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ARTICLE 4 - LIENS AND MORTGAGES

Sec. 14-4-1 Purpose, Definitions and Scope

A. Purpose

1. The purpose of the Pueblo of Santa Ana Mortgage Article (herein "Article") is to establish the legal authority and procedures that will allow tribal members to utilize mortgage financing to purchase, construct, rehabilitate, improve, or refinance a home. Loans may be obtained under any loan program approved or authorized to lend on the lands of the Pueblo, including but not limited to, mortgage loan guarantee and insurance programs sponsored by the U.S. Department of Housing and Urban Development ("HUD"), U.S. Department of Agriculture's Rural Housing Service ("USDA"), U.S. Department of Veteran's Affairs ("VA"), and any other Federal Agency.

2. This Article prescribes procedures for obtaining a lease of tribal trust or other restricted lands, mortgaging the lease to secure a loan, the recording, priority and foreclosure of mortgages.

B. Definitions

As used in this Article, the below terms shall be defined as follows:

1. "Borrower/Mortgagor" shall mean the Tribally Designated Housing Entity, or any tribal member who has executed a Mortgage, or any heir, successor, executor, administrator, or assign of such borrower.

2. "Days" shall mean calendar days unless specifically stated otherwise.

3. "Deficiency Judgment" shall mean a monetary judgment entered by a Court against a Borrower for any remaining balance owing on a Mortgage after the sale of the foreclosed property. The monetary judgment amount typically consists of the remaining principal balance owed on a loan, accrued interest from the date of judgment, reasonable collection costs and costs of sale, and attorney fees, less the amount the lender sold the property for at a foreclosure sale.

4. "Federal Agency" shall mean any agency of the Federal Government that makes, guarantees, or insures mortgage loans, including but not limited to, the Veteran's Affairs

(VA), the Department of Housing and Urban Development (HUD), the Federal Home Administration (FHA), and Department of Agriculture (USDA).

5. “Forbearance Relief” shall mean an action that results in the Lender or the Federal, State, or Tribal Government refraining from pursuing Mortgage Foreclosure.

6. “Infrastructure” shall mean water, sewage, utilities and road access to a home.

7. “Laws of the Pueblo of Santa Ana” shall mean any written law in the form of an ordinance, resolution or other instrument, as well as customary and traditional law practiced by the Pueblo.

8. “Lease” shall mean the residential ground lease for use of Trust Land or Restricted Land on which a Mortgage has or will be given.

9. “Lender/Mortgagee” shall mean any mortgage lender under any Mortgage or the successors or assigns in interest of any such Lender, and includes any subsequent holder, whether by assignment, succession, or otherwise, of the Lender's right, title, or interest in and to the Mortgage.

10. “Lessee” shall mean a person who has acquired a legal right of possession of Tribal Trust or Restricted Lands by a written Lease.

11. “Lessor” shall mean the Pueblo, who is the beneficial or equitable owner of trust or otherwise restricted property under a lease for which a Mortgage has been or will be given, or the successors, or assigns of such Lessor.

12. “Mortgage” shall mean the mortgage of a lease given to secure a loan made by a Lender to a Borrower.

13. “Mortgage Foreclosure Proceeding” shall mean a proceeding in the Tribal Court (1) to foreclose on the Leasehold Interest or other interests of the Borrower; and/or (2) to assign such interest of the Borrower to the Lender or other person or entity.

14. “Nuisance” shall mean the maintenance on the mortgaged property of a condition that:

a. Unreasonably threatens the health or safety of a resident of the community, the mortgaged property, or neighboring land users; or

b. Unreasonably and substantially interferes with the ability of neighboring real property users to enjoy the reasonable use and occupancy of their property.

15. “Order of Repossession” shall mean an order of the Tribal Court that either restores an owner or Lessor or the Mortgagee to possession of real property, and/ or evicts a tenant or other occupant therefrom.

16. “Redemption” shall mean the right of the Borrower or other person with an interest in property subject to a Mortgage pursuant to this Article to regain possession of the property within sixty (60) days after a Foreclosure Judgment upon payment or performance of other conditions prescribed by this Article and the Mortgage documents.

17. “Restricted Land” shall mean land owned by the Pueblo that is subject to restrictions against alienation imposed by Federal law.

18. “Secretary” shall mean unless otherwise indicated, the Secretary of the United States Department of the Interior or his or her duly designated representative.

19. “Subordinate Lienholder” shall mean the holder of any lien, including a subsequent mortgage, perfected subsequent to the recording of a Mortgage under this Article, except the Pueblo with respect to a claim for a tribal tax if applicable.

20. “Tribal Court” shall mean the Pueblo of Santa Ana Contemporary Tribal Court.

21. “Tribal members” shall mean members of the Pueblo of Santa Ana as determined by the laws of the Pueblo.

22. “Tribally Designated Housing Entity” shall mean the entity designated by the Pueblo to administer HUD funds and programs according to federal law.

23. “Tribal Recording Clerk” shall mean the Director of the Pueblo Tribal Resources Office or any other tribal office or entity designated by the Pueblo to perform the recording functions required by this Article, or any deputy or designee of such person.

24. “Trust Land” shall mean any land within the jurisdiction of the Pueblo, title to which is held by the United States for the benefit of the Pueblo or an individual member of the Pueblo.

25. “Unlawful Detainer” shall be a suit brought before the Tribal Court to terminate a tenant's interest in real property and/or to evict any person from occupancy of real property.

24. “Waste” shall mean spoilage or destruction of land, buildings, landscaping, trees, or other improvements on the mortgaged property which result or will likely result in substantial injury to such property.

C. Scope of Article

1. Except as otherwise specifically stated, this Article shall apply to any and all Mortgages and other agreements to secure an interest in residential units or dwellings, or other buildings on Trust or Restricted Land and supersedes and replaces all other codes and Articles previously adopted by the Santa Ana Pueblo specifically relating to residential Mortgages. In addition, the Eviction section of this Article may be applied against any person or entity occupying Trust or Restricted lands after tenancy has been terminated by the landlord or without

right. However, this Article shall not be interpreted to in any way supersede, or add additional requirements to, the Santa Ana Homeownership Program administered by the Pueblo.

2. No mortgage loan shall be recognized by the Pueblo, nor shall the Pueblo issue a residential lease for purposes of mortgaging the lease, on the following lands:

a. The lands associated with the old Tamaya village or agricultural lands as determined by the Tribal Council;

b. Other lands that the Pueblo may from time to time determine by Tribal Council resolution are not eligible for leasing or mortgage financing.

Enacted by Resolution Number 2016-R-47, adopted August 31, 2016.

Sec. 14-4-2 Jurisdiction

A. The Tribal Court shall exercise jurisdiction over all matters arising within the jurisdiction of the Santa Ana Pueblo with respect to the subject matter of this Article, and with respect to any person or entity acting or causing actions which arise under this Article.

B. Notwithstanding any other provision in this Article, if the U.S. Department of Housing and Urban Development (“HUD”) becomes the holder of a leasehold mortgage or other lien under the Section 184 Indian Home Loan Guarantee Program or other HUD loan program, the United States may file a foreclosure action in the appropriate federal court, and in any such instance, references to the “Tribal Court” in this Article shall be to include a federal court, except as limited by the subsequent sentence. A foreclosure action filed in federal court shall be governed by the laws governing the applicable federal program and any other applicable federal law.

Enacted by Resolution Number 2016-R-47, adopted August 31, 2016; amended by Resolution Number 2018-R-13, adopted August 8, 2018.

Sec. 14-4-3 Conflicts with Other Laws

If this Article is determined to conflict with any other law of general application approved by the Pueblo, this Article shall control.

Enacted by Resolution Number 2016-R-47, adopted August 31, 2016.

Sec. 14-4-4 Leases/Mortgages

A. Any tribal member may obtain a residential lease of tribal Trust or Restricted Land or other Pueblo lands, to encompass such member’s residence on such lands and associated out buildings, and mortgage the leasehold for the purpose of obtaining a loan to purchase, construct, rehabilitate or refinance a home. The size of the land to be leased shall not exceed that amount necessary to include the necessary infrastructure to the home.

B. The Tribal Council has the authority to approve a Lease form for use with mortgages under this Article. This authority includes the power to negotiate a Lease form with any Federal Agency. The Tribal Council has the authority to approve individual Leases of tribal Trust or Restricted Lands to eligible Borrowers and to create an ingress and egress easement to the leased property, if such is deemed necessary, when approving a Lease, the Tribal Council shall ensure there is access to the property. The Leases must be substantially in the form approved by the Tribal Council. The Tribal Council also has the authority to cancel a Lease if the Borrower does not obtain a Leasehold mortgage within six (6) months of the date of the Secretary's approval of a Lease. However, the authority to cancel a Lease does not apply to sites upon which a Borrower holds a Land Assignment or to a site upon which the Borrower extinguished his/her Land Assignment for the purpose of obtaining a Lease.

C. No Mortgage of Leasehold Interest Without Lease

Notwithstanding anything to the contrary contained herein or in any Mortgage document, no Borrower may mortgage a Leasehold Interest without first: (1) having a valid written Lease for such property from the Santa Ana Pueblo approved by the secretary; and (2) obtaining the prior written approval of the Secretary of all applicable Mortgage and loan documents, if such is required by federal law. Any Mortgage given in violation of this Section shall be void and of no effect.

Enacted by Resolution Number 2016-R-47, adopted August 31, 2016.

Sec. 14-4-5 Recording of Lease and Mortgage Loan Documents

A. The appropriate offices for recording leases and mortgages are the Santa Ana Tribal Resources or other office or entity designated by the Tribal Council Office and the Bureau of Indian Affairs Regional Land, Titles, and Records Office. A Lender may also require that a lease and mortgage be recorded in the County Clerk's Office in the County in which the mortgaged properties are located; provided, however, that recording in the state county shall be for notice or convenience purposes only, and such recording is not intended to nor shall it be deemed to grant jurisdiction over such property or Mortgage to the state or county.

B. For documents recorded at the Pueblo Recording Office or the office designated by the Pueblo for recording:

1. The Tribal Recording Clerk shall maintain a system for the recording of mortgage loans and such other documents as the Pueblo may designate by laws or resolution.

2. The Tribal Recording Clerk shall endorse upon any mortgage loan or other document received for recording:

a. The date and time of receipt of the mortgage or other document;

b. The filing number, to be assigned by the Tribal Recording Clerk, which shall be a unique number for each mortgage or other document received and;

c. The name of the Tribal Recording Clerk or designee receiving the mortgage or document.

3. Upon completion of the above-cited endorsements, the Tribal Recording Clerk shall make a true and correct copy of the mortgage or other document and shall certify the copy as follows:

Santa Ana Pueblo) ss.

I certify that this is a true and correct copy of a document received for recording this date. Given under my hand and seal this day of _____, 20__.

(SEAL)

(Signature)

(Date)

4. The Tribal Recording Clerk shall maintain the copy in the records of the recording system and shall return the original of the mortgage loan or other document to the person or entity that presented the same for recording.

5. The Tribal Recording Clerk shall also maintain a log of each mortgage loan or other document recorded in which there shall be entered:

- a. The name(s) of the Borrower/Mortgagor of each mortgage loan, identified as such;
- b. The name(s) of the Lender/Mortgagee of each mortgage loan, identified as such;
- c. The name(s) of the grantor(s), grantee(s) or other designation of each party named in any other documents filed or recorded;
- d. The date and time of the receipt;
- e. The filing number assigned by the Tribal Recording Clerk; and
- f. The name of the Tribal Recording Clerk or designee receiving the mortgage or document.

6. The certified copies of the mortgage loan and other documents maintained by the Tribal Recording Clerk shall be made available for Tribal Council review for official Pueblo purposes only, the log of executed mortgage loans shall be available for public inspection. The

log will not contain any personal information. Personal information of tribal members contained in the mortgage loan or other documents shall not be viewed or copied by the Tribal Council or the public under any circumstances.

Enacted by Resolution Number 2016-R-47, adopted August 31, 2016.

Sec. 14-4-6 Lien Priority

A. All mortgage loans recorded in accordance with the recording procedures set forth in this Article, including Leasehold Mortgages, and including loans made, guaranteed, insured or held by a federal agency, shall have priority over any lien not perfected at the time of such recording and any subsequent lien or claim.

B. Any mortgage loan created as a second mortgage, including a federal agency direct, guaranteed or insured mortgage, shall assume that position.

Enacted by Resolution Number 2016-R-47, adopted August 31, 2016.

Sec. 14-4-7 Foreclosure

A. Assignment

Unless otherwise prohibited in the mortgage documents or under applicable law, a Borrower may assign any mortgaged property at any time prior to commencement of foreclosure proceedings; provided that:

1. The successor Borrower is a member of the Pueblo, a Pueblo Entity, or Federal Agency; and

2. Borrower receives all required consents in writing from the Tribal Council, Lender, and or applicable Federal Agency, if any.

B. Notice of Default Required

If a Borrower defaults as defined in Section C. 1 below in performance under a Mortgage, the Lender must provide a written Notice of Default prior to enforcing the terms and conditions of the Mortgage and prior to availing itself of the remedies under this Article. All Notices of Default on a Mortgage shall be properly served in accordance with Section C. 4 and Section D below by Lender on Borrower, all Subordinate Lien holders, and the Pueblo. Prior to initiating a Mortgage Foreclosure Proceeding on any HUD guaranteed mortgage, notice shall be provided to the Secretary of HUD or his or her duly appointed representative. Prior to initiating a Mortgage Foreclosure Proceeding on any Mortgage guaranteed by any other Federal Agency, notice should be provided to the individual designated by the agency to receive such notice.

C. Required Actions Upon Default

1. A Borrower/Mortgagor shall be considered to be in default when he or she is in material violation of any term or condition under the mortgage, including being past due on the mortgage payment as defined in Section C. 2 below.

2. When a Borrower/Mortgagor is thirty days past due on his or her mortgage and before any foreclosure action or activity is initiated, the Lender/Mortgagee shall comply with the following:

a. Make a reasonable effort to arrange a face-to-face interview with the Borrower/Mortgagor. This shall include at least one trip to meet with the Borrower/Mortgagor at the mortgaged property.

b. Lender/Mortgagee shall document that it has made at least one phone call to the Borrower/Mortgagor (or the nearest phone as designed by the Borrower/Mortgagor, able to receive and relay messages to the Borrower/Mortgagor) for the purpose of trying to arrange a face-to-face interview.

3. Lender/Mortgagee may appoint an agent to perform the services of arranging and conducting the face-to-face interview specified in this action.

4. When the Borrower/Mortgagor is past due three (3) or more installment payments and at least ten (10) days before initiating a foreclosure action in Tribal Court, the Lender shall advise the Borrower/Mortgagor in writing by certified mail, return receipt requested or by posting prominently on the unit, with a copy provided to the Pueblo, as follows:

a. Advise the Borrower/Mortgagor whether the information regarding the loan and default/delinquency will be given to credit bureaus.

b. Advise the Borrower/Mortgagor of homeownership counseling opportunities/programs available through the Lender or otherwise.

c. Advise the Borrower/Mortgagor of other available assistance regarding the mortgage/default.

d. Lender's right to Foreclosure.

e. Lessor's Right of First Refusal.

f. In addition to the preceding notification requirements, the Lender/Mortgagee shall complete the following additional notice requirements:

i. notify the Borrower/Mortgagor that if the Leasehold Mortgage remains past due, the Lender/Mortgagee may ask the Pueblo to accept assignment of the Leasehold Mortgage if this is an option of the governmental program;

ii. notify the Borrower/Mortgagor of the qualifications for forbearance relief from the Lender/Mortgagee, if any, and that forbearance relief may be available from the government; and

iii. provide the Borrower/Mortgagor with names and addresses of government officials to whom further communications may be addressed, if any.

5. If a Borrower/Mortgagor is past due ninety (90) days and the Lender/Mortgagee has complied with the procedures set forth in the first part of this Section, the Lender/Mortgagee may commence a foreclosure proceeding in the Tribal Court by filing a verified complaint as set forth in Section E of this Article.

D. Notice to the Pueblo

The Lender must serve notice, by certified mail, return receipt requested, to the Office of the Governor simultaneously with any notice required to be served on the Borrower pursuant to this Article or the Mortgage documents,

E. Cure of Default

The Borrower or any Subordinate Lien holder may cure the default(s) at any time before entry of a judgment of foreclosure by payment of amounts past due up to date of payment along with any interest and any standard and normal late fees and charges, including reasonable attorney fees. Under no circumstances shall the amount required to be tendered include any amounts due pursuant to an acceleration clause. Any Subordinate Lien holder who has cured a default may thereafter include in its lien the amount of all payments made by such Subordinate Lien holder to cure such default(s), plus interest on such amounts at the rate stated in the promissory note secured by the Subordinate Lien.

F. Right of First Refusal

1. In the event of default by the Borrower on any Mortgage or other loan agreement for which a Lease is pledged as security, the Lessor shall have the Right of First Refusal to acquire the Borrower's interest in the premises (subject to all valid liens and encumbrances) upon:

- a. Payment of all sums past due; and
- b. Either payment of the balance of the loan or assumption of the Mortgage.

2. The Right of First Refusal may be exercised at any time after the Lessor receives notice from the Lender of the Borrower's default in writing, certified mail, return receipt requested, up to the date a Judgment for Foreclosure is entered. The Notice of the Lessor's Intent to Exercise its Right of First Refusal shall be provided in writing from the Lessor to the Borrower, all Subordinate Lien holders, and the Lender; provided, however, that even upon the Lessor's exercise of the Right of First Refusal, the Borrower may cure the default at any time up

to the date of a judgment for foreclosure. The estate acquired by the Lessor through exercise of its Right of First Refusal shall not merge with any other estate or title held by the Lessor as long as the Lease is mortgaged or otherwise pledged as security for any loan.

3. If the Borrower default(s) on a Mortgage, the Right of First Refusal may not be exercised by the Lessor unless the Borrower has been advised of Forbearance Relief that may be available, if any, and the Lender or the relevant federal agency has found the Borrower to be ineligible.

Enacted by Resolution Number 2016-R-47, adopted August 31, 2016.

Sec. 14-4-8 Foreclosure Complaint

A. Upon expiration of the cure period for a default under a Mortgage, as identified in the Mortgage documents or otherwise provided in this Article, if there is a failure to cure, and the Lender has complied with the provisions set forth in this Article, the Lender may commence a Mortgage Foreclosure Proceeding in the Tribal Court, unless otherwise limited by applicable federal law, by filing a verified complaint.

B. The verified complaint in a mortgage foreclosure proceeding shall contain the following:

1. The name of the Borrower/Mortgagor and each person or entity claiming through the Borrower/Mortgagor subsequent to the recording of the mortgage loan, including each Subordinate Lienholder, except the Pueblo with respect to a claim for a tribal leasehold, as a defendant;

2. A description of the property subject to the mortgage loan;

3. A concise statement of the facts concerning the execution of the mortgage loan and in the case of a Leasehold Mortgage the lease; the facts concerning the recording of the mortgage loan or the Leasehold Mortgage; the facts concerning the alleged default(s) of the Borrowers/Mortgagor; and such other facts as may be necessary to constitute a cause of action;

4. True and correct copies of each promissory note, mortgage, or other recorded real property security instrument and any other documents relating to the property and if a Leasehold Mortgage, a copy of the lease and any assignment of any of these documents; and

5. an allegation that all relevant requirements and conditions prescribed in Federal and Tribal Law, and in the promissory note, security instrument, and the Lease have been complied with by the Lender

6. Otherwise satisfying the requirements of the Tribal Court.

C. The complaint shall be verified by the Tribal Court Clerk along with a summons specifying a date and time of appearance for the Defendant(s).

D. Service of Process and Procedures

Any foreclosure complaint must be served on the Borrower/Mortgagor in accordance with the tribal court rules of services of process. If there are none, service of the complaint must be done in the following manner:

1. Delivery must be made by an adult person and is effective when it is:
 - a. Personally delivered to a Borrower/Mortgagor with a copy sent by mail, or
 - b. Personally delivered to an adult living in the property with a copy sent by mail, or
 - c. Personally delivered to an adult agent or employee of the Borrower/Mortgagor with a copy sent by mail.
2. If the notice cannot be given by means of personal delivery, or the Borrower/Mortgagor cannot be found, the notice may be delivered by means of:
 - a. Certified mail, return receipt requested, at the last known address of the Borrower/Mortgagor, or
 - b. Securely taping a copy of the notice to the main entry door of the property in such a manner that it is not likely to blow away, and by posting a copy of the notice in some public place near the premises, including a tribal office, public store, or other commonly-frequented place and by sending a copy first class mail, postage prepaid, addressed to the Borrower/Mortgagor at the premises.
3. The person giving notice must keep a copy of the notice and proof of service in accordance with this section, by affidavit or other manner recognized by law.

E. Certified Mailing to Pueblo

In any foreclosure proceedings on a Leasehold Mortgage where the Pueblo is not named as a defendant, a copy of the summons and complaint shall be mailed to the Pueblo by certified mail, return receipt requested, within five (5) days after the issuance of the summons.

F. Continuances

No continuances shall be granted in cases involving the Lender or a Federal Agency, except for good cause shown and:

1. By agreement of all parties with the consent of the Tribal Court; or
2. In the sole discretion of the Tribal Court.

G. Cure of Default

1. Prior to the entry of a judgment of foreclosure, any Borrower/Mortgagor or a Subordinate Lienholder may cure the default(s) under the Mortgage by making a full payment of the delinquency and other amounts set forth in Section 7. E above to the Lender/Mortgagee, plus all reasonable legal and Court costs incurred in foreclosing on the property.

2. Any Subordinate Lienholder who has cured a default shall thereafter have included in its lien the amount of all payments made by such Subordinate Lienholder to cure the default(s), plus interest on such amounts at the rate stated in the note for the mortgage.

H. Judgment and Remedy

1. The Tribal Court shall hear and decide this matter in a prompt and reasonable time period not to exceed sixty (60) days from the date of service of the Complaint on the Borrower/Mortgagor.

2. The Tribal Court shall enter judgment in favor of the Lender if:

a. a Notice of Default has been properly provided to all persons or entities required, and

b. if the Right of First Refusal has not been exercised, or the default is not cured within the allowable period as identified in the Mortgage documents or otherwise provided in this Article, and

c. if the Tribal Court determines that the Borrower is in default of the Mortgage.

3. A Judgment for Foreclosure shall:

a. foreclose the Borrower's interest in the mortgaged property, and each other defendant named in the complaint upon whom proper and timely service has been made, including each Subordinate Lien holder; and

b. Assign the Leasehold Interest in the mortgaged property to the Lender or any purchaser of the Leasehold Interest at a foreclosure sale. The proceeds of such sale shall be applied first toward any lien having a priority date prior to that of the Mortgage documents, next as provided in the Mortgage documents, and finally toward any liens having a priority date subsequent to the Mortgage documents.

c. Assignment of such mortgaged property shall be subject to:

i. The Borrower's right of redemption, if applicable; and

ii. Limitations as to who may become an assignee of a Leasehold Interest as stated in the Lease.

4. The Tribal Court shall have the authority to enter against the Borrower a judgment for the following: (1) past due payments, unpaid utilities, and any charges due the Pueblo or Lessor under any Lease or occupancy agreement; (2) any and all amounts secured by the Mortgage that are due the Lender; and (3) damages caused by the Borrower to the property other than ordinary wear and tear. The Tribal Court shall have the authority to award to the prevailing party costs and reasonable attorney's fees in bringing suit. The Tribal Court shall not have the authority to enter a deficiency judgment except as may be required pursuant to a federal loan guarantee program as set forth in the mortgage documents.

5. The Tribal Court shall have the authority to order the sale of the foreclosed property and use the proceeds to satisfy the Judgment.

I. Redemption

The Redemption period shall end sixty (60) days after a Judgment of Foreclosure has been entered but prior to sale of the home. The defendant Borrower of the mortgaged property, his heirs, personal representatives, or assigns, may exercise the right of redemption, by paying to the Lender or Lender's assigns, at any time within sixty (60) days from the date of the Judgment of Foreclosure, the amount due on the Judgment, with interest from the date of Judgment at the rate of ten percent a year, together with all taxes, interest and penalties thereon, and all payments made to satisfy in whole or in part any prior lien or mortgage not foreclosed, with interest on such taxes, interest, penalties and payments made on liens or mortgages at the rate of ten percent a year from the date of payment. If the Lender is assigned the Borrower's Leasehold Interest, the Lender may subsequently sell or assign such Leasehold Interest to an eligible Borrower or the Lessor. If HUD acquires the Leasehold Interest, it may transfer the same subject to the terms and conditions of the Lease and pursuant to applicable law.

J. Intervention

The Pueblo may petition the Tribal Court to intervene in any Lease or Leasehold Mortgage Foreclosure Proceeding under this Article. Neither the filing of a petition for intervention by the Pueblo, nor the granting of such petition by the Tribal Court, shall operate as a waiver of the sovereign immunity of the Pueblo, except as expressly authorized by the Tribal Council.

K. Subleases

In the event a Federal Agency or the Lender is assigned the leasehold mortgage pursuant to a foreclosure action, and a subsequent purchaser cannot be found pursuant to the terms and conditions of this Article, the Federal Agency or Lender may sublease the leased premises to a member of the Pueblo, the Pueblo or a Pueblo entity, or as otherwise allowed in the lease.

L. Foreclosure Sales

1. All sales of mortgaged property under a Judgment of Foreclosure shall be made by the Mortgagee. The sale shall be by auction to tribal members, with priority given to

eligible family members of the defaulting borrower, and tribal entities after such notices as required by this Article.

2. Notice of sale must:

- a. be published in a newspaper or newsletter or general circulation in the Pueblo; and
- b. be mailed at least thirty (30) days before the sale to each party in the foreclosure case at the address provided for service of papers in the case and to the Governor; and
- c. be posted at the Governor's Office and in other tribal buildings open to the public.

3. All proceeds from sale of the foreclosed property shall be brought to the Court to be applied to the payment of the Judgment. The proceeds shall be applied as follows:

- a. First, to the expenses of the sale, including the costs of notice and a reasonable fee for the official conducting the sale, except that no Pueblo or federal employee or employee of a tribal entity shall be paid a fee for such service.
- b. Second, to the discharge of the Judgment amount.
- c. Third, to the discharge of the claims for other mortgage holders whether or not foreclosed, which are junior to the first priority lien on the mortgage foreclosed, in order of seniority.
- d. The remainder returned to the Mortgagor.

Enacted by Resolution Number 2016-R-47, adopted August 31, 2016.

Sec. 14-4-9 Evictions

A. No Self-Help Eviction

No person or entity may compel an occupant to vacate any premises by force or in a way that causes a breach of the peace. All persons or entities attempting to regain possession of any property shall upon the failure of an occupant to voluntarily vacate property, give a notice to quit and obtain a court order of eviction as provided in this Article. This Section 9 shall not apply (1) to the Santa Ana Homeownership Program which is wholly funded by the Pueblo; (2) to any other tribal program falling outside the scope of this Article; or (3) to impede the authority of the Tribal Council or Governor in enforcing evictions under and in accordance with the Santa Ana Homeownership Program.

B. Notice to Quit

1. If anyone claiming a right to possession desires to obtain possession of real property from another, he or she shall give notice to the occupant to quit possession of the property.

2. The purpose of the notice to quit is to provide advance notice of a specific problem that needs to be addressed.

3. The notice to quit shall be addressed to the adult occupant(s) of the real property and shall state the reasons(s) for termination of possession and the date by which the occupant is required to quit possession of the property. The notice to quit shall be in writing substantially in the following form:

I have a legal right to possession of the property now occupied by you at (here insert the address or other reasonable description of the location of the property), and hereby give you notice that you are to quit possession or occupancy on or before the (here insert the date) for the following reason (here insert the reason(s) for the notice to quit possession).

Signed, (here insert the signature, name and address of the party with a right to possession, as well as the date and place of signing).

4. The notice must be delivered within the following periods of time:

a. At least seven (7) calendar days prior to the date to quit specified in the notice for any failure to pay rent or other payments required by an agreement with the occupant.

b. At least three (3) calendar days prior to the date to quit specified in the notice for Nuisance, serious injury to property, or injury to persons.

c. If there is an emergency or condition making the dwelling unsafe or uninhabitable, or in situations involving an imminent or serious threat to public health or safety, the notice may be made in a period of time which is reasonable, given the situation.

d. At least fourteen (14) calendar days in all other situations.

C. Unlawful Detainer

A person may be charged with unlawful detainer if such person has received notice to quit and continues in occupancy of real property under any of the following situations:

1. After the expiration of the term of a Lease;

2. If such person has entered onto or remains on the real property of another without the permission of the owner and without having any substantial claim under a lease or title to such property;

3. After the Lessor or Landlord has terminated a person's tenancy pursuant to court procedures providing a hearing;

4. After a Leasehold Interest has been foreclosed in a Mortgage Foreclosure Proceeding and the Borrower, Lessee, Sublessee, or other occupant of the property has received notice of such foreclosure and has remained in possession of the property beyond the date set forth to vacate the Property in the notice;

5. When a person has received notice (i) that he or she is in default under a Lease or other occupancy agreement; and (ii) requiring him or her to cure such default or surrender possession of the occupied property, and such person has not done either within the period provided in such notice;

6. When a person continues to fail to keep or perform any condition or covenant of any lease or other use agreement under which the property is held after he or she has been given notice to comply with such condition or covenant or else to surrender the property;

7. When a person fails to comply with applicable Tribal Housing Policies and/or regulation; or

8. When such person continues to commit or to permit Waste upon or maintain a Nuisance upon the occupied property after having been given notice to either cease such Waste or maintenance of Nuisance or to surrender the property.

D. Petition and Summons

Any person claiming a right to possess property held by another, including but not limited to a Lender or a Federal Agency, as appropriate, may commence an action in unlawful detainer in Tribal Court, unless otherwise limited by applicable federal law, as follows:

1. By filing a verified petition for eviction:

a. Citing authority for jurisdiction of the Tribal Court;

b. Naming as defendant(s) the occupant(s) of the property and, if the property is subject to a Mortgage, the Borrower and each record owner claiming through the Borrower subsequent to the recording of the Mortgage, including each Subordinate Lien holder;

c. Describing the property subject to the petition;

d. Stating the facts concerning the alleged unlawful possession of the property by the defendant and, if the property is subject to a Leasehold Interest and/or a Mortgage (i) the execution of any Lease and/or the Mortgage; (ii) the recording of the Mortgage; and (iii) the alleged default(s) of the Borrower(s); and (iv) any other facts necessary to support a cause of action;

e. Appending as exhibits true and correct copies, if any, of each occupancy agreement, promissory note, lease, loan agreement, security instrument, and/or Mortgage, and, if applicable, any assignment thereof relating to such mortgaged property;

f. Including an allegation that all relevant requirements and conditions prescribed in Federal and Tribal Law, and in the occupancy agreement, promissory note, lease, loan agreement, security instrument, and/or Mortgage, and the assignment, if any, have been complied with by the petitioner;

g. Including claims for damages, if any; and

h. Otherwise satisfying the requirements of the Tribal Court.

2. By obtaining and serving upon each defendant a summons requiring the defendants to appear for a hearing upon the complaint and filing a copy of such summons with the Tribal Court. The summons must be issued in accordance with the Tribal Court rules and procedures. The hearing date shall be in accordance with the Tribal Court Rules of Civil Procedure, but no less than six (6) days and not more than thirty (30) days from the date an Answer is filed, or if no Answer is filed, no more than forty-five (45) days from the date of service of the summons and complaint. The summons must notify each defendant that judgment will be taken against him or her in accordance with the terms of the complaint unless he or she appears for a hearing at the time, date, and place specified in the summons to provide evidence as to why he or she should not be evicted; and

E. Service of Summons and Complaint

A copy of the summons and complaint shall be served upon the defendants in the manner provided by the Tribal Court rules for service of process in civil matters. In the absence of such Tribal Court rules, the summons and complaint shall be served by one of the following two methods.

1. delivering a copy personally to the Borrower, Mortgagor or to any other occupant under color of law, or to any adult residing in the unit and, if applicable, to any Sublessee; or

2. posting said notice in a conspicuous place near the entrance to said unit, and sending an additional copy to the Lessee or to any other occupant under color of law, and, if applicable, to the Sublessee, by certified mail, return receipt requested, properly addressed, postage paid. Proof of service may be made by affidavit of any adult person stating the he has complied with the requirements of one of the above methods of service.

F. Power of the Tribal Court

The Tribal Court shall enter an order of repossession if:

1. Notice of suit is given in accordance with procedures provided herein; and

2. The Tribal Court finds at the hearing that the defendant has committed an act of unlawful detainer; or

3. The defendant(s) fails to appear pursuant to the summons.

4. Upon issuance of an order of repossession, the Tribal Court shall have the authority to enter a judgment against the defendant(s) for the following, as may be deemed appropriate:

a. Back rent, unpaid utilities, and any charges due the Santa Ana Pueblo, Tribal Housing Authority, or Sublessor under any Sublease or other written agreement, except for a Leasehold Mortgage;

b. If the property is subject to a Leasehold Mortgage, any and all amounts secured by a Leasehold Mortgage that are due the Lender or the appropriate Federal Agency;

c. Damages to the property caused by the defendant(s), other than ordinary wear and tear; and

d. Costs and reasonable attorney's fees.

G. Enforcement

Within fifteen (15) days of issuance of an order of repossession by the Tribal Court, Tribal or Federal Law Enforcement Officers shall enforce the order by evicting the defendant from the property that is unlawfully occupied.

H. Storage of Property

Following forcible eviction of the defendant(s) and/or other occupants, the former occupant's personal property shall be stored by the Lessor or Landlord for at least thirty (30) days, at a suitable location off of the premises. In order to reclaim their property, the former occupants shall pay the reasonable costs of its removal and storage. If they do not pay such costs within thirty (30) days, the Lessor or Landlord is authorized to sell the property in order to recover these costs. The Lessor or Landlord shall provide the evicted occupants with pertinent information concerning the sale, including the time, date and location. Any proceeds from the sale in excess of the storage and removal costs shall be remitted to the former occupants. Nothing in this section shall prevent the former occupants from reclaiming property remaining after the sale if they can arrange to do so in a manner satisfactory to the Lessor or Landlord. Personal property that is not reclaimed by the former occupants or cannot be sold in accordance with the provision stated herein may be disposed of in the sole discretion of Lessor or Landlord.

I. Continuances

Except for good cause shown and by agreement of all parties with the consent of the Court, or the sound discretion of the Court, there shall be no continuances in cases involving a

lender or Federal Agency that will interfere with the requirement that the order of repossession be enforced not later than 45 days after the Tribal Court finds against defendants.

Enacted by Resolution Number 2016-R-47, adopted August 31, 2016.

Sec. 14-4-10 No Merger of Estates

There shall be no merger of estates by reason of the execution of a Lease or a Leasehold Mortgage or the assignment or assumption of the same, including an assignment adjudged by the Tribal Court, or by operation of law, except as such merger may arise upon satisfaction of the Leasehold Mortgage.

Enacted by Resolution Number 16-R-47, adopted August 31, 2016.

Sec. 14-4-11 Pueblo Approvals

A. The Pueblo must approve all transfers or assignments of the leasehold interest, except at foreclosure and except as provided in the lease.

B. The Federal Agency which made, insured or guaranteed the mortgage loan, or the lender may assume title to the leasehold interest without Pueblo approval of such transfer. However, anyone who subsequently purchases or rents the leasehold property must be approved by the Pueblo except as otherwise provided in the lease.

C. In the event of a foreclosure and subsequent eviction, the Pueblo:

1. Shall have the right to sublease a leasehold estate only to tribal members and tribal entities; and

2. May impose other qualifying criteria on a potential sub-lessee related to Pueblo customs, traditional law, health and safety of the Pueblo community, not otherwise prohibited by applicable federal law.

Enacted by Resolution Number 2016-R-47, adopted August 31, 2016.

Sec. 14-4-12 Limited Waiver of Sovereign Immunity

The Pueblo hereby authorizes a limited waiver of sovereign immunity from suit that the Pueblo may enjoy with respect to any and all controversies or claims arising out of or related to the obligations of the Pueblo under a Lease or any Mortgage document or instrument to which the Pueblo may be a party pursuant to a Mortgage assumption. In connection with such waiver, the Pueblo hereby consents to the personal jurisdiction of the Tribal Court with respect to any action to enforce any obligations owed by it to any other party, including a Federal Agency, or to enforce any other party's rights and/or remedies under such Lease(s) or Mortgage documents. The authority provided herein is not intended to nor shall it be construed to waive the immunity of the Pueblo for any other purpose or with respect to any claim or other matter not specifically mentioned herein, and is not intended to, nor shall it, extend to the benefit of any person other than the parties to such agreements or their successors or assigns.

Enacted by Resolution Number 2016-R-47, adopted August 31, 2016.

Sec. 14-4-13 Amendments

This Article may be amended by the Tribal Council. No amendment to this Article shall be applied to affect adversely the rights and privileges of persons who entered into mortgages pursuant to this Article prior to the effective date of such amendment.

Enacted by Resolution Number 2016-R-47, adopted August 31, 2016.

Sec. 14-4-14 Appeals

Appeals of Tribal Court decisions made under this Article shall be handled in accordance with the general Pueblo Tribal Court appellate provisions.

Enacted by Resolution Number 2016-R-47, adopted August 31, 2016.

RESIDENTIAL LEASE OF SANTA ANA PUEBLO OWNED LAND
Approved August 31, 2016 by TC Resolution No. 2016-R-47

Lease No. _____

Contract No. _____

THIS Lease is made and entered into by Santa Ana Pueblo Tribe of Indians (hereinafter "Lessor" or "Tribe"), and _____, who is/are member(s) of Santa Ana Pueblo and residing upon the Santa Ana Pueblo Indian Reservation (hereinafter "Lessee").

WITNESSETH _____

1. SECRETARIAL APPROVAL; FEDERAL AGENCY APPROVAL; DEFINITIONS OF FEDERAL AGENCY, TRIBE, and LENDER. As used in this Lease, the term "Secretary" means the Secretary of the Interior or his or her duly authorized representative. This Lease is subject to the approval of the Secretary pursuant to the Act of August 9, 1955, 69 Stat. 539, as amended, 25 U.S.C. § 415, as implemented by Title 25, Code of Federal Regulations, Part 162. The form of this Lease has been accepted by the Secretary of Housing and Urban Development (HUD) pursuant to 24 C.F.R. § 203.43h(c), which implements Section 248 of the National Housing Act, 12 U.S.C. § 1715z-13, for use in connection with Federal Housing Administration (FHA) insurance of a mortgage on the interest created by this Lease, and pursuant to 24 C.F.R. § 1005.107, which implements Section 184 of the Housing and Community Development Act of 1992 (Pub. L.102-550) for use in connection with HUD's issuance of a loan guarantee of a mortgage on the interest created by this Lease. The form of this Lease has also been accepted by the Secretary of the United States Department of Agriculture (USDA) for use in connection with the issuance by USDA or its Rural Housing Service (RHS) of a direct or guaranteed loan pursuant to section 502 of the Housing Act of 1949 as amended, 42 U.S.C. § 1472, and accepted by the Secretary of the Veterans Affairs (VA) for use in connection with the issuance by VA of a direct or guaranteed loan pursuant to Article 37 of Title 38, United States Code, secured by the interest created by this Lease. As used in the context of this Lease, the term "Tribe or Tribal" refers to the respective Tribe who enters into this Lease as the "Lessor." For future reference, "Federal Agency" refers to HUD, VA, and USDA. When used in this Lease, the "lender" is any mortgagee that a Federal Agency has approved or a Federal Agency which makes a direct loan. With respect to mortgages which are insured under Section 248 of the National Housing Act, the lender must be approved by the Federal Housing Administration. The term "lender" also includes any of the lender's successors or assigns of the lender's right, title to, or interest in, the Mortgage and any subsequent noteholder secured by the Mortgage. The assignment of the mortgage or any interest therein does not require the consent of the Tribe.

2. PREMISES. Lessor hereby Leases to the Lessee all that tract or parcel of land situated on Santa Ana Pueblo Tribal Lands, County of Sandoval, State of New Mexico, and described as follows (the Leased Premises):

[insert legal description, survey-grade GPS description, or other description prepared by a registered land surveyor], Sandoval County, Santa Ana Pueblo Indian Reservation, New Mexico approximately _____ acres; together with an ingress and egress Easement as shown on the survey.

3. USE OF PREMISES. The purpose of this Lease is to enable the Lessee to purchase, construct, improve, and/or maintain a dwelling and related structures on the Leased Premises, and otherwise to use said premises as a principal residence. The Lessee agrees not to use any part of the Leased Premises for any unlawful conduct or purposes and will comply with all applicable Federal Laws, Articles, rules, regulations, and other legal requirements under 25 CFR 162.014. If historic properties, archeological resources, human remains, or other cultural items not previously reported are encountered during the course of any activity associated with this Lease, all activity in the immediate vicinity of the properties, resources, remains, or items will cease and the Lessee will contact BIA and the Tribe to determine how to proceed and appropriate disposition.

4. TERM. Lessee shall have and hold the Leased Premises for an initial term of 25 years, and with an automatic renewal of 25 years beginning on the effective date of this Lease. This Lease may not be terminated by either or both parties during its term if, and as long as, the Lease and/or any improvements on the premises, or any interest therein, is mortgaged or otherwise pledged as security for any loan in accordance with the provisions hereof, unless consent in writing to such termination is given by the lender and, if the loan is guaranteed, insured, or made by a Federal Agency, a written consent of that agency is also required. This Lease shall not be subject to any forfeiture or reversion and shall not be otherwise terminable, if such event would adversely affect any interest in the Leased Premises, including improvements thereon, acquired in accordance with the provisions hereof by the holder of any mortgage or other lien, or of any purchaser at a foreclosure sale under such mortgage (or lien) or under any conveyance given in lieu of foreclosure, or of any holder subsequent to such purchase. In the event a Federal Agency acquires a mortgage on the interest created by this Lease by assignment from a lender, the Lessor shall not terminate the Lease without the written consent of the respective Federal Agency, as long as the mortgage is in force. Lessor may cancel this Lease if Lessee does not obtain a Leasehold mortgage within six (6) months of the Secretary's approval of the Lease. However, cancellation may not occur if Lessee holds a Land Assignment to the site or if Lessee's Land Assignment was extinguished for the purpose of obtaining this Lease.

5. RENT. The improvement of housing for Santa Ana Pueblo families is a public purpose of the Lessor. The consideration for this Lease is (1) the obligation of Lessee to further said purpose, (2) the promise hereby given by Lessee to pay the Lessor rent at the rate of \$1 per term, (3) the extinguishment, hereby agreed to by Lessee, of any and all use rights heretofore held by Lessee in the Leased Premises, so that Lessee shall hereafter hold rights only by virtue of this Lease, and (4) other good and valuable considerations, the receipt of which is hereby acknowledged by Lessor. Rent may be subject to adjustment pursuant to 25 C.F.R. 162. All rent payments shall be due on or before the 10th day of each term regardless of whether Lessee receives an advance billing or other notice that a payment is due. Rent payments shall be made to the Tribe at the

following address on or before each due date (Note that payments may not be made more than one year in advance of the due date):

Santa Ana Pueblo
Office of the Governor
2 Dove Road
Santa Ana Pueblo, NM 87004

6. IMPROVEMENTS. All buildings or other improvements now existing or hereafter constructed on the Leased Premises shall be the leasehold property of the Lessee during the term of this Lease, including any extension or renewal thereof. During the term of this Lease, Lessee shall obtain any necessary governmental permits, approvals or authorization required for the construction and use of all improvements he or she (they) place or cause(s) to be placed on the Leased Premises, and shall comply with all laws applicable to the construction and use of improvements.

7. USE RIGHT. Upon expiration of this Lease, or upon its termination in accordance with the terms hereof, unless such termination is due to default upon the part of Lessee or cancellation under paragraph 4 above, Lessee or any successors in interest shall be entitled to use rights in the Leased Premises if qualified under the laws of the Tribe. If not so eligible, Lessee, his or her (their) sublessee and any successors in interest shall, upon demand, surrender to Lessor upon expiration or other termination of this Lease complete and peaceable possession of the Leased Premises and all improvements thereon which have not been relocated as permitted under Paragraph 24 of this Lease, which shall be the property of the Tribe.

8. FEDERAL SUPERVISION.

(a) Nothing contained in this Lease shall operate to delay or prevent a termination of Federal responsibilities with respect to the Leased Premises by the issuance of a fee patent, the lifting of restrictions on alienation, or otherwise during the term of the Lease; such termination, however, shall not serve to abrogate the Lease.

(b) No member of Congress or any delegate thereto or any Resident Commissioner shall be admitted to any share or part of this Lease or to any benefit that may arise herefrom.

9. QUIET ENJOYMENT. Lessor agrees to defend the title to the Leased Premises and also agrees that Lessee and any successors in interest shall peaceably and quietly hold, enjoy and occupy the Leased Premises for the duration of this Lease without any hindrance, interruption, ejection or molestation by Lessor or by any other persons' whomsoever, except if the requirements of any part of this Lease are not kept by the Lessee. Notwithstanding the foregoing, Lessee and his or her (their) assigns is (are) subject to all the laws of the Tribe to the same extent as any other Tribal member or resident.

10. ENCUMBRANCE. Nothing in this Lease shall prevent the Lessee, with the approval of the Secretary and HUD (for Section 248 insured loans), from executing and recording a mortgage, declaration of trust and/or other security instrument as may be necessary to obtain financing for the purchase of a dwelling, refinancing of an existing mortgage, construction and/or improvement of a dwelling and related structures, or shall prevent the mortgagee or other lender from foreclosing or instituting other appropriate proceedings under law in the event of default of

any mortgage or other loan agreement by the Lessee, or assigns. Except in cases involving loans for home construction or home improvement by a bank, recognized lending institution, or a lending agency of the United States Government or Santa Ana Pueblo Government, where no such consent or approval of Lessor shall be required, Lessee may not execute a mortgage, declaration of trust or other security instrument pledging his/her interest in this Lease or any improvements on the Leased Premises without the prior written consent of Lessor and the approval of the Secretary.

11. ASSIGNMENT AND SUBLEASE.

(a) Except as otherwise provided herein, Lessee shall not assign or sublet this Lease without the prior written consent of the Lessor and sureties (as found in 25 C.F.R. 162) and approval of the Secretary. If this Lease and/or any improvements on the Leased Premises are mortgaged or pledged as security for a loan, Lessee shall not assign or sublet this Lease without the written approval of the lender and the respective Federal Agency. Lessee may assign the Lease and deliver possession of the Leased Premises, including any improvements thereon, to the lender or its successors, or Federal Agency guaranteeing or insuring the loan, if Lessee default(s) in any mortgage or other loan agreement for which the Lease and/or improvements on the Leased Premises are pledged as security, and, in such event, the lender or its successors in interest may transfer this Lease or possession of the Leased Premises to a successor Lessee; provided, however, that the Lease may only be transferred to another member of the Tribe or tribal entity. Notwithstanding the provisions contained above, the following additional requirements shall be applicable to a Lease, which secures a mortgage insured, guaranteed or held by a Federal Agency:

(b) Notwithstanding that the term sublease is used herein, the Lessee shall not sublease the premises if the Lease is the security for a mortgage insured under Section 248. The lessee may assign the lease in accordance with the terms hereunder. In the event a Federal Agency is the lender or acquires the mortgage secured by this Lease, and subsequently acquires said Lease by foreclosure, or by the assignment of said Lease by Lessee, his or her (their) Lessees or assigns (for which the approval of the Tribe is not required), then:

(1) The appropriate Federal Agency (the Agency involved in this transaction) will notify the Tribe of the availability of the Lease for sale, the sales price of the home and other terms of sale.

(2) The Lease may only be assigned to another tribal member or tribal entity. Any such sublease or assignment shall be executed consistent with tribal law and Federal law.

(3) If a purchaser is found, the Lease will be transferred by the Federal Agency, to the purchaser, with the prior written consent of the Lessor.

(4) If a purchaser cannot be found, the appropriate Federal Agency shall be entitled to sublease the Leased Premises and improvements with the prior written approval of the Lessor. Such sublease shall be to a member of the Tribe or a tribal entity. If a tribal member or tribal entity cannot be found by the Federal Agency within sixty (60) days after making diligent efforts, the Federal Agency may require the Tribe to assume a sublease. The term of the initial Lease period and any succeeding period shall not exceed one year each. Any purchase of the Lease shall be subject to any sublease by the Federal Agency pursuant to this subsection.

(5) No mortgagee (except a Federal Agency as mortgagee or assignee of a mortgagee) may obtain title to the interest created by this Lease without the prior written consent of the Tribe.

In the event that the lender is the entity responsible for acquiring the Lease and the leasehold estate by foreclosure, the lender shall have the rights of the Federal Agency who had insured or guaranteed the foreclosed mortgage under subparagraphs (1) through (5) above, provided this sentence does not apply to loans insured under HUD/FHA's Section 248 program.

12. OPTION.

Subsequent to Lessee's breach of any covenant or agreement under a mortgage or other security instrument for which the Lease or any improvements on the Leased Premises are pledged as security, and upon the expiration of any applicable cure period, the Lessor shall have an option (the "option" herein) to acquire the Lessee's Leasehold interest (subject to all valid liens and encumbrances) upon either payment in full of all sums secured by the mortgage or assumption of the loan with the approval of the lender or the applicable Federal Agency as evidenced by the note and mortgage and execution of an assumption agreement acceptable in all respects to the Lender. Such option is subject to the following conditions:

(a) If the Lessee or any assignee of Lessee fails to cure the default, the lender shall give written notice to the Lessor of Lessee's or its assignee's failure.

(b) If the Lessee fails to cure the default, and said notice shall be given before the lender or successor invokes any other remedies provided under the mortgage or by law, thereafter, the lender may issue an acceleration notice to the Lessee, its Lessees or assigns, under the mortgage or other security instrument, requiring the Lessee, its Lessees or assigns to pay all sums secured by the mortgage or other security instrument. If the Lessee, its Lessees or assigns fail to cure the default in accordance with the terms of the lender's acceleration notice, the lender shall give the Lessor written notice of said failure to cure. The Lessor may exercise its option at any time prior to the entering of a Judgment for foreclosure. This option shall be exercised by notice in writing from the Lessor to the Lessee and the lender.

(c) Notwithstanding the Lessor's option to acquire the Lessee's interest in the Leased Premises, such option shall be subject to any right the Lessee may have under the mortgage or by law to reinstatement after the acceleration, and the right to bring appropriate court action to assert the non-existence of a default or any other defense to acceleration and sale or foreclosure.

(d) The estate acquired by the Lessor through the exercise of the option shall not merge with any other estate or title held by the Lessor as long as the leasehold interest or any improvements on the Leased Premises, or any interest therein, are mortgaged or otherwise pledged as security for any loan, and the leasehold interest shall remain subject to any valid and subsisting mortgage or other security instrument.

13. RESERVATIONS.

Lessee shall use the premises exclusively for residential purposes, except as otherwise agreed to by the parties. Any rights not expressly provided are reserved by the Lessor.

Minerals: The Lessor reserves all rights, as owned by the Lessor, to all mineral rights, including but not limited to oil, gas, or hydrocarbon substances. The Lessor shall not exercise surface entry in connection with reserved mineral rights without prior consent of the Lessee and sureties (as found in 25 C.F.R. 162).

Timber: The Lessor reserves all rights, as owned by the Lessor to timber and forest products on the premises.

Water: The Lessor reserves all rights, as owned by the Lessor, to water on the premises - except that which is needed for residential purposes.

14. EFFECTIVE DATE.

This Lease and all its terms and provisions shall be binding upon the successors and assigns of the Lessee and any successor in interest to the Lessor and shall take effect upon the date of approval by the Secretary.

15. OBLIGATION TO THE UNITED STATES.

It is understood and agreed that while the Leased Premises are in trust or restricted status, all of the Lessee's obligations under this Lease, and the obligation of his, hers (theirs) sureties, are to the United States as well as to the owner of the land and are enforceable by the United States. The BIA may, at its discretion, treat as a lease violation any failure by the Lessee to cooperate with a BIA request to make appropriate records, reports, or information available for BIA inspection and duplication.

16. ASSENT NOT WAIVER OF FUTURE BREACH OF COVENANTS.

No assent, express or implied, to any breach of any of the Lessee's covenants, shall be deemed to be a waiver of any succeeding breach of any covenants.

17. VIOLATIONS OF LEASE.

It is understood and agreed that violations of this Lease shall be acted upon in accordance with the regulations in 25 C.F.R. Part 162.

18. CARE OF PREMISES.

It is understood and agreed that the Lessee is to keep the premises covered by this lease in good repair. Lessee shall not commit or permit to be committed any waste on said premises and shall not remove or tear down any building or other improvements thereto but shall keep the same in good repair. Lessee shall not destroy or permit to be destroyed any trees, except with the consent of the Lessor and the approval of the Secretary and shall not permit the premises to become unsightly. The Lessee will be held financially responsible for all unrepaired damages to buildings, fences, improvements or, appearance, except for the usual wear and decay.

19. FORCE MAJEURE.

Whenever under this instrument a time is stated within which or by which original construction, repairs or re-construction of said improvements shall be completed, and if during such period any cause reasonably beyond the Lessee's power to control occurs, the period of delay so caused shall be added to the period allowed herein for the completion of such work.

20. INSPECTION OF THE PREMISES.

The Secretary, lender, applicable Federal Agency, and the Lessor and their authorized representative shall have the rights, at any reasonable times during the term of this lease, and with reasonable notice, to enter upon the leased premises, or any part thereof, to inspect the same and all buildings and other improvements erected and placed thereon.

21. INDEMNIFICATION.

Neither the Lessor nor the United States, nor their officers, agents, and employees shall be liable for any loss, damage, or injury of any kind whatsoever to the person or property of the Lessee or sublessees or any other person whomsoever, caused by any use of the leased premises, or by any defect in any structure erected thereon, or arising from any accident, fire, or other casualty on said premises or from any other cause whatsoever; and Lessee, as a material part of the consideration for this lease, hereby waives on Lessee's behalf all claims against Lessor and/or the United States and agrees to hold Lessor and/or the United States free and harmless from liability for all claims for any loss, damage, or injury arising from the use for the premises by Lessee, together with all costs and expenses in connection therewith. The Lessee shall indemnify the United States and the Tribe against all liabilities or costs relating to the use, handling, treatment, removal, storage, transportation, or disposal of hazardous materials, or the release or discharge of any hazardous material from the Leased Premises that occurs during the Lease term, regardless of fault, with the exception that the Lessee is not required to indemnify the Tribe for liability or cost arising from the Tribe's negligence or willful misconduct.

22. UTILITIES.

Neither the Lessor nor the United States shall have any obligation to provide utilities as of the commencement of this Lease. In the event that the Lessee requires utilities, the installation and maintenance thereof shall be the Lessee's sole obligation, provided that such installation shall be subject to the written consent of the Lessor, which the Lessor will not unreasonably withhold. The Lessee shall pay, as they become due, all bills for electricity and other utilities that are furnished to the leased premises.

23. LATE PAYMENT INTEREST.

It is understood and agreed between the parties hereto that, if any installment of rental is not paid within 30 days after becoming due, interest will be assessed at the existing prime rate, plus three (3) percent, times the amount owed for the period during which payments are delinquent. Interest will become due and payable from the date such rental becomes due and will run until said rental is paid. The interest rate formula is $\text{Interest} = (\text{Prime rate} + 3\%) \text{ times } (x) \text{ amount due}$.

24. RIGHT OF REMOVAL.

Upon the termination of the lease, if the Lessee does not have use rights under Santa Ana tribal laws, the Lessee of a one-unit single family dwelling shall be entitled, within 120 days, to remove the dwelling and related structures from the leased premises and relocate such improvements to an alternative site, not located on the leased premises. Any Lessee who exercises such a right shall be required to pay all costs related to the relocation of the dwelling unit. Lessee shall leave the land in good order and condition. All other improvements shall become the property of the Lessor at the expiration of this lease. This paragraph does not apply if this Lease is mortgaged. This paragraph does not apply to Section 248 insured mortgage loans.

25. INSURANCE.

The Lessee agrees, so long as a mortgage on this lease is in effect, to keep buildings and improvements on the leased premises insured against loss or damage by fire with extended coverage endorsements in an amount equal to the full insurable value of the buildings and

improvements insured. Said policy is to be made jointly payable to the Lessee and the Lender, and Lessee shall pay all premiums as required by the Lender.

26. ADDITIONS.

Prior to execution of this Lease, provision (s) number (s) has (have) been added hereto and by reference is (are) made a part hereof.

PUEBLO OF SANTA ANA, LESSOR

DATE

WITNESS:

LESSEE

DATE

WITNESS:

APPROVED:

UNITED STATES DEPARTMENT OF THE INTERIOR

Pursuant to Secretarial Redelelegation Order 209 DM 8, 230 DM 1 and 3 IAM 4, the within residential lease is hereby approved and declared to be made in accordance with the law and the rules and regulations prescribed by the Secretary of the Interior thereunder, and now in force (25 C.F.R. 162).

Regional Director, Southwest Regional Office
Albuquerque, New Mexico

Date

ARTICLE 5 - REACQUIRED LAND *[Reserved]*

ARTICLE 6 - HOUSING ASSIGNMENT CODE

Sec. 14-6-1 Introduction

A. The Pueblo has long recognized the need for quality, affordable homes for Pueblo families on the Pueblo. Some families live in overcrowded and substandard conditions. The Housing Assignment Program is intended to provide affordable and quality homes to Pueblo families. The Program will not have minimum income limits. As long as the family can show that they can make the monthly house payment and meet other qualification criteria, the family can participate in the Program.

B. The Housing Assignment Program will use the Pueblo's Planning and Building Services to manage the design and construction contracts. The home designs will reflect our Pueblo culture and values. To underwrite the acquisition of the home and keep the monthly payments low, the Pueblo will use investments or life insurance policies. The Participant must agree to the life insurance policy. The payments for the home will be based on the size of the home. To keep the cost of the homes as low as possible, the Participant must stay in the Program for the entire term of the Housing Assignment Agreement in order to be assigned the home. If the Participant leaves the Program before the contracted time, then the Pueblo will find a new Participant for the home.

Enacted by Resolution 99-R-21, adopted June 3, 1999; amended by Resolution 2016-R-57, adopted October 13, 2016

Sec. 14-6-2 Definitions

A. "Cure" shall mean the Participant's correction of a default in the Housing Agreement that is approved in writing by the Housing Board.

B. "Housing Assignment Agreement" shall mean the agreement that sets forth the terms and conditions for the acquisition of the home.

C. "Housing Board" or "Board" shall mean Tamaya Housing, Inc., board of directors.

D. "Insured Participant" shall mean the Participant for whom a life insurance policy has been issued.

E. "Participant" shall mean the members of the family that have assumed the obligations under a Housing Assignment Agreement to acquire a home.

F. "Planning and Building Services" or "PBS" shall mean the Pueblo of Santa Ana Planning and Building Services.

G. "Program" shall mean the Pueblo's Housing Assignment Program, established by this Code.

H. “Pueblo” shall mean the Pueblo of Santa Ana.

I. “Pueblo member” shall mean an enrolled member of the Santa Ana Pueblo and/or a traditionally accepted member approved by the Tribal Council and in good standing. Unless otherwise noted in this Code, reference to a Pueblo member also includes a traditionally accepted member.

J. “Termination” shall mean the termination of a Participant’s Housing Assignment Agreement and eviction from the home.

K. “Tribal Administration” shall mean employees of the Pueblo of Santa Ana Tribal Administration and personnel such as the Finance Director, as are designated by the Governor or Tribal Council to carry out the tasks assigned to the Tribal Administration by this Code.

Enacted by Resolution 99-R-21, adopted June 3, 1999; amended by Resolution 2016-R-57, adopted October 13, 2016; amended by Resolution 2016-R-59, adopted October 13, 2016.

Sec. 14-6-3 Management of Program

A. Tribal Administration. The Tribal Administration shall develop underwriting criteria to ensure that the Participants have sufficient income unencumbered by debt to make the monthly payments. The underwriting criteria shall be available to Pueblo members at the Tribal Administration offices.

B. Housing Board.

1. Authority for the development of Program and construction of homes under the Program shall rest with the Housing Board. The Housing Board shall coordinate with all other departments, enterprises, and offices of the Pueblo to ensure the successful completion of the homes and operation of the Program. The Housing Board shall be responsible for overseeing the administration of the Program once the homes are built and occupied. The Housing Board shall make final determinations on all matters assigned to it in this Code, including exceptions to the primary residence requirement as provided in Section 14-6-6(C), requests for Cure agreements, and terminations under Section 14-6-11. The Housing Board shall provide for education and credit counseling services to assist Pueblo members to understand the Program and improve their credit, if necessary. The decisions of the Housing Board are final and not appealable. The Housing Board shall fulfill additional duties as are prescribed to it by the Tribal Council from time to time.

2. Decisions of the Housing Board shall be made by a majority of the members present at meetings duly called at least 3 days in advance. A majority of the Board members shall constitute a quorum. The Housing Board shall consist of five members who shall be appointed by the Tribal Council.

3. The Board shall meet between the 20th and 25th of the month to consider any defaults or terminations.

4. The Tribal Council may remove Board members with or without cause. The Board members shall serve for three years and their terms shall be staggered. Annually, the Housing Board shall report to the Tribal Council on the status of the Program. At this time, the Tribal Council shall review the Housing Board to determine if any changes should be made to the Board. The Tribal Council has the discretion to name new Board Members at any time during the year.

5. The Board may adopt by-laws governing its conduct and regulations on matters not covered in this Code to govern the Program. Such by-laws and Program regulations must be approved by the Tribal Council.

6. A Board member shall not participate in decisions which affect a member of his/her immediate family (a child or spouse), a sibling, parent or parent in-law. Such a Board member shall be recused from both the discussion and decision.

C. Planning and Building Services. Planning and Building Services shall provide the architectural, engineering and construction oversight required for the Housing Project. PBS shall establish lot plans for any lands designated for subdivisions and assist with the siting of houses on in-fill sites. PBS shall design the homes or oversee the design contracts. PBS shall design at least two different floor plans for each size home. The design shall reflect the culture and values of the Pueblo.

Enacted by Resolution 99-R-21, adopted June 3, 1999; amended by Resolution 2016-R-57, adopted October 13, 2016

Sec. 14-6-4 Land Assignment

A. The Pueblo shall hold all land assignments upon which homes are to be built under this Program. Members presently holding a land assignment that want a home built on that assignment must release their assignment to the Pueblo. At the successful completion of the Housing Assignment Agreement, the home and land shall be traditionally assigned to the Participant. This traditional assignment shall not grant any rights beyond the customary traditional rights held for Pueblo assignments. The assignment is not subject to enforcement in any court or legal proceeding.

B. Agricultural lands may not be used for a home site under this Code.

Enacted by Resolution 99-R-21, adopted June 3, 1999; amended by Resolution 2016-R-57, adopted October 13, 2016

Sec. 14-6-5 Construction of Homes

A. Construction Financing. The Tribal Administration shall use funds as appropriated by the Tribal Council for the Program to refinance, construct the homes, install infrastructure and pay for all other costs associated with the Program.

B. Contractor. The Pueblo, in conjunction with the Board will contract with a licensed general contractor (GB98) for all aspects of the home construction projects and develop all the necessary construction documents, in compliance with appropriate codes.

Enacted by Resolution 99-R-21, adopted June 3, 1999; amended by Resolution 2016-R-57, adopted October 13, 2016

Sec. 14-6-6 Housing Assignment Agreement Provisions

A. Term. Pueblo families shall be assigned the homes through a Housing Assignment Agreement. The term of the Housing Assignment Agreement shall be 25 years from the date of the Housing Assignment Agreement. Except as provided below, if the Participant fails to reside in the home as the primary residence or fulfill the terms and conditions of the Housing Assignment Agreement for the full 25 years the Participant shall forfeit the right to acquire the home. The Pueblo shall qualify a new Participant for the home.

B. Primary Residence and Limitation on Number of Homes. The home must be used as the primary residence of the Participant(s) for the home. A Participant in the Program may not acquire more than one home through the Program.

C. Exceptions to Primary Residence Requirement. Upon approval of the Housing Board, the following exceptions to the primary residence requirement are allowed:

1. Temporary absences from the Pueblo for school, military, work or health reasons. Temporary means an absence, not to exceed four years, where the Participant intends to return to the Pueblo upon the completion of school, military or job assignment;

2. Such other temporary absences as the Housing Board shall approve. The Housing Board's decision shall be final and not appealable.

D. Death of the Insured Participant. If an Insured Participant dies before the end of the 25-year term, the Pueblo shall assign the home and assignment to the spouse if the spouse is living in the home and is a Pueblo member. If there is no eligible spouse, the home shall pass according to the last will and testament of the Participant if to a Pueblo member, and if no last will and testament exists, the home shall pass according to Pueblo custom and tradition to a Pueblo member. If a Participant that is not the insured dies, the remaining Participant must fulfill the obligations of the Housing Assignment Agreement. The home may only be acquired by a Pueblo member.

E. Husband and Wife as Participants.

1. Both the husband and wife shall be considered Participants in the Program. The home shall be considered community property. Both husband and wife shall be responsible for all the obligations of the Housing Assignment Agreement and the conditions, covenants and restrictions on the lot.

2. In the event a husband and wife participate in the Housing Assignment Program and are later legally divorced, the rights and interest in the Housing Assignment Agreement shall be decided as part of the divorce proceeding. Failure of either spouse to continue to reside in the home as a primary residence shall invalidate the Housing Assignment Agreement and the home shall revert to the Pueblo per the terms of the Housing Assignment Agreement. If one spouse continues to reside in the home, that spouse shall assume all obligations of the Housing Assignment Agreement and conditions, covenants and

restrictions on the lot. The spouse that leaves the home may apply to be assigned another home, if available.

F. Prohibited Transfers of the Housing Assignment Agreement. The Participant shall not transfer the Housing Assignment Agreement prior to the termination of the 25-year term. Any attempt to transfer the Housing Assignment Agreement will invalidate the agreement and the home and lot assignment shall revert to the Pueblo pursuant to the Housing Assignment Agreement.

G. Assignment after 25 Years. Upon expiration of the 25-year term and successful completion of all the requirements of the Housing Assignment Agreement, the home and lot shall be assigned to the Participant who shall have the right to transfer the home as his/her property subject to the governing laws and customs of this Code and the Pueblo.

H. Rental of Homes. The home shall be used by the Participant as the primary residence. The Participant may not rent or lease the home to another person unless the Participant has been granted an exemption to the primary residence requirement set forth in Section 14-6-6(C), above. In that instance, the Participant may lease or rent the home for the time of the temporary absence. The Participant shall remain liable for the house payment and all other obligations of the Housing Assignment Agreement. The rental or lease of the home, except as provided for above, shall be considered a breach of the Housing Assignment Agreement and cause for termination thereof.

Enacted by Resolution 99-R-21, adopted June 3, 1999; amended by Resolution 2016-R-57, adopted October 13, 2016

Sec. 14-6-7 Qualifications of Participants

A. Participants must be members in good standing of the Pueblo as determined by the Tribal Council.

B. Participants must have acceptable credit ratings and proof of available income sufficient to make the monthly house payments.

C. Participants for whom a house is built in-fill, within a residential area, must release to the Pueblo their assignment of land on which the house is to be built.

D. In-fill lots must be adequate to accommodate the proposed house size.

E. Preference will be given to Pueblo families without homes living in overcrowded or substandard housing.

F. Participants must agree to use the home as their primary residence.

G. Participants must agree that the home, even after it has been assigned to the Participant, may not be acquired, sold or transferred to a non-Pueblo member.

H. Participants must have lived on Santa Ana lands at least 5 years of the last 10 years, unless the Participant qualifies under the temporary absence exception of Section 14-6-6(C).

I. Participants must agree to a payroll deduction for the full amount of the house payment. If self-employed, Participants must make alternative arrangements for the house payment such as automatic bank payments.

J. The size of the home available to a Participant will be based on the size of Participant's family and available income.

K. Single Pueblo members shall be eligible to participate in the Program only if they are over 23 years old and to the extent homes are available after first meeting the needs of Pueblo members with families.

Enacted by Resolution 99-R-21, adopted June 3, 1999; amended by Resolution 2016-R-57, adopted October 13, 2016

Sec. 14-6-8 Insurance Underwriting

A. Participants as Insured. Participants must agree to be insured under a life insurance policy and submit to the necessary exams and requirements of the insurance policy. If a husband and wife are both Participants, only one insurance policy will be issued for that family. The Pueblo shall be the beneficiary and owner of the policy. The insured shall have no interest in the insurance policy and make no claims against it. The insured shall not have the right to cancel or alter the terms of the insurance policy. Failure of the insured to comply with any requirements of the insurance policy or agree to any amendments deemed necessary by the Housing Board shall be cause for termination of the Housing Assignment Agreement.

B. Aggregate Insurance Cost. The monthly premiums for the insurance policies on all the Participants shall be summed for a total aggregate. The monthly house payments shall not be based on the cost of an individual insurance policy but on a pro rata share of the aggregate based on the size and cost of the house, plus an administrative fee, insurance, and a reserve account. The Pueblo will adjust monthly payment amounts from time to time as necessary to reflect changes in these underlying costs.

C. Transfer of Insurance Policy. The Pueblo shall have the right to transfer the insurance policy from one Participant to another in the event the first Participant defaults or chooses to cancel the Housing Assignment Agreement, or at the Housing Board's discretion, surrender the policy for its cash value.

D. The Housing Board shall manage the insurance program and make adjustments or changes in insurers or investments as may be necessary to keep the Program financially viable.

Enacted by Resolution 99-R-21, adopted June 3, 1999; amended by Resolution 2016-R-57, adopted October 13, 2016

Sec. 14-6-9 House Payments

A. Payment Due Date. Participants shall make house payments by the 5th day of the month.

B. Late Payments. A late fee of \$25 shall apply to monthly house payments made on or after the 10th day of the month. The Housing Board or its designee shall

develop a plan to provide financial counseling to Participants who are chronically late on the house payments.

C. Default for Failure to Pay. Failure to make the house payment by the 15th day of the month shall constitute a default on the Housing Assignment Agreement unless prior arrangements for payment have been made with the Housing Board.

Enacted by Resolution 99-R-21, adopted June 3, 1999; amended by Resolution 2016-R-57, adopted October 13, 2016

Sec. 14-6-10 Remedies for a Default on Housing Assignment Agreement

A. The Pueblo has the right to terminate the Housing Assignment Agreement if a Participant defaults on any of the terms and conditions of the Housing Assignment Agreement.

B. Prior to termination, and consistent with the terms of the Housing Assignment Agreement, the Housing Board shall notify the Participant of the default condition and give the Participant 10 days within which to cure the default.

C. Any cure agreement must be set forth in writing and signed by the Housing Board representative and the Participant.

D. As part of a cure agreement, the Participant may work out a payment plan if failure to pay is due to temporary physical disability or illness. The Housing Board may also approve payment plans for temporary loss of income which payment plans shall not extend for more than 60 days.

E. If the Participant does not cure within the 10 days, the Housing Board shall terminate the Housing Assignment Agreement and pursuant to the termination procedures of this Code evict the defaulting Participant from the home.

Enacted by Resolution 99-R-21, adopted June 3, 1999; amended by Resolution 2016-R-57, adopted October 13, 2016

Sec. 14-6-11 Termination and Eviction Procedures

A. If the Housing Board determines that a Participant has defaulted on the Housing Assignment Agreement, it shall so notify the Participant by mail. The Participant shall have 10 days within which to respond, in writing, to the charge of default. The notice of default shall set forth the date by which a response must be received. Responses must be delivered to the Housing Board and to such other address as the Housing Board directs. If the Participant does not respond within these 10 days, the Housing Board shall terminate the Housing Assignment Agreement and evict the Participant.

B. If the Participant responds to the charge of default, the Housing Board shall meet within 5 days to consider the Participant's response. The Housing Board may at its discretion call a meeting with the Participant. If the Participant demonstrates that s/he is not in default of the Housing Assignment Agreement, the Housing Board shall issue an order to that effect. If the Housing Board decides that the Participant is in default, the

Housing Board shall issue an order of default, terminate the Housing Assignment Agreement and evict the Participant. The decision of the Housing Board is final and is not appealable.

C. If a Participant is in default of the Housing Assignment Agreement and an eviction has been ordered, the Participant and all others living in the house shall vacate the house within 10 days. If the Participant and other residents fail to vacate the house within the 10 days, the Housing Board shall change the locks of the house. If necessary, the Housing Board may seek the assistance of the Pueblo police to evict the Participant. By this Code, the Pueblo police are authorized to carry out an order of eviction issued by the Housing Board.

Enacted by Resolution 99-R-21, adopted June 3, 1999; amended by Resolution 2016-R-57, adopted October 13, 2016

Sec. 14-6-12 Resale of Houses by the Housing Board

A. In the event a house is vacated because of an eviction or any other cause, the Housing Board is authorized to qualify a new Participant for the house.

B. The Housing Board shall determine the value of the home and assess a monthly house payment based on that value, cost of insurance and any other costs associated with the Program. The Housing Board shall also determine the term of years for the Housing Assignment Agreement, not to exceed 25 years.

Enacted by Resolution 99-R-21, adopted June 3, 1999; amended by Resolution 2016-R-57, adopted October 13, 2016

Sec. 14-6-13 Housing Fund

There shall be established a Santa Ana Housing Fund. All proceeds from the insurance program and any other income from the sale or rental of the Program homes shall be placed in this Fund. The Fund shall be used as a revolving fund for payment of costs of operating the Program and infrastructure and construction of additional homes for assignment to Pueblo families.

Enacted by Resolution 99-R-21, adopted June 3, 1999; amended by Resolution 2016-R-57, adopted October 13, 2016

Sec. 14-6-14 Covenants, Conditions and Restrictions on Lots and Program Homes

The following covenants, conditions and restrictions shall apply to all homes in the Program. Participants, tenants, and residents of the homes agree to be bound by these covenants, conditions and restrictions. These covenants, conditions and restrictions apply to the lots and homes both prior to and subsequent to the assignment of the lot and home to a Participant. Violation of the covenants, conditions and restrictions is a cause of default and subject to review by the Housing Board to determine if the Housing Assignment Agreement should be terminated. Repeated and flagrant violations of the covenants, conditions and restrictions subsequent to the transfer of the home may be grounds for cancellation of the assignment of the home and lot.

A. The following are not permitted within the lot or in front of the house or anywhere within the subdivision:

1. Abandoned vehicles (including cars, trucks, vans or farm vehicles).
Vehicles shall be deemed abandoned if they cannot start or run on their own engine and have been parked without being moved for more than one month.

2. Pig pens or animal corrals.

3. Loose trash or garbage.

4. Any other material which is unsightly and a nuisance.

B. Prior to assignment to Participant, additions and/or alterations to the house must be approved in writing by the Housing Board.

C. The Participants, owners and/or residents of the house must maintain the yard free of excessive weeds and in good appearance.

D. Non-members shall not be allowed to live in the house.

E. During the term of the Housing Assignment Agreement, the Housing Board and/or Tribal Administration shall have the right to inspect the house by giving notice, either written or personally. If the inspection is for routine maintenance and upkeep, the notice must be given 2 days in advance. If the inspection is in response to an allegation of a violation of the covenants, conditions and restrictions, the inspection may be made the same day as the notice is given.

F. Prior to assignment to Participant, the house shall be kept in good repair and condition.

PUEBLO OF SANTA ANA HOUSING ASSIGNMENT AGREEMENT
Approved October 13, 2016, by TC Resolution No. 2016-R-57

This Agreement to be assigned a home is made by _____, a member of the Santa Ana Pueblo (hereinafter Participant), and the SANTA ANA PUEBLO (hereinafter Pueblo).

Participant wishes to be assigned by the Pueblo, under the terms of this Agreement, the house located within the Pueblo of Santa Ana, Sandoval County, New Mexico, at the site identified in the survey attached as Exhibit A.

1. Definitions

“**Cure**” shall mean the Participant’s correction of a default in the Housing Assignment Agreement that is approved in writing by the Housing Board.

“**Housing Agreement**” shall mean this Agreement that sets forth the terms and conditions for the acquisition of the home.

“**Housing Board**” shall mean the Board established by the Tribal Council to oversee the administration of the Housing Assignment Program and such other responsibilities as the Tribal Council shall from time to time authorize. In the absence of a Council delegated Housing Board, three members of Tribal Administration shall serve in an interim capacity.

“**Insured**” shall mean the Participant for whom a life insurance policy has been issued.

“**Pueblo**” shall mean the Pueblo of Santa Ana.

“**Pueblo member**” shall mean an enrolled member of the Santa Ana Pueblo and/or a traditionally accepted member approved by the Tribal Council and in good standing. Unless otherwise noted in this Housing Agreement, reference to a Pueblo member also includes a traditionally accepted member of the Pueblo.

“**Termination**” shall mean the termination of this Agreement and eviction from the home.

2. Participant’s Representations

a. Participant represents that he/she is a member in good standing of the Pueblo and that the home will be used as their primary residence.

b. If the home has been built on an assignment. Participant acknowledges that the assignment to the lot on which the home is built has been withdrawn by the Pueblo and is presently held by the Pueblo. Participant acknowledges that he/she has no interest in said assignment until Participant complies with the terms of this Housing Assignment Agreement and the Pueblo conveys the lot and the home to Participant at the completion of the term of this Agreement.

c. Participant agrees that the home, even after it has been assigned to Participant, may not be acquired, sold or transferred to a non-Pueblo member.

3. Monthly House Payment and Insurance

a. Participant agrees to make monthly house payments of \$_____ for a period of 25 years. This payment includes an administrative fee and the cost of life insurance and hazard insurance and a reserve. Participant understands that the Pueblo

will obtain hazard insurance for the home under a group policy and that the cost of hazard insurance and life insurance may increase in the future. The Pueblo agrees to provide participant with 60 days' notice of any change in the amount of the house payment based on changes in the cost of insurance and the effective date for a new house payment amount based on that change in cost. Participant agrees that on such date, participant will pay the new payment amount.

b. Participant understands that maintaining hazard insurance on the dwelling is a condition of the housing agreement. Participant shall take all actions necessary to maintain the home eligible for hazard insurance.

c. Participant may prepay the house payment without penalty pursuant to a written agreement with the Housing Board setting forth the prepayment sums and new term.

4. Payment Terms

a. Payroll Deduction. Participant agrees to make the house payment by payroll deduction. If participant is self-employed or otherwise unable to use payroll deduction participant agrees to make the house payment through an automatic bank withdrawal.

b. Payment Due Date. Participant shall make the total house payments, payable to the Pueblo by the 5th day of the month. Payments must be received at the Pueblo administration accounting department by the 5th day of the month.

c. Late Payments. A late fee of \$25 shall apply to monthly house payments made on or after the 10th day of the month. Participant agrees to submit to financial counseling upon request of the Housing Board if their monthly house payments are repeatedly late.

d. Default for Failure to Pay. Failure to make the house payment by the 15th day of the month shall constitute a default of this Housing Assignment Agreement unless prior arrangements for payment have been made with the Housing Board.

5. Interest in the Home

Participant shall not have any legal right or interest in the home other than as a tenant during the 25-year term of the Agreement. The title and complete ownership of the home and the underlying land shall remain with the Pueblo. Upon final payment, the Pueblo shall assign the home and the underlying lot to Participant. This traditional assignment shall not grant any rights beyond the customary traditional rights held for Pueblo assignments. The assignment is not subject to enforcement as against the Pueblo in any court or legal proceeding.

6. Primary Residence

a. Primary Residence and Limitation on Number of Homes. Participant agrees to use the home as the primary residence. Participant in the Housing Assignment Program may not acquire more than one home through the program. The home may not be rented out unless participant qualifies for a temporary absence as set forth below in which case the home may be leased or rented to another Pueblo member.

b. Exceptions to Primary Residence Requirement. Upon approval of the Housing Board, the following exceptions to the primary residence requirement are allowed:

i. Temporary absences from the Pueblo for school, military, work or health reasons. Temporary means an absence, not to exceed four years, where the Participant intends to return to the Pueblo upon the completion of school, military or job assignment;

ii. Such other temporary absences as the Housing Board shall approve. The Housing Board's decision shall be final and not appealable.

7. Insurance Underwriting

a. Participant agrees to the issuance of a life insurance policy on Participant. Participant agrees to submit to the necessary exams and to take all other action necessary for the issuance of the insurance policy. The Pueblo shall be the beneficiary and owner of the policy. The insured shall have no interest in the insurance policy and make no claims against it. The insured shall not have the right to cancel or alter the terms of the insurance policy. Failure of the insured to comply with any requirements of the insurance policy or agree to any amendments deemed necessary by the housing board shall be cause for termination of the Housing Agreement.

b. Death of the Insured. If the insured dies before the end of 25-year term, the Pueblo shall assign the home and assignment to the spouse if the spouse is living in the home and is a Pueblo member. If there is no eligible spouse, the home shall pass according to the last will and testament of the insured if to a Pueblo member, and if no last will and testament exists, the home shall pass according to Pueblo custom and tradition to a Pueblo member. The home may only be acquired by a Pueblo member.

c. Transfer of Insurance Policy. At the Housing Board's discretion, the Pueblo shall have the right to surrender the policy for its cash value or transfer the insurance policy from one Participant to another in the event the first Participant defaults or chooses to cancel the Housing Agreement.

8. Husband and Wife as Participants

This clause shall only apply if Participant marries a Pueblo member. The home shall be considered community property. Both husband and wife shall be responsible for all the obligations of the Housing Assignment Agreement and the conditions, covenants and restrictions on the lot. In the event participants are legally divorced, the rights and interest in this Housing Assignment Agreement shall be decided as part of the divorce proceeding. Failure of either spouse to continue to reside in the home as a primary residence shall invalidate the Housing Assignment Agreement and the home shall revert to the Pueblo per the terms of the Housing Agreement. If one spouse continues to reside in the home, that spouse shall assume all obligations of the Housing Assignment Agreement and conditions, covenants and restrictions on the lot. The spouse that leaves the home may apply to be assigned another home, if available.

9. Prohibited Transfers of the Agreement

Participant shall not transfer the Housing Assignment Agreement prior to the termination of the 25-year term. Any attempt to transfer the Housing Assignment Agreement will invalidate the Agreement and the home and lot assignment shall revert to the Pueblo.

10. Remedies for a Default on Housing Agreement

a. The Pueblo has the right to terminate the Housing Assignment Agreement if Participant defaults on any of the terms and conditions of the Housing Agreement. Prior to termination, the Housing Board shall notify the Participant of the default condition and give the Participant 10 days within which to cure the default.

b. Any cure agreement must be set forth in writing and signed by the Housing Board representative and Participant.

c. As part of a cure agreement, Participant may work out a payment plan if failure to pay is due to temporary physical disability or illness. The Housing Board may also approve payment plans for temporary loss of income which payment plans shall not extend for more than 60 days.

d. If the Participant does not cure within the 10 days, the Housing Board shall terminate the Housing Assignment Agreement and, pursuant to the termination procedures of this Housing Assignment Agreement and the Housing Assignment Code, evict Participant.

11. Termination and Eviction Procedures

a. If the Housing Board determines that Participant defaulted on this Agreement, it shall so notify Participant by mail. Participant shall have 10 days within which to respond, in writing, to the charge of default. The notice of default shall set forth the date by which a response must be received. Responses must be delivered to the Housing Board and to such other address as the Housing Board directs. If Participant does not respond within these 10 days, the Housing Board shall terminate the Agreement and evict Participant.

b. If Participant responds to the charge of default, the Housing Board shall meet within 5 days to consider Participant's response. The Housing Board may at its discretion call a meeting with Participant. If Participant demonstrates to the satisfaction of the Housing Board that Participant is not in default of the Housing Agreement, the Housing Board shall issue an order to that effect. If the Housing Board decides that Participant is in default, the Housing Board shall issue an order of default, terminate the Housing Assignment Agreement and evict Participant. The decision of the Housing Board is final and is not appealable.

c. If Participant is in default of the Housing Assignment Agreement and an eviction has been ordered, Participant and all others living in the house shall vacate the house within 10 days. If Participant and other residents fail to vacate the house within the 10 days, the Housing Board shall change the locks of the house. If necessary, the Housing Board may seek the assistance of the Pueblo police to evict Participant.

12. Covenants, Conditions and Restrictions on Lots and Program Homes

The following covenants, conditions and restrictions shall apply to the home to be assigned under this Agreement. Participant, their tenants and residents of the home agree to be bound by these covenants, conditions and restrictions. Unless otherwise noted, these covenants, conditions and restrictions apply to the lot and home both prior to and subsequent to the assignment of the lot and home to Participant. Violation of the covenants, conditions and restrictions is a cause of default and subject to review by the Housing Board to determine if the Housing Assignment Agreement should be terminated. Repeated and flagrant violations of the covenants, conditions and restrictions subsequent to the transfer of the home may be grounds for withdrawal of the assignment of the home and lot.

a. The following are not permitted within the lot or in front of the house or anywhere within the subdivision:

i. Abandoned vehicles (including cars, trucks, vans or farm vehicles). Vehicles shall be deemed abandoned if they cannot start or run on their own engine and have

been parked without being moved for more than one month.

- ii. Pig pens or animal corrals.
- iii. Loose trash or garbage.
- iv. Any other material which is unsightly and a nuisance.

b. Prior to assignment to Participant, additions and/or alterations to the house must be approved in writing by the Housing Board.

c. Participant and residents of the house must maintain the yard free of excessive weeds and in good appearance.

d. Non-members shall not be allowed to live in the house.

e. During the term of the Agreement, the Housing Board and/or Tribal Administration shall have the right to inspect the house by giving notice, either written or personally. If the inspection is for routine maintenance and upkeep, the notice must be given 2 days in advance. If the inspection is in response to an allegation of a violation of the covenants, conditions and restrictions, the inspection may be made the same day as the notice is given.

f. Prior to assignment to Participant the house shall be kept in good repair and condition. Participant is responsible for all general maintenance and upkeep of the home.

13. No Waiver of Sovereign Immunity

Nothing in this Agreement is or shall be deemed to be a waiver of the Pueblo's sovereign immunity.

Signed and agreed to this ___ day of _____ 20__

PARTICIPANT

PUEBLO OF SANTA ANA

By: _____

By: _____

ARTICLE 7- HOUSING CODE

Sec. 14-7-1 Purpose

This Code is intended to clarify and modify the nature, purposes, rights, and responsibilities of the providers of affordable housing services on Pueblo lands.

Enacted by Resolution No. 05-R-90, adopted November 30, 2005.

Sec. 14-7-2 Definitions

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

- A. “Council” means the Tribal Council of the Pueblo of Santa Ana;
- B. “NAHASDA” means the Native American Housing Assistance and Self Determination Act of 1996, as may be amended from time to time;
- C. “Code” means this Pueblo of Santa Ana Housing Code;
- D. “Person” means an individual, trust, association, partnership, political subdivision, government agency, municipality, public or private corporation, or any other legal entity whatsoever;
- E. “Pueblo” means the Pueblo of Santa Ana;
- F. “Pueblo lands” means all lands owned by the Pueblo in fee but subject to federal restrictions against alienation, and all lands held by the United States in trust for the Pueblo, including such lands acquired after the enactment of this Code.
- G. “TDHE” means the Tribally Designated Housing Entity that may be authorized from time to time by the Council to receive grant amounts under and to provide affordable housing services pursuant to NAHASDA, and to provide other housing services as authorized by the Council; and
- H. “Tribal Courts” means any or all of the courts established by the Pueblo to enforce its tribal laws.

Enacted by Resolution No. 05-R-90, adopted November 30, 2005.

Sec. 14-7-3 Applicability

Except for the Housing Assignment Program and as otherwise specifically stated herein, this Code shall apply to any and all affordable housing activities occurring on Pueblo lands pursuant to NAHASDA, and other housing activities as may be authorized by the Council from time to time, and supersedes and replaces all other codes and ordinances previously adopted by the Pueblo specifically relating to such services.

Enacted by Resolution No. 05-R-90, adopted November 30, 2005.

Sec. 14-7-4 Interpretation

The Tribal Courts shall interpret and construe this Code.

Enacted by Resolution No. 05-R-90, adopted November 30, 2005.

Sec. 14-7-5 Conflicts with other Laws

If this Code is determined to conflict with any other tribal law of general application, this Code shall control.

Enacted by Resolution No. 05-R-90, adopted November 30, 2005.

Sec. 14-7-6 Severability

If any provisions of this Code or the application of any provision to any Person or circumstance is held invalid or unenforceable by a federal or Tribal court, such holding shall not invalidate or render unenforceable the remainder of this Code, and, to this end, the provisions of this Code are severable.

Enacted by Resolution No. 05-R-90, adopted November 30, 2005.

Sec. 14-7-7 Jurisdiction

The Tribal Courts shall have exclusive jurisdiction to hear and determine actions arising under this Code and occurring on or in relation to the lands and/or assets of the Pueblo, including but not limited to eviction of a tenant or homebuyer.

Enacted by Resolution No. 05-R-90, adopted November 30, 2005.

Sec. 14-7-8 Appeals

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

Enacted by Resolution No. 05-R-90, adopted November 30, 2005.

Sec. 14-7-9 Powers of the Council

The powers of the Council or its designee under this Code include but are not limited to the following:

- A. To enter into contracts with federal agencies for funding;
- B. To agree, notwithstanding anything to the contrary contained in this Code or in any other provision of law, to comply with any conditions attached to federal financial assistance mandating that the contractor and any subcontractors comply with requirements as to minimum salaries or wages and maximum hours of labor, and comply with any conditions which the federal government may have attached to its financial aid to the project;
- C. To sue and be sued in its name; *provided* that such powers do not require or obligate the Pueblo or its designee under this Code to waive its sovereign immunity, nor is the delegation of such power itself an actual waiver of such sovereign immunity; any waiver of the Pueblo or its designee under this Code is only to the extent and for the purposes set out in this Code, and shall be valid only if clearly and unequivocally expressed in writing and limited to specifically stated obligations and liabilities;
- D. To lease property for such periods as are authorized by law, and to hold and manage or to sublease the same;
- E. With respect to any dwellings, accommodations, lands, buildings, or facilities embraced 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, and concerning the occupancy, rental, care, and management of housing units; and to make such further rules and regulations as the Pueblo may deem necessary and desirable to effectuate the powers granted by this Code;
- F. To finance the purchase of a home by an eligible homebuyer in accordance with regulations and requirements of the applicable funding entity;
- G. To terminate any lease or 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, and to bring action for eviction against such tenant or homebuyer;
- H. To establish income limits for admission that 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 the applicable funding entity;
- I. To employ a director, technical and maintenance personnel, and such other officers and employees, permanent or temporary, as the Pueblo may require, and to delegate to such officers and employees such powers or duties as the Pueblo shall deem proper;

J. 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; and

K. To adopt such operating procedures, policies, and agreements as the Pueblo deems necessary and appropriate.

Enacted by Resolution No. 05-R-90, adopted November 30, 2005.

Sec. 14-7-10 Designation of Tribally Designated Housing Entity

A. The Council may, from time to time, designate an entity as its TDHE for delivery of affordable housing services to eligible individuals under the provisions of NAHASDA.

B. The designation of a TDHE constitutes delegation by the Council to the TDHE of all powers that the Pueblo may exercise consistent with the purposes of this Code, including but not limited to those powers of the Council specified in this Code.

Enacted by Resolution No. 05-R-90, adopted November 30, 2005.

Sec. 14-7-11 Limitations on Council

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

A. will not levy or impose any real or personal property taxes, gross receipts taxes, or special assessments upon its designee under this Code, if any, or any project developed pursuant to the provisions of this Code;

B. will ensure that all services and facilities provided to other dwellings and inhabitants of the Pueblo will be furnished to its designee under this Code, if any;

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 will 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; and

D. 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.

Enacted by Resolution No. 05-R-90, adopted November 30, 2005.

Sec. 14-7-12 Board Qualification and Appointments

A. Duties and Powers. If a TDHE is designated by the Council, its business and affairs shall be managed and governed by its Board of Directors (“Board”). The Board may adopt such rules and regulations in the conduct of its meetings and its management as it deems proper, consistent with applicable law, the authorizing ordinances, and its Bylaws.

B. Number; Qualifications; Selection; Term; Vacancies; and Removal of Board. The number, qualifications, selection, term, vacancies, and removal of the Board shall be as stated in a TDHE's organizing documents.

Enacted by Resolution No. 05-R-90, adopted November 30, 2005.

Sec. 14-7-13 Ratification of Prior Acts

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

Enacted by Resolution No. 05-R-90, adopted November 30, 2005.

Sec. 14-7-14 Amendment

A. If the Council has a TDHE for the delivery of affordable housing services, proposed amendments to this Code shall first be presented to the TDHE's governing body. Upon approval by a majority vote of the members of the governing body 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. Upon ratification of any proposed amendment by a majority vote of the Council, the amendment shall become effective.

B. If the Council does not have a TDHE for the delivery of affordable housing, this Code may be amended by a resolution adopted by a majority vote of the Council.

Enacted by Resolution No. 05-R-90, adopted November 30, 2005.

Sec. 14-7-15 Designation of Tamaya Housing, Inc. ("THI"), as TDHE; THI's Articles of Incorporation

A. The Tribal Council designated the Tamaya Housing, Inc., as the Pueblo's TDHE, effective November 30, 2005.

B. THI's Articles of Incorporation are as follows:

ARTICLES OF INCORPORATION
of
TAMAYA HOUSING INCORPORATED
A TRIBALLY CHARTERED CORPORATION

Pursuant to the inherent authority of the Santa Ana Pueblo ("Pueblo") as a federally recognized Indian tribal government and its authority to provide for the health, safety, and welfare

of its members, the Tribal Council of the Pueblo (“Tribal Council”) has established a tribally-chartered corporation known as Tamaya Housing Incorporated (“Corporation”) and has approved these Articles of Incorporation (“Articles”). In any suit, action, or proceedings involving the validity or enforcement of or otherwise relating to any of its contracts, the Corporation shall be conclusively deemed to have become established and authorized to transact business and exercise its powers upon proof of the approval of these Articles. A copy of the resolution duly certified by the Secretary of the Tribal Council shall be admissible in evidence in any suit, action, or proceeding.

ARTICLE I.
NAME, LOCATION, AND PLACE OF BUSINESS

- B. **Name.** The full name of the Corporation shall be Tamaya Housing Incorporated.
- B. **Place of Business.** The principal place of business and the office of the Corporation shall be on the Santa Ana Pueblo, State of New Mexico.
- C. **Offices.** The Corporation also may have offices at such other places as the Board of Directors (“Board”) may from time to time direct or as the operation of the Corporation shall require.

ARTICLE II.
DURATION

The duration of the Corporation is perpetual.

ARTICLE III
OWNERSHIP

- A. **Sole Shareholder.** The Pueblo of Santa Ana shall be the sole owner and shareholder of the Corporation and its interest in the Corporation cannot be alienated.
- B. **Authorization of Shares of Ownership.** The Board of Directors is authorized at any time, and from time to time, to provide for the issuance of shares of ownership as necessary; *provided that*, such shares and certificates shall be issued only to the Tribe as sole owner of the Corporation. The Board of Directors may authorize the shares of stock to be issued for consideration consisting of any tangible or intangible property or benefit to the Corporation, including cash, promissory notes, services performed, or contracts for services to be performed. Before the Corporation issues shares, the Board of Directors must determine that the consideration received or to be received for the shares to be issued is adequate. Such determination by the Board shall be conclusive insofar as the adequacy of consideration relates to whether the shares are validly issued and fully paid for.
- C. **Issuance of Shares of Ownership.** No interest in the Corporation may be sold, transferred, pledged, or hypothecated to any entity other than the Tribe, either voluntarily or involuntarily, without the prior written consent of the Tribal Council.

D. **Voting.** The sole right and authority to represent the Tribe in voting its shares of ownership in the Corporation shall be vested in the Tribal Council. Unless otherwise provided herein, the decision of a majority of the members of the Tribal Council voting at any duly called and noticed meeting at which a quorum is present shall be the decision and vote of the Tribe in regard to its ownership of shares in the Corporation.

E. **Dividends.** In its sole discretion, the Board of Directors may, from time to time, distribute to the Owner a dividend.

ARTICLE IV. PURPOSES

The purposes for which the Corporation is organized are as follows:

A. To establish a separate entity whose activities, transactions, obligations, liabilities and property are completely separate from those of the Pueblo;

B. To provide for the management and operation of housing ventures so that business decisions can be made in a non-political atmosphere, all the while maintaining accountability to the Pueblo of Santa Ana through the Tribal Council;

C. To remedy unsafe and unsanitary housing conditions that are injurious to the public health, safety, and welfare;

D. To alleviate the shortage of decent, safe, sanitary, and affordable dwelling units for persons of low income;

E. To assist persons of all income levels to obtain good and decent housing at a fair and reasonable cost;

F. To conduct and assist in, the development, construction, operation, and management of affordable housing projects and activities on any tribal or individual Indian trust or restricted lands or benefiting Pueblo of Santa Ana tribal members, and in the conduct of such other related activities and the provision of related services as may constitute “eligible affordable housing activities” under Section 202 of the Native American Housing and Self-Determination Act of 1996 (Pub. L. No. 104-330, 25 U.S.C. §§ 4101 *et seq.*) (“NAHASDA”);

G. To provide office support and administrative services, including but not limited to hiring and paying for staff, supplies, furniture, equipment, insurance, and other benefits;

H. To manage, account for, and pay all operating expenses incurred in the delivery of housing services;

I. To provide employment opportunities through the construction, reconstruction, improvement, extension, alteration, repair, and operation of housing;

J. In general, to make any expenditures and to take any and all action that is incidental or reasonably related to any of the specific purposes recited above; and

K. To do everything necessary, proper, advisable, or convenient for the accomplishment of the purposes herein, and to do all things incidental thereto or connected therewith, which are not forbidden by applicable law or these Articles.

ARTICLE V. POWERS OF THE CORPORATION

In furtherance, but not limitation, of the specific and general purposes enumerated above, the Corporation shall have the following powers:

A. To engage in any and all lawful business activities necessary for the orderly and efficient operation of the Corporation;

B. To adopt By-laws (“By-laws”) for the regulation of the internal affairs of the Corporation consistent with these Articles and the laws and regulations of the Pueblo of Santa Ana;

C. To qualify to conduct business within any Indian reservation, state, territory, dependency, foreign country, on trust or patented land;

D. To acquire, convey, and/or dispose of personal and real property by means of lease, contract, purchase, conveyance, special-use permits, or otherwise; and to hold, possess, enjoy, and lease or rent any and all classes of property whatsoever, whether real, personal, or mixed, or any interest therein;

E. To construct building structures or improvements necessary for its corporate purposes;

F. To solicit, collect, and receive money and other assets; to administer funds and contributions received by grant, gift, deed, request, or device; to acquire money, securities, property, rights, and services of every kind and description; and to hold, invest, expend, contribute, use, sell, or otherwise dispose of any money, securities, property, rights, or services so acquired for the purposes herein mentioned;

G. To borrow money; to make, accept, endorse, execute, and issue bonds, debentures, promissory notes, and other corporate obligations for monies borrowed, or in payment for property acquired for any of the purposes of the Corporation; and to secure payment of any such obligation by mortgage, pledge, deed, indenture, agreement, or other instrument of trust, or by other lien upon, assignment of, or agreement in regard to all or any part of the property, rights, or privileges of the Corporation; provided that the term “property,” as used herein, does not include property held in trust by the United States of America for the Pueblo or individual members of the Pueblo;

H. To invest and reinvest its funds in such mortgages, bonds, notes, debentures, shares of preferred and common stock, any other securities of any kind whatsoever, and property, real, personal, or mixed, tangible or intangible;

I. To enter into, make, perform, and carry out contracts and other agreements that are necessary, requisite, or advantageous to the operations of the Corporation with any other business, including but not limited to corporations, partnerships, associations, limited liability companies, and other entities; persons; organizations; and tribal, state, and local governments;

J. To the greatest extent permitted by applicable law, these Articles, and its By-laws, to indemnify Directors, officers, employees, and agents of the Corporation;

K. To purchase and maintain insurance on behalf of any person who is or was a Director, officer, employee, or agent of the Corporation against any liability asserted against him or her and incurred by him or her in any such capacity or arising out of his or her status as such, whether or not the Corporation would have the power to indemnify him or her against such liability;

L. To sue on its own behalf, and to be sued only by an express and unequivocal writing to that effect; *provided that the exercise of this power is not a consent to the attachment of any assets except those owned directly by the Corporation* and specifically and properly pledged as collateral for the underlying obligation; and provided further, that this waiver of sovereign immunity is not authorized or intended, nor shall it be construed, to be a waiver of sovereign immunity of the Pueblo, or to create a liability on the part of the Pueblo. The Board may sue and be sued in its corporate name upon any contract, claim, or obligation arising out of any written agreement it may enter into, but the Corporation is not obligated to sue or to allow itself to be sued. Any consent by the Corporation to be sued must be in writing, must be authorized by a valid corporate resolution, and must be approved by the Board in writing;

M. To employ, contract with, or appoint employees, independent contractors, and agents of the Corporation, and define their duties and fix their compensation;

N. To participate in the Pueblo's insurance and retirement plan or comparable plan so that eligible employees may participate in accordance with policies and procedures as may be adopted by a valid corporate resolution, approved by the Board in writing;

O. To establish and maintain such bank accounts as may be necessary or convenient;

P. To undertake and carry out studies and analyses of housing needs, to prepare housing plans, to be executed on the Pueblo of Santa Ana, to operate projects and to provide for the construction, reconstruction, improvement, extension, alteration, or repair of any project or any part thereof;

Q. To secure insurance and bonding as may be necessary to protect assets of the Corporation;

R. To obtain a certificate of authority to transact business in the State of New Mexico or any other state as a foreign corporation, and to comply with applicable state law governing foreign corporations;

S. To agree to any conditions attached to federal financial assistance relating to the determination of prevailing salaries or wages or compliance with labor standards, in the development or operation of projects; and the Corporation may include in any contract let in connection with a project stipulations requiring that the contractor and any subcontractors comply with requirements as to minimum salaries or wages and maximum hours of labor, and comply with any conditions which the federal government may have attached to its financial aid to the project;

T. To obligate itself, in any contract with the federal government for financial contributions to the Corporation, to convey to the federal government possession of or title to the project to which such contract relates, upon the occurrence of a substantial default (as defined in such contract) with respect to the covenants or conditions to which the Corporation is subject; and such contract may further provide that in case of such conveyance, the federal government may complete, operate, manage, lease, convey or otherwise deal with the project and funds in accordance with the terms of such contract; provided that the contract requires that, as soon as practicable after the federal government is satisfied that all defaults with respect to the project have been cured and that the project will thereafter be operated in accordance with the terms of the contract, the federal government shall reconvey to the Corporation the project as then constituted;

U. To lease property from the Pueblo and others for such periods as are authorized by law, and to hold and manage or to sublease the same;

V. With respect to any dwellings, accommodations, lands, buildings or facilities embraced 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, and concerning the occupancy, rental, care, and management of housing units; and to make such further rules and regulations as the Corporation may deem necessary and desirable to effectuate the powers granted by these Articles;

W. To finance the purchase of a home by an eligible homebuyer in accordance with regulations and requirements of the Department of Housing and Urban Development or other federal or private mortgaging entity;

X. To terminate any occupancy document 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; and to bring action for eviction against such tenant or homebuyer;

Y. To establish income limits for admission that ensure that dwelling accommodations in a low-income housing project shall be made available only to persons of low-income;

Z. To employ an executive director, technical and maintenance personnel, and such other officers and employees, permanent or temporary, as the Corporation may require; and to delegate to such officers and employees such powers or duties as the Corporation shall deem proper;

AA. 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;

BB. To adopt such operating procedures, policies, and agreements as the Corporation deems necessary and appropriate;

CC. To take all actions necessary, suitable, or proper for the accomplishment of any of the purposes or attainment of any of the goals herein enumerated, either alone or in association with other corporations, firms, and individuals, as principals, agents, brokers, contractors, subcontractors, trustees, shareholders, or otherwise, and to perform any act or acts, things incidental to, growing out of, or connected with said business, or in any part or parts thereof; and

DD. To exercise any or all of the above powers, on- or off-reservation, subject to the duties imposed upon the Board by these Articles, the Tribal Council, or tribal law.

ARTICLE VI. LIMITATION OF POWERS

Unless expressly authorized by resolution of the Tribal Council, the Corporation may not:

- A. Expressly or impliedly enter into agreements of any kind on behalf of the Pueblo;
- B. Pledge the credit of the Pueblo;
- C. Dispose of, pledge, or otherwise encumber real or personal property of the Pueblo except as provided by federal law and these Articles;
- D. Secure loans or incur indebtedness requiring any obligation, contribution, or guarantee on the part of the Pueblo;
- E. Waive any right of or release any obligation owed to the Pueblo; or
- F. Waive any other rights, privileges, or immunities of the Pueblo.

ARTICLE VII.
CONTROL OF OPERATIONS

Control of the Corporation shall be vested in the Board with day-to-day operations delegated to the Corporation's Chief Executive Officer or Executive Director. The Directors shall in all cases act as a Board, regularly convened, by a majority vote, and they may adopt such rules and regulations for the conduct of their meetings and the management of the Corporation as they may deem proper, not inconsistent with these Articles, the By-laws, and applicable tribal or federal law. The Pueblo shall have no authority to direct the business affairs of the Corporation, except as provided in these Articles.

ARTICLE VIII.
BOARD: QUALIFICATIONS, APPOINTMENTS, AND VACANCIES

A. **Number; Manner of Selection.** The Board shall consist of not less than three (3) or more than five (5) persons, all of whom shall be appointed by the Tribal Council. Directors shall be eligible for reappointment. The initial Board shall consist of three (3) Directors.

B. **Term of Office.** Each new Director appointed or reappointed following the expiration of the initial terms set forth herein but not appointed to fill out an unexpired term shall serve for a term of three (3) years. Directors may be re-elected.

C. **Staggered Terms.** The Tribal Council shall designate one (1) member of the initial Board to serve for a term of three (3) years, one (1) member of the initial Board to serve for a term of two (2) years, and one (1) member of the initial Board to serve for a term of one (1) year, or until their successors are duly selected and qualified.

D. **Qualifications of Directors.** The Directors shall meet the following qualifications:

1. Each Director shall possess communication skills, experience, and expertise necessary to carry out the duties of a Director and to contribute to the ability of the Corporation to achieve the purposes for which these Articles are issued.
2. Each Director shall possess at least two (2) years' experience in housing management, construction/modernization, business management, personnel, accounting, or housing inspections.
3. Prior to appointment to the Board, each prospective Director shall submit to a drug screen. The Board shall pay for such drug screen.
4. Directors may be enrolled members of the Pueblo.
5. Directors shall not be employees of the Corporation.
6. When nominated and appointed, Directors may not be past due on any payment owed to the Corporation or its predecessor entity.
7. A Director may be a member of the Tribal Council.

8. Directors cannot have been convicted of a felony offense or any other offense related to conversion of property or that would tend to reflect on his or her ability to manage finances. If while in office, a Director is charged with the commission of one or more of such offenses, he or she immediately shall be suspended from the Board and shall remain suspended until such time as the charges are resolved. If the Director is convicted of the offense or offenses charged, his or her appointment to the Board immediately shall be terminated.

9. No person shall be barred from serving on the Board because he or she is a tenant or occupant in a housing project of the Corporation; and any such Director shall be entitled to participate fully in all meetings concerning matters that affect all of such tenants or occupants, even though such matters may affect him or her as well. However, no such Director shall be entitled or permitted to participate in or be present at any Board meeting (except in his or her capacity as a 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 such tenant or occupant.

E. **Initial Board.** The initial Board of Directors shall consist of the following persons whose terms shall be as described:

Name	Term
_____	(3 Years)
_____	(2 Years)
_____	(1 Year)

ARTICLE IX.
DUTIES AND POWERS OF THE BOARD

Except as otherwise provided or limited herein, the Board is hereby delegated the following duties and powers:

A. To develop, adopt, and amend from time to time *as* it may deem necessary, the By-laws for the administration of the Corporation's operations, *as well as* to develop, adopt, and amend *as* need be other policies and operating procedures respecting the business affairs of the Corporation;

B. To direct the operations to accomplish the purposes and to exercise the powers, *as* both are set forth in these Articles, without previous authorization or subsequent approval of the Pueblo, *as* the sole owner, unless otherwise provided herein, and all parties dealing with the Board shall have the right to rely upon any action taken by the Board and certified in a proper corporate resolution;

C. To exercise full power and be responsible for the development, custody, management, operation, inventory, and maintenance of all utilities, facilities, buildings, businesses, operations, and other activities concerning the business set forth in these Articles; and for the taking of any and all usual, necessary, and convenient actions incidental thereto,

including the borrowing of funds and the making of contracts or commitments necessary to the functioning of the Corporation;

D. To be responsible for making investment decisions, subject to the limitations contained herein, for the establishment and maintenance of effective operating policies; for the selection of management personnel; and for supervision of the performance of the Corporation;

E. To exercise its authorized powers in the best interests of the Pueblo, within the limits of responsible business judgment; provided that it shall not incur contractual obligations without first determining that the Corporation has the ability to make payments when due;

F. To make available to the Tribal Council, minutes of each Board meeting and to provide to the Tribal Council a comprehensive Annual Report and an audit in the form and manner required by the Tribal Council;

G. To exercise full authority and be responsible for the custody, management, and operation of all corporate assets whether by direct control, custody, management, and operation or by means of management or leasehold interests granted by the Corporation to other persons or legal entities, including such expansions and enlargements thereof as shall be authorized; for the planning, construction, and operation of additional buildings, improvements, and facilities; and for the taking of any and all usual and necessary actions incident thereto;

H. To act and to direct the officers and managers of the Corporation to act in the same capacity as that of natural persons, but possessing authority to perform only such acts as are necessary or expedient to accomplish the purposes as set forth in these Articles;

I. To hire agents, employees, engineers, auditors, and such professional consultants, contractors, and managers as in the opinion of the Board may be needed from time to time; to define their duties and fix their compensation; and to require the bonding of all officers, agents, or employees responsible for the handling or safeguarding of funds, property, or other assets of the Corporation;

J. To acquire (by assignment, purchase, exchange, lease, hire, or otherwise), hold, own, manage, operate, mortgage, lease and sublease, pledge, hypothecate, exchange, sell, deal in, and dispose of: either alone or in conjunction with others, real and personal property, and interests therein, and commodities of every kind, character, and description necessary or incidental to the purposes or in the exercise of the powers described herein above;

K. To borrow money and give collateral as security respecting said indebtedness, so long as the debt is incurred, and the collateral or security is given in pursuance of the purposes described herein above;

L. To designate and approve all depositories used for the deposit of funds of the Corporation;

M. To enter into, make, perform, and carry out, cancel, or rescind contracts for any lawful purpose pertaining to its business and necessary or incidental to the purposes described herein above;

N. To assist with the preparation of one- and five-year plans required under NAHASDA;

O. To consult with and advise the Tribal Council on Corporation business activities;

P. To consult with and advise the Tribal Council on all financial and record-keeping activities involving the Corporation, including but not limited to those required by NAHASDA or any other applicable tribal or federal law;

Q. To keep accurate, full, and complete books and accounts according to generally accepted accounting principles (“GAAP”) showing the Corporation’s transactions and financial condition;

R. To prepare financial statements at the end of each year. All financial statements shall present fairly the financial position and results of the operation of the Corporation and shall be prepared in accordance with generally accepted accounting principles;

S. To maintain the books, accounts, and records of the Corporation at the Corporation’s principal office; and

T. To give, develop, and present to the Tribal Council an annual corporate budget, and take final approval action with reference to the use of funds under the exclusive control of the Corporation for operating and capital addition purposes.

ARTICLE X. REMOVAL OF DIRECTORS

Any Director may be removed for cause: (1) by the majority vote of the Board of Directors then in office; or (2) by the Tribal Council upon a majority vote of the members of the Tribal Council present at a duly called meeting where a quorum is present. Grounds for removal shall include but not be limited to dereliction of duty; negligence; malfeasance in office; violation of these Articles or other policies and procedures of the Corporation, Pueblo laws and regulations; failure to attend three (3) consecutive Board meetings without justification, or any other good cause shown.

ARTICLE XI. RESIGNATION OF DIRECTORS

Any Director may resign at any time by giving written notice to the Board and the Governor and to the Tribal Council. Such resignation shall be effective on the date specified therein; the acceptance of such resignation shall not be necessary to make it effective.

ARTICLE XII.
MEETINGS OF THE BOARD OF DIRECTORS

Meetings of the Board shall be convened in compliance with the terms and conditions of the By-laws.

ARTICLE XIII.
OFFICERS

Officers of the Board shall be selected in accordance with and shall have such powers and duties as provided in the By-laws.

ARTICLE XIV.
SUSPENSION OF BUSINESS; DISSOLUTION

After issuance of these Articles by the Tribal Council, the business of the Corporation may be suspended or dissolved only as provided in the By-laws or upon a majority vote of the Tribal Council.

ARTICLE XV.
AMENDMENTS

These Articles may be amended from time to time by the affirmative majority vote of the voting members of the Tribal Council at a duly called meeting of the Tribal Council at which a quorum is present.

Enacted by Resolution No. 05-R-90, adopted November 30, 2005; amended by Resolution No. 05-R-59, adopted November 30, 2005.