



PUEBLO OF ISLETA
P.O. BOX 1270
ISLETA, NM 87022

PUEBLO OF ISLETA

RESOLUTION NO. 2024 -001

RESOLUTION RESCINDING ISLETA PUEBLO HOUSING AUTHORITY ORDINANCE; APPROVING ORDINANCE FOR THE PROVISION OF HOUSING AND COMMUNITY DEVELOPMENT; RATIFYING PRIOR ACTIONS TAKEN PURSUANT TO THE ISLETA PUEBLO HOUSING AUTHORITY ORDINANCE; RATIFYING AND REAFFIRMING ESTABLISHMENT OF ISLETA PUEBLO HOUSING AUTHORITY AS THE TRIBALLY DESIGNATED HOUSING ENTITY FOR THE PUEBLO OF ISLETA; AND APPOINTING TRIBAL COUNCIL MEMBERS AS THE SOLE BOARD OF COMMISSIONERS FOR THE ISLETA PUEBLO HOUSING AUTHORITY

At a duly called meeting of the Tribal Council of the Pueblo of Isleta, held on January 11, 2024, the following Resolution was passed:

WHEREAS, the Pueblo of Isleta (the "Pueblo") is a federally recognized Indian Tribe with a written Constitution and inherent powers of self-government;

WHEREAS, the Pueblo is governed by a Governor and Tribal Council made up of elected representatives who act in accordance with the Pueblo of Isleta Tribal Constitution ("Constitution");

WHEREAS, Article V, Section 2(e), of the Constitution for the Pueblo of Isleta authorizes the Tribal Council to "enact ordinances to, to protect the peace, safety, property, health, and general welfare of the members of the Pueblo of Isleta;"

WHEREAS, Article V, Section 2 (l), of the Constitution requires the Tribal Council to "manage and control the lands and resources of the Pueblo for the best interest of the Pueblo;"

WHEREAS, Article V, Section 2(j), of the Constitution for the Pueblo of Isleta authorizes the Tribal Council to "appoint or authorize such committees, commissions, boards, pueblo-chartered



organization or corporations, officials and employees not otherwise provided for in this constitution;"

WHEREAS, pursuant to the inherent authority of the Pueblo as a federal recognized Indian Tribe, the inherent authority vested in the Tribal Council, and its authority to provide for the health, safety, and welfare of its Pueblo members, the Tribal Council may establish a Tribally Designated Housing Entity ("TDHE"), as a separate and distinct entity owned by the Pueblo, to deliver housing services to eligible individuals under the provisions of the Native American Housing Assistance and Self Determination Act of 1996 ("NAHASDA") and other funding sources, and to participate in housing-related and housing-related community development activities ("Housing Services") as authorized by Pueblo, federal, and other applicable law;

WHEREAS, on November 5, 1996, by Resolution No. 96-093, the Tribal Council established the Isleta Pueblo Housing Authority ("IPHA") and approved an Ordinance of the Isleta Pueblo Housing Authority ("Original Ordinance") establishing the powers and authorities of IPHA (Ordinance No. 96-001), and said Original Ordinance has been amended from time to time;

WHEREAS, the Tribal Council has determined that it is necessary and in the best interest of the Pueblo and IPHA for the Tribal Council to rescind the Original Ordinance and its subsequent amendments, and to ratify all prior actions taken pursuant to the Original Ordinance and such amendments;

WHEREAS, the Tribal Council wishes to enact a new ordinance in place of the Original Ordinance to clarify provisions related to the powers, authorities, and limitations of the IPHA Board of Commissioners ("Board") and Tribal Council, and to ensure compliance with NAHASDA and other applicable laws, as may be amended from time to time;

WHEREAS, IPHA, in coordination with its legal counsel, has drafted an updated ordinance titled Ordinance for the Provision of Housing and Community Development ("Proposed Ordinance"), attached hereto as Exhibit A;

WHEREAS, the Tribal Council has reviewed and considered the Proposed Ordinance and has determined that it is in the best interest of the Pueblo to rescind the Original Ordinance and its subsequent amendments, and to enact the Proposed Ordinance in its place;

WHEREAS, pursuant to the Proposed Ordinance, the Tribal Council wishes to ratify and reaffirm establishment of IPHA as the Pueblo's designated TDHE to be responsible for carrying out Housing Services as authorized by Pueblo, federal, and other applicable law;

WHEREAS, Article XI, Section F, Part 1 of the Proposed Ordinance states "[i]f a TDHE is designated by the Council, its business and affairs shall be managed and governed by its Board;"

WHEREAS, Article XI, Section F, Part 3, Subpart (a) of the Proposed Ordinance states the "initial Board shall be comprised of the members of the Council;"

WHEREAS, Article XI, Section F, Part 3, Subpart (b) of the Proposed Ordinance provides that the Council may appoint a Board not consisting entirely of members of the Council when the Council, in its sole discretion, determines that the TDHE should be represented by a Board with at least some non-Council members; and

WHEREAS, the Tribal Council has determined that it is in the best interest of the Pueblo for members of the Tribal Council to remain as the sole Commissioners on the IPHA Board;

NOW THEREFORE BE IT RESOLVED, that the Tribal Council hereby repeals the Original Ordinance and its subsequent amendments; and ratifies all prior actions taken pursuant to the Original Ordinance and such amendments;

BE IT FURTHER RESOLVED, that the Tribal Council hereby enacts the Proposed Ordinance;

BE IT FURTHER RESOLVED, the Proposed Ordinance supersedes and replaces all previously enacted ordinances and laws enacted for the purpose of establishing a TDHE for the delivery of Housing Services to the Pueblo;

BE IT FURTHER RESOLVED, pursuant to the Proposed Ordinance, the Tribal Council hereby ratifies and reaffirms the establishment of IPHA as the Pueblo's Tribally Designated Housing Entity to be responsible for carrying out Housing Services as authorized by Pueblo, federal, and other applicable law;

BE IT FURTHER RESOLVED, that the Tribal Council hereby appoints its members to serve as the sole Commissioners on the IPHA Board until such time as the Tribal Council determines otherwise;

BE IT FURTHER RESOLVED, that the provisions of this Resolution shall supersede any conflicting provisions of past-adopted Resolutions;

BE IT FURTHER RESOLVED, that the Board is authorized and directed to do all that is necessary to effectuate the intent of this Resolution;

BE IT FURTHER RESOLVED, that this Resolution shall take effect immediately upon adoption by the Tribal Council and shall remain in effect until otherwise superseded or repealed by Pueblo law; and

BE IT FURTHER RESOLVED, that the Tribal Council hereby exempts the Isleta Public Housing Authority from the Pueblo of Isleta Design and Construction Tax and that the Legal Department is hereby directed to amend the Isleta Law and Order Code in compliance with this subsection.

CERTIFICATION

We, the undersigned, do hereby certify that the foregoing Resolution was passed at a duly called Meeting of the Isleta Tribal Council of the Pueblo of Isleta, held on the 11th day of January, 2024, at which a quorum was present, with 7 voting for, 0 opposing, and 0 abstaining.




Michael Allen Lente, Tribal Council President



Max Zuni, Governor:

ATTEST:



Elizabeth Kirk, Tribal Council Secretary



PUEBLO OF ISLETA

**ORDINANCE FOR THE PROVISION OF
HOUSING AND COMMUNITY DEVELOPMENT**

Adopted by Resolution No. 2024-001 on January 11, 2024

Property Pueblo of Isleta
www.isletapueblo.com

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**ORDINANCE FOR THE PROVISION OF
HOUSING AND COMMUNITY DEVELOPMENT**

Adopted by Resolution No. 2024-001 on January 11, 2024

I. PURPOSE

This Ordinance is intended to clarify and modify the nature, purposes, rights, and responsibilities of the providers of affordable housing and other housing services on and off the Reservation, and to authorize participation in Housing Related Activities and Housing Related Community Development Activities. This Ordinance supersedes and replaces any and all prior ordinances, laws, or codes related to the provision of affordable housing services assisted with funding provided by the U.S. Department of Housing and Urban Development. This Ordinance is also intended to allow the TDHE, as identified herein, if any, to seek funding from other federal, state, and tribal entities or agencies and private sources.

II. DEFINITIONS

Except as otherwise provided, the following definitions shall apply throughout this Ordinance:

A. "Board" or "Board of Commissioners" means the governing body of the TDHE, if any;

B. "Commissioner" means any member of the Board of Commissioners of the TDHE, if any;

C. "Community Based Development Organization" means an organization that:

- 1.** Is an association or corporation organized under state or local law to engage in community development activities (which may include housing and economic development activities) primarily within an identified geographic area of operation within the

jurisdiction of the recipient, or in the case of an urban county, the jurisdiction of the county;

2. Has as its primary purpose the improvement of the physical, economic, or social environment of its geographic area of operation by addressing one or more critical problems of the area, with particular attention to the needs of persons of low- and moderate-income;

3. May be either non-profit or for-profit; provided that any monetary profits to its shareholders or members must be only incidental to its operations;

4. Maintains at least 51 percent of its governing body's membership for low- and moderate-income residents of its geographic area of operation, owners or senior officers of private establishments and other institutions located in and serving its geographic area of operation, or representatives of low- and moderate-income neighborhood organizations located in its geographic area of operation;

5. Is not an agency or instrumentality of the recipient and does not permit more than one-third of the membership of its governing body to be appointed by, or to consist of, elected or other public officials or employees or officials of an ineligible entity;

6. Requires the members of its governing body to be nominated and approved by the general membership of the organization, or by its permanent governing body;

7. Is not subject to requirements under which its assets revert to the recipient upon dissolution; and

8. Is free to contract for goods and services from vendors of its own choosing;

D. "Community Development Financial Institution" means a Person (other than an individual) that:

1. Has a primary mission of promoting community development;

2. Serves an investment area or targeted population;
 3. Provides development services in conjunction with equity investments or loans, directly or through a subsidiary or affiliate;
 4. Maintains, through representation on its governing board or otherwise, accountability to residents of its investment area or targeted population; and
 5. Is not an agency or instrumentality of the United States, or of any state or political subdivision of a state;
- E. "Council" means the Isleta Tribal Council;
- F. ACrime of Violence@ means child abuse, sexual abuse, sexual assault, domestic violence, and any other crime that involves the use, attempted use, or threatened use of physical force against the person or property of another.
- G. "Enrolled Member" means a Pueblo of Isleta tribal member;
- H. AHomebuyer@ means a person or persons who, having executed a lease-purchase or other agreement with the TDHE for the purchase of a home, has not yet achieved homeownership;
- I. AHousing Project@ or AProject@ means any work or undertaking to provide, or assist in providing, decent, safe, and sanitary dwellings, apartments, or other living accommodations for persons of low-income by any suitable method, including but not limited to: rental; sale of individual units in single or multifamily structures under conventional condominium, or cooperative sales contracts or lease-purchase agreements; loans; or subsidies of rental charges. Such work or undertaking may include buildings, land, leaseholds, equipment, facilities, and other Real Property or Personal Property for necessary, convenient, or desirable appurtenances, for streets, sewers, water service, utilities, parks, site preparation or

landscaping, and/or administrative, community, health, recreational, welfare, or other purposes. This also applies to the planning of such buildings and improvements, the acquisition of property or any interest therein, the demolition of existing structures, the construction, reconstruction, rehabilitation, alteration or repair of the improvements or other property, and all other work in connection therewith, and the term shall include all other Real Property and Personal Property and all tangible or intangible assets held or used in connection with a housing project;

J. AHousing Related Activities@ means any facility, community building, infrastructure, business, program, or activity, including any community development or economic development activity, that:

1. Is determined to be beneficial to the provision of housing in an Indian area; and
2. Meets at least one of the following conditions:
 - a. Helps the Pueblo or its designee reduce the cost of construction of Indian housing;
 - b. Makes housing more affordable, energy efficient, accessible, or practicable in an Indian area; or
 - c. Otherwise advances the purposes of NAHASDA;

K. AHousing Related Community Development Activities@ mean activities that increase economic opportunity, principally for Persons of low- and moderate-income, or that stimulate or retain businesses or permanent jobs, including Projects that include one or more such activities that are clearly needed to address a lack of affordable housing accessible to existing or planned jobs and includes:

1. any facility, community building, business, activity, or infrastructure that:

- a. Is owned by an Indian tribe or a TDHE;
- b. Is necessary to the provision of housing in an Indian area; and
 - (1) Helps an Indian tribe or a TDHE reduce the cost of construction of Indian housing;
 - (2) Makes housing more affordable, energy efficient, accessible, or practicable in an Indian area; or
 - (3) Otherwise advances the purposes of NAHASDA; and
- 2. Does not include any activity conducted by any Indian tribe under the Indian Gaming Regulatory Act (25 U.S.C. 2701 *et seq.*);
- 3. "Indian Area" means the area within which the Pueblo operates or provides affordable housing programs and Housing Related Activities both on- and off-Reservation; for direct residential services, down payment assistance, and Housing Related Community Development Activities this includes all lands within 500 miles of the Reservation.
- L. ANAHASDA@ means the Native American Housing Assistance and Self-Determination Act of 1996, 25 U.S.C. §§ 4101 *et seq.*, as may be amended from time to time;
- M. AOrdinance@ means this Ordinance for the Provision of Housing and Community Development;
- N. APerson@ means an individual, trust, firm, association, partnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity whatsoever;
- O. "Personal Property" means clothing, jewelry, equipment, furniture, or other personal effects (including religious items), tangible or intangible (*e.g.*, stocks and bonds), of the

Person, which property is not fixed permanently to land or to any building or structure that is affixed to land;

P. "Pueblo" means the Pueblo of Isleta;

Q. "Real Property" means land and anything growing on or permanently affixed to such land, including buildings, structures, improvements, and equipment that cannot easily be removed;

R. "Reservation" means the Pueblo of Isleta Reservation, which includes all lands and water within the exterior boundaries of the Pueblo of Isleta, including without limitation all land, the title to which is held in trust by the United States for the benefit of the Pueblo or an individual Indian, held by the Pueblo or a member of the Pueblo subject to a restriction by the United States; held in fee by the Pueblo; or held by the Pueblo pursuant to a grant; and all other lands that may hereafter be acquired or conveyed in fee to the Pueblo, held in trust for the benefit of the Pueblo, or held by the Pueblo subject to restrictions against alienation whether by purchase, gift, act of Congress, or otherwise;

S. ATDHE@ means the Tribally Designated Housing Entity, other than the Pueblo itself, that may be established, designated, and authorized from time to time by the Council to receive grant amounts under and to provide housing services pursuant to NAHASDA and any other funding source, or dissolved from time to time in accordance with this Ordinance; and

T. ATribal Courts@ means the Isleta Pueblo Judiciary.

III. APPLICABILITY

Except as otherwise specifically stated herein, this Ordinance shall apply to any and all Housing Related Community Development Activities, including affordable housing and Housing Related Activities, occurring on and off the Reservation pursuant to federal, tribal, and/or state

programs. Such activities shall comply with all relevant and applicable laws and regulations including but not limited to federal and Pueblo law, 25 C.F.R. Part 256, 24 C.F.R. Part 1000, 24 C.F.R. Part 1003, and 2 C.F.R. Part 200.

IV. INTERPRETATION

The Tribal Courts shall interpret and construe this Ordinance.

V. CONFLICTS WITH OTHER LAWS

A. If a TDHE is designated by the Council, the Isleta Business and Employment Opportunity Act, as may be amended from time to time, shall have no effect on this Ordinance or the contents contained herein and shall not be deemed to be applicable against the TDHE, its contractors and subcontractors, or to its operations.

B. If this Ordinance is determined to conflict with any other Pueblo law of general application, this Ordinance shall control.

VI. SEVERABILITY

If any provisions of this Ordinance, or the application of any provision to any Person or circumstance, is held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate nor render unenforceable the remainder of this Ordinance and its application to any other Person or circumstance, and, to this end, the provisions of this Ordinance are severable.

VII. JURISDICTION

The Tribal Courts shall have jurisdiction to interpret and construe this Ordinance and to hear and determine actions arising under it and occurring on or in relation to the lands and/or assets of the Pueblo subject to this Ordinance, including but not limited to eviction of a

Homebuyer, tenant, or occupant. The Council hereby declares that the powers of the Tribal Courts shall be vigorously used, and the Council shall cooperate to the fullest extent possible to enforce eviction of a Homebuyer, tenant, or occupant for nonpayment or other contractual violations.

VIII. APPEALS

Except as otherwise provided herein, appeals under this Ordinance shall be in accordance with the Pueblo's general appellate provisions.

IX. POWERS OF THE COUNCIL

The powers of the Council or its TDHE, if any, under this Ordinance include but are not limited to the following:

A. To agree, notwithstanding anything to the contrary contained in this Ordinance or in any other provision of law, to comply with any applicable law relating to wage or labor standards, and to include such requirement in all contracts and subcontracts;

B. To sue and be sued in its name; provided that such powers do not require or obligate the Pueblo or its TDHE, if any, to waive its sovereign immunity from suit, nor is the delegation of such power an actual waiver of such sovereign immunity; any waiver of the sovereign immunity of the Pueblo or its TDHE, if any, is only to the extent and for the purposes set out in this Ordinance, and shall be valid only if clearly and unequivocally expressed in writing, authorized by a resolution of the Council or the Board of its TDHE, if any, and limited to specifically stated obligations and liabilities;

C. to engage in Housing Related Activities;

D. to engage in Housing Related Community Development Activities;

E. to establish a Community Based Development Organization;

- F. to establish a Community Development Financial Institution;
- G. to construct, buy, and otherwise acquire and maintain buildings, housing, offices, and other appurtenances proper and necessary for carrying out the intent of this Ordinance;
- H. to purchase, take by gift or bequest, acquire, own, lease, manage, operate, deal in and dispose of Real Property and Personal Property of all kinds and descriptions, wherever situated, subject to applicable law;
- I. to purchase or lease property, for such periods as are authorized by law, and to hold and manage or to sublease the same;
- J. with respect to any dwellings, accommodations, lands, buildings, or facilities included within any Project (including individual, cooperative, or condominium units), to lease or rent, sell, enter into lease purchase agreements or leases with option to purchase; to establish and revise rents or required monthly payments; to make rules and regulations concerning the selection of tenants or Homebuyers, including the establishment of priorities, in accordance with NAHASDA or other federal statutory requirements, and concerning the occupancy, rental, care, and management of housing units; and to make such further rules and regulations as the Council deems necessary and desirable to effectuate the powers granted by this Ordinance;
- K. to finance the purchase of a home by a prequalified eligible Homebuyer in accordance with regulations and requirements of the funding source(s);
- L. to provide affordable housing assistance, as authorized by NAHASDA or any other funding source, including but not limited to assistance for rehabilitation, modernization, Real Property acquisition, site improvement, conversion, demolition, mold remediation, weatherization, homeownership counseling, energy auditing, energy efficiency, rent, and down

payments;

M. to provide housing assistance, as authorized by NAHASDA and any other funding source, to Persons who are not low- or moderate-income;

N. to develop and rehabilitate utilities, utility services, and necessary infrastructure;

O. to provide safety, security, and law enforcement measures and activities appropriate to protect residents;

P. to terminate any lease, rental agreement, or lease purchase agreement when the tenant or Homebuyer has violated the terms of such agreement or failed to meet any of its obligations thereunder, or when such termination is otherwise authorized under the provisions of such agreement, or applicable policies, rules, or laws; and to bring action for eviction against such tenant or Homebuyer;

Q. to establish income limits for admission to ensure that dwelling accommodations in a low-income Housing Project shall be made available only to Persons of low-income, except as may be otherwise provided by NAHASDA or any other funding source involved with the Housing Project;

R. to solicit, collect, and receive money and other assets; to administer funds and contributions received by grant, gift, deed, request, or devise; to acquire money, securities, property, stocks, bonds, or other evidences of indebtedness; and to hold, invest, expend, contribute, use, sell, or otherwise dispose of any money, securities, property, stocks, bonds, or rights so acquired and to exercise all the rights, privileges, and powers of ownership;

S. to employ professional, technical, maintenance personnel, permanent or temporary, as the Pueblo or its TDHE, if any, may require; and to delegate to such personnel the

powers or duties as the Council shall deem proper;

T. to contract for professional services including legal, accounting, and consulting;

U. to assist the Pueblo in developing necessary land use and mortgage laws relating to housing activities, including but not limited to foreclosure laws, land assignments, and land lease laws;

V. to implement a home mortgage program in coordination with public and private entities;

W. to draft policies and procedures for the issuance, in its discretion, of obligations for any of its purposes and for the issuance of refunding obligations for the purpose of paying or retiring obligations previously issued;

X. to adopt such operating procedures, policies, and agreements as the Pueblo deems necessary or appropriate; and

Y. in its sole discretion, from time to time by resolution and in accordance with this Ordinance, establish, designate, and authorize or thereafter dissolve a TDHE as the sole recipient of grant amounts and provider of housing assistance under NAHASDA, which establishment, designation, and authorization, or dissolution, shall constitute a contemporaneous delegation by or back to the Council, respectively, of its powers under the Ordinance except for those powers expressed in this paragraph; provided that nothing in this paragraph shall be construed or interpreted as requiring the Council to establish, designate, and authorize or thereafter dissolve a TDHE.

X. LIMITATIONS ON COUNCIL

As long as this Ordinance remains in effect, the Council:

A. will not levy or impose any Real Property or Personal Property taxes, gross receipts taxes, or special assessments upon its TDHE, if any, or any Project developed pursuant to the provisions of this Ordinance;

B. will furnish or cause to be furnished to its TDHE, if any, and the occupants of Housing Projects, all services and facilities of the same character and to the same extent as the Pueblo furnishes from time to time without cost or charge to other dwellings and inhabitants;

C. insofar as it may lawfully do so, will grant such deviations from any present or future building or housing codes of the Pueblo as are reasonable and necessary to promote economy and efficiency in the development and operation of any Project, and at the same time safeguard health and safety, and make such changes in any zoning of the site and surrounding territory of any Project as are reasonable and necessary for the development and protection of such Project and the surrounding territory;

D. expect the TDHE, if any, and, when applicable, the Tribal Courts, to handle all claims and grievances involving housing matters, following proper administrative procedures; furthermore, the Council shall not insert itself into such matters of the TDHE and Tribal Courts unless such administrative procedures allow for Council involvement; and

E. will do any and all things, within its lawful powers, necessary or convenient to aid and cooperate in the planning, undertaking, construction, or operation of Projects.

XI. ESTABLISHMENT AND OPERATION OF TDHE

In its sole discretion, if the Council establishes, designates, and authorizes a TDHE under this Ordinance, the following provisions shall apply with respect to the TDHE.

A. DESIGNATION OF TDHE.

1. In its sole discretion, the Council may, from time to time, as necessary, establish, designate, and authorize by resolution a TDHE, as a separate and distinct entity owned by the Pueblo to deliver housing services to eligible individuals under the provisions of NAHASDA, and to participate in Housing Related Activities and Housing Related Community Development Activities as authorized by Pueblo and federal law, including activities described at 24 C.F.R. §1003.204, as may be amended.

2. The establishment, designation, and authorization of a TDHE by the Council constitutes delegation by the Council to the TDHE of all powers that it may exercise consistent with the purposes of this Ordinance, including those powers of the Council specified in this Ordinance.

B. ADDITIONAL POWERS OF THE TDHE. In addition to the powers delegated by the Council, as a separate and distinct entity owned by the Pueblo, the TDHE shall have the power:

1. to have and exercise all lawful powers incidental, necessary, or convenient to effect any or all of the purposes for which the TDHE is organized;

2. to engage in any lawful business permitted and necessary to carry out the purposes of the TDHE;

3. to have a seal which may be altered at the discretion of the Board;

4. to establish within its own structure a finance department, procurement department, human resources department, and development department, with such departments to be separate and distinct from and independent of similar departments of the Pueblo; and

a. to hire necessary employees to staff such departments; and/or

b. to enter into contracts or inter-agency or inter-entity agreements to provide necessary services for such departments;

5. to adopt such operating policies as necessary to ensure that the operation of the TDHE is separate and distinct from the operations of the Pueblo;

6. to carry on the business of the TDHE either on or off the Reservation; and

7. to enter into and make contracts and agreements of every kind and nature with any Person without the approval of the Council or the Secretary of the Interior, except that such approval shall be required for contracts which involve the use of trust or federally-restricted Indian.

C. LIMITATIONS ON TDHE. The TDHE shall have no power:

1. to expressly, or by implication, enter into any agreement of any kind on behalf of the Pueblo without the prior authorization of the Council, which authorization shall be by resolution of the Council;

2. to pledge the credit of the Pueblo;

3. to dispose of, pledge, or otherwise encumber Real Property or Personal Property of the Pueblo;

4. to secure loans or incur indebtedness on behalf of the Pueblo;

5. to waive any right, privilege or immunity of, or release any obligation owed to the Pueblo;

6. to enter into any sublease or other encumbrance or instrument respecting lands leased to the TDHE by the Pueblo without the express written approval of the Council, which approval may be reflected in the lease; or

7. to sell, lease, exchange, or otherwise dispose of all or substantially all of the TDHE's assets, other than in the usual and regular course of its business, without prior written consent of the Council. Prior to any such proposed sale, lease, exchange, or disposition, the TDHE shall give reasonable notice to the Council, which notice shall be at least 30 calendar days. The Council's consent to any such proposed sale, lease, exchange, or disposition shall be in the form of a resolution, duly adopted in accordance with applicable Pueblo law.

D. TAX STATUS OF TDHE. The TDHE shall share in the exempt status of the Pueblo and shall be treated as a political subdivision of the tribal government for the purposes of federal taxation. To the extent that the TDHE realizes any profit from its activities, the profit shall be used to further the purposes stated herein, and no monetary benefits will inure to the benefit of shareholders or members of its governing body.

E. RESCISSION OF DELEGATION. At any time, the Council, by resolution, may rescind designation of a TDHE, or any powers delegated to a TDHE, with or without cause.

F. BOARD OF COMMISSIONERS.

1. **Duties and Powers.** If a TDHE is designated by the Council, its business and affairs shall be managed and governed by its Board. The Board may adopt such rules in the conduct of its meetings and its management as it deems proper, consistent with applicable law, the authorizing ordinances, and relevant policy.

2. **Qualifications of Commissioners.** The Commissioners shall meet the following qualifications:

a. Each Commissioner shall possess communication skills, experience, and expertise necessary to carry out the duties of a Commissioner, and to contribute to the ability

of the TDHE to achieve the purposes for which the TDHE was established.

b. Each Commissioner shall possess at least two years' experience in housing development, design, management, construction/modernization, business management, personnel, tribal governance, accounting, financing, or housing inspections, or, in the alternative, he or she shall possess, at a minimum, an Associate's or Bachelor's Degree in one of the following areas: Business, Health, Political Science, Building Trades, Human Services, or Social Services.

c. Prior to appointment to the Board, each prospective Commissioner shall submit to a background investigation and a drug screen. The prospective Commissioner shall pay for such background investigation and drug screen, but, upon the TDHE's receipt of satisfactory results, shall be reimbursed for all such costs.

d. Commissioners shall be Enrolled Members.

e. Commissioners shall not be employees of the TDHE.

f. When nominated and appointed, Commissioners shall not be past due on any payment owed to the TDHE or its predecessor entity.

g. Criminal Background.

(1) Conviction of any crime requiring listing on a Sex Offender Registry site, whether tribal, state, or federal, shall result in a finding of ineligibility until such time as the individual is no longer required to register. Conviction of domestic violence or other Crime of Violence involving the use, attempted use, or threatened use of physical force against a Person or property; or any offense related to conversion of property or that would tend to reflect their ability to manage finances shall result in a finding of ineligibility of the individual as a Commissioner for a period of five years from conviction, or release from probation, incarceration, or parole, whichever is later.

(2) If, while in office, a Commissioner is charged with the commission of one or more of such offenses under this section, he or she shall be immediately suspended from the Board and shall remain suspended until such time as the offense or offenses for which the Commissioner was charged is or are resolved. If the Commissioner is convicted of the offense or offenses charged, his or her appointment to the Board shall be terminated immediately.

h. No Person shall be barred from serving on the Board because he or she is a Homebuyer, tenant, or occupant in a Housing Project of the TDHE, and any such Commissioner shall be entitled to participate fully in all meetings concerning matters that affect all such Homebuyers, tenants, or occupants, even though such matters may affect him or her as well. However, no such Commissioner shall be entitled or permitted to participate in or be present at any Board meeting (except in his or her capacity as a Homebuyer, tenant, or occupant), or to be counted or treated as a member of the Board, concerning any matter involving his or her individual rights, obligations, or status as a Homebuyer, tenant, or occupant, and he or she is specifically prohibited from voting on any such matter..

3. Number; How Selected; Quorum.

a. The initial Board shall be comprised of the members of the Council.

b. When the Council, in its sole discretion, determines that the TDHE should be represented by a Board not consisting entirely of members of the Council, subsequent Boards shall be made up of no less than five nor more than nine Commissioners who shall be Enrolled Members, all of whom shall be appointed by the Council, and shall be eligible to vote on matters before the Board. If Board membership drops below the above stated minimum number of Commissioners, the Board may continue to operate and its actions will be deemed to be authorized under this Ordinance so long as a quorum is present.

c. Commissioners shall be eligible for reappointment.

d. The Council may appoint one or more Persons as *ex-officio* members of the Board; such *ex-officio* members shall be ineligible to vote on matters before the Board.

e. The majority of Commissioners eligible to vote on matters before the Board and then in office shall constitute a quorum.

4. Term of Office.

a. Commissioners on the initial Board shall serve so long as they remain members of the Council.

b. Commissioners on subsequent Boards shall serve staggered terms established by the Council. Approximately half of the Commissioners appointed to the first subsequent Board shall serve two-year terms and the remainder of the Commissioners appointed to the first subsequent Board shall serve four-year terms. Following the expiration of the terms of the first subsequent Board set forth herein, each Commissioner appointed or reappointed thereafter shall serve for a four-year term and until his or her successor is duly appointed and qualified; provided, however, if he or she earlier dies, resigns, or is removed, the Council shall appoint another Commissioner for the length of the unexpired term.

5. Officers and Committees.

a. The Board shall elect from its Commissioners a Chairperson, a Vice Chairperson, and a Secretary, each to serve a one (1) year term or until his or her successor is duly elected and qualified. Any vacancy occurring in the office of Chairperson, Vice Chairperson, or Secretary by death, resignation, removal, or otherwise shall be filled for the

unexpired portion of the term in the manner prescribed for the regular selection to such office.

b. The Board, in its sole discretion, may establish additional committees as may be necessary for the efficient operation of the TDHE.

6. **Vacancies.** All vacancies on the Board shall be filled by the Council without undue delay, at any regular or specially called meeting for that purpose for the unexpired portion of the term. If the Council has not acted to replace a Commissioner within 60 calendar days after the occurrence of such a vacancy, the remaining Commissioners may name an interim Commissioner who shall serve until confirmed or replaced by the Council with another Commissioner.

7. **Resignation and Removal of Commissioners.**

a. Any Commissioner may resign from the Board. Resignation must be by a written letter directed to the Chairperson with a copy to the Governor of the Pueblo.

b. Any Commissioner may be removed for good cause by the Council after a hearing before the Council where the Commissioner has been given an opportunity to respond to the Council regarding the reason(s) for his or her removal. A record of the hearing shall be kept by the Council. The Board may request the Council remove any Commissioner by majority vote of the Board then in office. Grounds for removal may include dereliction of duty; negligence; misconduct in office; violation of this Ordinance, TDHE policies and procedures, or Pueblo laws and regulations; or failure to attend three consecutive Board meetings without proper justification.

8. **Expenses; Stipend.** Commissioners shall be entitled to reimbursement for actual expenses, including travel expenses, incurred in the discharge of their duties. In lieu

of actual expenses, Commissioners may receive a reasonable stipend for attendance at Board meetings, and such stipend shall be in an amount to be determined by a resolution of the Board.

G. INDEMNIFICATION OF BOARD MEMBERS AND EMPLOYEES. The TDHE shall indemnify any and all Persons who may serve or who have served at any time as its Commissioners, officers, employees, or agents, and their respective heirs and personal representatives, against any and all costs and expenses which may be imposed upon or incurred by them individually in connection with or resulting from any claim, action, suit, or proceeding in which such individual may be involved by reason of his or her being or having been a Commissioner, officer, employee, or agent of the TDHE, if a majority of Commissioners not seeking indemnification or otherwise involved in the controversy shall determine in good faith:

1. That such Person did not act, fail to act, or refuse to act willfully or with gross negligence or with fraudulent or criminal intent;
2. That any legal fees paid or any settlements made are reasonable;
3. That the Person seeking indemnification did not act beyond the scope of his or her employment or office; and
4. That it is in the best interests of the TDHE that indemnification is made.

The Board shall act on all requests for indemnification. If the Board determines that indemnification is appropriate, it shall set out the reasons and justification in writing, and provide a copy to the Council. If the Board is unable to act on a request for indemnification due to a lack of a disinterested quorum of Commissioners, the decision whether to indemnify shall be submitted to the Council which shall act in accordance with the criteria listed above.

H. REPORTS TO COUNCIL. The TDHE shall submit quarterly reports to the Council

that provide:

1. A summary of the year's activities for the TDHE;
2. The financial condition of the TDHE;
3. The current status of TDHE projects;
4. The number of TDHE units and vacancies;
5. Significant accomplishments and problems for the TDHE;
6. Future plans of the TDHE; and
7. Other information deemed pertinent by the TDHE or Council.

The Council, in its sole discretion, may request such reports at any time; provided, however, such request does not alleviate the requirements under this section.

I. **FISCAL YEAR.** The fiscal year of the TDHE shall be on a calendar year basis unless otherwise determined by resolution of the Board.

J. **AUDIT.** At the close of each fiscal year, the Board or its designee shall cause to be conducted a certified audit showing the status of the TDHE for the previous 12-month period as required pursuant to the Single Audit Act, 31 U.S.C. 7501, *et seq.* The Chairperson or his or her designee shall present the audit to the Council as soon as possible after it is completed.

K. **RECORDS AND INSPECTIONS.** The books, records, and property of the TDHE shall be made available for inspection at all reasonable times by authorized representatives of the Board and Council.

L. **INSURANCE.**

1. **Liability Insurance.** Insurance, including but not limited to public liability insurance sufficient to protect the interests of the TDHE and Council from all liability, shall be

carried on all property and Persons under the jurisdiction or management of the TDHE.

2. **Directors' and Officers' Insurance.** The TDHE shall purchase and have in effect at all times a standard directors' and officers' liability insurance policy covering the Commissioners and officers of the TDHE. The TDHE's failure to have such a policy in force at any time shall not affect the TDHE's obligation to indemnify its Commissioners and officers as set forth herein. To the greatest extent possible, for purposes of such insurance, employees, and agents for the TDHE shall also be covered under such policy.

3. **Employment Practices Liability Insurance.** The TDHE shall carry Employment Practices Liability Insurance providing coverage of claims made by employees alleging discrimination, wrongful termination, harassment, and other employment-related issues.

4. **Unemployment Insurance.** The TDHE shall carry such workers' compensation and/or unemployment insurance as may be necessary to protect the interests of the TDHE and its employees and to comply with applicable law.

5. **Fire and Hazard Insurance.** Fire and hazard insurance sufficient to protect the interests of the TDHE from losses by fire or other disaster shall be carried on all property of the TDHE.

6. **Review of Insurance Coverage.** The Board or its designee shall perform an annual inventory of insurance coverage to ensure that federal and Pueblo requirements are met and that all property and Persons are protected from liability. Record of such inventory shall be maintained on file at the TDHE and are to be made available to the Board upon request.

XII. RATIFICATION OF PRIOR ACTS

The Council hereby determines that all prior acts and actions taken by it or its TDHE, if any, including any TDHE previously designated, or its predecessor under prior ordinances, shall be ratified and not invalidated by the adoption of this Ordinance, but that this Ordinance shall be controlling as to future actions, rights, and obligations of the Council or TDHE, if any, under this Ordinance, and shall supersede all prior ordinances intended to control the operation of the Pueblo, its TDHE, if any, or any previously established Indian Housing Authority, beginning with the effective date of this Ordinance.

XIII. AMENDMENT

A. If the Council has not designated an entity as its TDHE for the delivery of affordable housing, this Ordinance may be amended by a resolution adopted by a 75% affirmative vote with three-quarters of the Council present.

B. If the Council has designated a TDHE for the delivery of affordable housing services, proposed amendments shall first be presented to the Board. Upon approval by a majority vote of the Commissioners of the TDHE present at a duly called meeting at which a quorum is present, the proposed amendment shall then be presented to the Council for ratification or objection by resolution by a 75% affirmative vote with three-quarters of the Council present. Upon ratification of any proposed amendment by the Council, the amendment shall become effective.