property.

One of the ways to deal with the uncertainties of these three paragraphs in the lease document would be to create standardized requirements for how properties need to be developed, similar to a zoning ordinance, along with a set of design standards such as are being developed for this project. Those can then be referenced in the lease as required performance standards. A development checklist could be provided to the Lessee to make sure the Lessee is fully informed about what is expected.

The BIA could consider adopting the Douglas County planning and building codes as regulatory guidelines for all development on the allotments. This idea was discussed with County planners during the investigations for this project and it was well received. It might also be possible for the BIA to contract with the County for building inspections and code enforcement. While they

would not have regulatory jurisdiction, they could advise the Bureau on whether the standards are being met and any deficiencies that need to be corrected. That still leaves the issue of enforcement, i.e., who enforces the codes to ensure compliance. Presumably, the County would not be able to issue a stop work order or withhold a certificate of occupancy. However, it could be written into the leases that non-compliance carries legal remedies to protect the Lessor, including termination of the lease of the work being performed is non-standard.

Without such standards, any verbal understandings between the Lessor and the Lessee will be subject to interpretation and potential disputes. It would be highly desirable to show and/or describe the proposed development plan as an attachment to the lease that has been approved by both parties, either under an option to lease or simply as a pre-lease requirement.

8. *Unlawful Uses*

This is a good provision, although there may be various interpretations as to what is “unlawful”. Presumably the term applies to the laws of the United States and the State of Nevada, but it may be desirable to state whether the International Building Code or any local ordinances that should be adopted apply (or are excluded) and/or whether the paragraph applies to administrative rules.

9. *Lease Fees*

This is a straight-forward description of the amounts payable, and their timing, under the terms of the lease. It is a little unusual because the payments are made to the Secretary for the benefit of the allotment holder. The various subparagraphs adequately cover the details of the lease. These specific provisions need to be written by legal counsel qualified to address the required regulatory language as well as general purposes of each individual lease. As noted above, there needs to be clear language about the method for calculating lease escalations, when they take effect, and how they are applied.

10. *General Plan*

Again, the way this paragraph is written it describes the general use (purpose) of the proposed development of the property and includes some specific requirements that are typical of a zoning ordinance. At this point, it does not say that the general plan has to be approved by the Secretary, the BIA office, or the Lessor. It would be desirable to be more specific and even show an approved concept plan as an attachment.

11. *Time and Expenditure for Improvements*

This is one of the most important paragraphs in the lease, especially the specified time period for improvements, because it is frequently the most common cause of disputes and/or defaults. The way it is written in the Pine View Estates master lease, there are several timed benchmarks that must be met to ensure continuing progress toward the final full development. This type of language needs to be included in all the leases.

Equally important is language that clearly describes the rights of the Lessor in case the Lessee fails to meet the requirements of the lease. There is a default provision in Paragraph 13 – Completion of Development, with a fuller provision in Paragraph 27 – Defaults. These could be combined into a single paragraph under the ASREC heading of “Remedies for Default”. That would allow description of each potential default and the specific actions that may be taken by the Lessee to cure the default, or by the Secretary or Lessor to claim a remedy.

In general, the primary objective of the default provision should be to ensure specific performance, i.e., that the Lessor actually develops the property in the manner described by the general plan as well as the specific plans and designs. The Lessor usually does not want to cancel a lease with only partially built improvements. For that reason, the Lessee needs to have room to adjust to changing market or financial conditions or other unforeseeable events.

12. Plans and Designs

Again, it is recommended that these be approved prior to the execution of the lease, even if it requires a pre-lease option agreement. This also commits the Lessee to making at least some financial investment in the project before taking a position in the property in addition to the required environmental assessment.

13. Completion of Development

As noted, this paragraph reinforces the timing of the project that has already been stipulated in the lease, along with a provision allowing the Lessor to terminate the lease if completion does not occur during the stipulated period. This paragraph would have more force if it were made part of the “Remedies for Default”.

14. Construction, Maintenance, Repair, Alterations

This paragraph is generally satisfactory but would have more strength if it referenced performance standards, CC&Rs, or other written requirements for construction and development. Any exceptions could be noted if agreed to by both parties.

The “indemnify and hold harmless” provision is acceptable in this paragraph but reference could also be made to Paragraph 24 – Public Liability Insurance.

15. Community Services

This is a good paragraph for emphasizing that the Lessor has no responsibilities or liabilities for maintaining and/or protecting the Lessee’s property. It would be useful to verify that these services can be obtained and to include the names of the public agencies that are responsible for police and fire protection.

16. Water Use and Facilities

This paragraph is vague because it does not define “large volumes” of water. It appears to be written for Pine View Estates under the assumption that all water will be provided by a domestic

water system. Many of the allotments will probably be served by wells, and perhaps by already existing wells owned by the Lessor. Water is an important issue in the Pine Nut Mountains and there needs to be flexible but clear language that describes how water will be provided to each allotment, who is responsible for providing it, what uses are allowed for that water (domestic, agricultural, recreational, commercial, etc.), what limitations are imposed, and how the water use will be monitored. There also needs to be language that states any remedies for violating the terms of this water agreement. The lease should include a disclaimer that ground water may not be available over the life of the development, and that this provision should be incorporated into all subleases in the Pine Nut allotments.

17. Non-Responsibility Notices

This paragraph is appropriate as written.

18. Sublease, Assignment, Transfer

This paragraph generally conforms to standard subleasing agreements in the private sector. It is important to note that a sublease does not relieve the Lessee of any obligations under the master lease, including the obligations to pay the primary lease rent to the Secretary and to maintain the property in good condition, whether occupied by the sublease tenant or vacated. Problems usually arise when the Lessee, who is the owner of the sublet building, tries to transfer primary lease responsibilities to the sublease tenant.

As written in this paragraph, the references to “assignment” and “transfer” apply to a specific two acres of commercial property. In practice, these terms also need to apply to the master lease itself. Presumably, the credit worthiness and ability of the Lessee to perform were validated prior to agreement to lease the property to the Lessee. There should not be an unrestricted right of the Lessee to assign or transfer the lease unless the Lessor agrees to the substitution. Otherwise, the Lessor might end up having a leaseholder with lower qualifications than the original Lessee.

19. Status of Sublease

This paragraph essentially moves the Lessor into the position of the Lessee as regards subleases if the master lease is terminated. There needs to be a set of mechanics for collecting rents, enforcing maintenance and upkeep agreements, payments of utilities, etc. to avoid having disputes with the sublease tenants about their responsibilities versus those of the Lessor.

20. Right of First Refusal

This paragraph is well written but has an unstated assumption that the Lessee will offer to “sell, exchange, or otherwise dispose of” improvements at a discounted market rate as the master lease moves toward termination. It would not be reasonable for the Lessor to acquire the property under a right of first refusal at the same value as if it were on land owned by the Lessee.

21. *Release Clauses*

This paragraph applies principally to development of a subdivision where the project is developed sequentially, over time, as individual lots are sublet. It is written to accommodate that purpose, but it is unclear whether this provision will need to be included in all leases.

22. *Encumbrances*

It might be worth stating that any encumbrance allowed under this paragraph shall be limited to the right of the encumbrancer (financing entity) to acquire the leasehold interest of the Lessee in default. That limits it to a right of possession, sale of improvements, or subleasing.

23. *Liens, Taxes, Assessment, Utility Charges*

The provisions of this paragraph are straightforward. Presumably, liens can only be made against the improvements placed on the land and not on the land itself. It might be worthwhile to state that explicitly.

24. *Public Liability Insurance*

This paragraph includes two parts: (1) a provision to name the Lessor as co-insured on the Lessee's general liability insurance policy, at specified amounts of coverage; and (2) a hold-harmless provision for the U.S. Government and its officers, agents and employees. It would be desirable to include the Lessor and the U.S. government under both of these provisions, which is standard practice in many general business contracts. There should also be a provision for notices upon each renewal to confirm that the policy still includes that coverage.

25. *Fire and Damage Insurance*

This paragraph requires the Lessee to "rebuild, repair or otherwise reinstate" damaged improvements. It would be worthwhile to add a provision that if circumstances prevent any of those from occurring, then the Lessee will be required to return the land to its original state prior to the construction of the improvements.

26. *Time of Essence*

This is a standard provision, usually coming at the end of the lease form.

27. *Default*

As noted earlier, this is one of the most important provisions in the lease document. A primary objective should be to require specific performance, which may be tacitly implied in the language that the Lessor and/or Secretary may "enforce by suit or other legal proceedings Lessee's compliance with any other provisions of this lease". Other ways of accomplishing this objective include incentives for completing the development on or ahead of schedule;

disincentives (usually monetary) for delaying completion past the due date; or the right of the Lessor to substitute its own contractor to complete a project if the Lessee does not perform according to the contract.

In any case, specific types of defaults and their specific remedies need to be listed. A minor default should not cause the whole project to come apart, but ongoing minor defaults could spiral out of control.

28. *Attorney's Fees*

The only recommendation here is that the applicable courts and/or jurisdictions for hearing lawsuits should be explicitly stated. Any legal remedies must be claimed in Federal court.

29. *Holding Over*

Good – No changes recommended.

30. *No Partnership*

Good – No changes recommended.

31. *Termination of Federal Trust*

This appears to be unique language for a lease of Federal Trust land so no changes are recommended.

32. *Tax Immunity*

Good – No changes recommended

33. *Signs and Advertisements*

This is vague in the reference to displays that are “not offensive or in bad taste”. This would be a normal practice for commercial developments but it is not certain how it would apply to residential development. This is another case where the advice of legal counsel should be sought for the specific language which should be included in the design standards.

34. *Obligations of Lessee*

Again, this is language that applies only to leases of Trust land so no changes are recommended.

35. *Memorandum of Lease*

This Memorandum should include all of the four fundamentals of the ASREC lease provisions:

1. Name and legal address of parties
2. Description of property
3. Term of agreement
4. Rental and method of payment

36. *Agreements for Utility Lines and Streets*

An additional subparagraph needs to be added that states: “Lessee shall be solely responsible for paying the costs of all line extension and hookup fees for said utilities”.

37. *Antiquities*

Again, this provision applies to all leased Trust land.

38. *Minerals*

It might be advisable to include Timber in this provision to ensure that an allotment does not get clear cut by the Lessee.

39. *Payments and Notices*

This is straightforward.

40. *Inspection*

It would be desirable to include a “reasonable notice” provision for residential developments to avoid conflicts with the next paragraph.

41. *Quiet Enjoyment*

This is a standard term, especially for residential leases.

42. *Adoption of Covenants, Conditions and Restrictions*

As noted earlier, it would be desirable to have CC&Rs apply to the entire master lease and not just to subleases. These are separate documents, usually recorded, that can be referenced throughout the lease for provisions of specific performance.

43. *Option to Purchase*

While a major part of the Pine View Estates Master Lease, this paragraph is assumed to be inapplicable to future leases of allotments in the Pine Nut Mountains.

44. *Delivery of Premises*

This is straightforward and no changes are recommended.

45. *Lease Binding*

This is a good statement as far as it goes, but there may need to be additional language to ensure that the lease continues to be in force if the Lessor or an individual representing a multi-party Lessor agency dies or is incapacitated. As it reads, the lease is binding upon the “parties hereto and their successors, heirs and assigns *upon approval of said parties* and the Secretary”. The lease should not be cancelled because some parties do not approve to accept the responsibility for enforcing it.

46. *Interest of Members of Congress*

Another interesting paragraph that is applicable only to leases of Trust lands.

47. *Resolution of Disputes*

This is straightforward.

Other Considerations

It is not certain that several disputes (and some civil and criminal suits) arising from certain leases of Trust lands could have been averted simply by tightening up the language of the leases. For example, the Fort Mojave Indian Tribe signed a Master Lease for development of housing on 528 acres of Trust land near Laughlin, Nevada, in 1993. Two rounds of municipal bond financing were arranged to provide funding for the project, the first in 1996 and the second in 1999. The bonds were secured by Deeds of Trust on the leasehold interest of the offeror. However, no Deeds of Trust were ever recorded which caused a complaint to be filed by the Security and Exchange Commission against the developer, who defaulted on the bonds and interest payments.

This was a case of a Tribe entering into a master lease in good faith with a developer who was apparently inexperienced in financing projects on leased Trust lands. The Tribe was caught in the middle of a financing scheme that would not have been recognized through any provisions of their long-term lease of the land.

Another case arose from the Lone Butte Industrial Park developed by the Gila River Indian Community in Arizona. This case involved a lease to a major private corporation that subsequently sold a security interest in its manufacturing equipment to another party, then sold its entire business to yet a third party. The third party failed to perform its obligations under the terms of the original lease, so Lone Butte decided to foreclose on the plant and equipment. The ownership of the equipment came into dispute and the matter went to court. Much of the argument thereafter revolved around jurisdictional issues.

This shows the importance of removing the vague language of the Pine View Estates Master Lease and replacing it with specific provisions for performance and remedies for defaults. It also demonstrates the importance of obtaining the Lessor's approval for any changes in a lease through subletting, assignments, transfers of property, or other actions. Further, it shows the importance of the Lessor performing due diligence into the qualifications, experience, track record, and financial capabilities of the Lessee before the lease agreement is signed.