

## **TITLE 18 - HOUSING AND CONSTRUCTION**

### **CHAPTER 1 - TOHONO O'ODHAM KI:KI ASSOCIATION**

*Legislative History: Ordinance No. 98-03, "Establishment of Tohono O'odham Ki:ki Association," was approved on July 1, 1998; amended by Resolution No. 02-110, (allowing removal of TOKA Interim Directors by Legislative Council resolution) on March 13, 2002; amended by Resolution No. 02-089 (amending Article V, Section 1(a) and staggering board members' terms) on March 7, 2002; amended by Resolution No. 06-440 (amending Article V, Sections 1 and 3, in part, to authorize suspension of Board of Directors and removal of directors without cause) on June 23, 2006; amended by Resolution No. 10-019 (authorizing TOKA to leverage its IHBG funds, authorizing limited waivers of TOKA's immunity, and making typographical and other corrections) on January 13, 2010; amended by Resolution No. 11-191 (clarifying authorities of Board of Directors and Executive Director, TOKA Board's policy adoption authority, and procedure for Legislative Council review and approval, if necessary, of annual Indian Housing Plan and Performance Reports) on May 18, 2011; amended by Resolution No. 11-559 (amending Article V, Section 1(b) to increase qualifications for Board of Directors) on November 28, 2011.*

**TITLE 18 -HOUSING AND CONSTRUCTION**

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ORDINANCE OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL  
Tohono O'odham Ki:ki Association Ordinance

ORDINANCE NO. 98-03<sup>1</sup>

STATEMENT OF PURPOSE:

An Ordinance to establish a separate Tribal entity, known as the Tohono O'odham Ki:ki Association, in accordance with Article VI of the Constitution of the Tohono O'odham Nation. The TOKA will assume all of the Nation's Housing Programs, and for the primary purpose of providing well constructed and affordable homes for our members, as well as maintaining our current assisted stock of home ownership homes and rental homes.

NOW, THEREFORE, BE IT ENACTED by the Tohono O'odham Legislative Council the following:

ARTICLE I

ESTABLISHMENT OF THE  
TOHONO O'ODHAM KI:KI ASSOCIATION

1. Designation of Housing Entity and Purposes: In accordance with the Native American Housing Assistance and Self-Determination act of 1996, 25 U.S.C. Sec 4101 et seq., P.L. 104-330, 110 Stat. 4016, the Association is hereby designated the Tribally Designated Housing Entity to implement the Nation's Indian Housing Plan under NAHASDA's proposed Indian Housing Block Grant Program.
  - a. The Tohono O'odham Nation's Tribally Designated Housing Entity is hereby established and will be known as the Tohono O'odham Ki:Ki Association, ("TOKA"). It will assume all of the Tohono O'odham Housing Authority's rights, responsibilities, properties and overall functions, as well as those housing functions currently under the Nation's Planning Department.
  - b. The new Housing Entity will conduct its business affairs in the current existing office of the former Housing Authority located in Sells. The TOKA will be primarily responsible for providing and implementing a comprehensive program to address the housing needs of its people within its Indian Area of responsibility. The Indian Area will be the Nation and the surrounding areas and U.S. border towns.

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<sup>1</sup> As amended by Tohono O'odham Legislative Council Resolution No. 02-089, Resolution No. 02-110, Resolution No. 06-440, Resolution No. 10-019, and Resolution No. 11-191.

- c. The Tohono O’odham Ki:Ki Association’s Executive Director will be authorized to conduct all of its business and financial affairs, to include but not limited to the planning, construction, development, operations, economic self development projects, along with the other requirements as set forth by these provisions and its organizational policies and procedures.
- d. The purpose of the Tohono O’odham Ki:Ki Association will be to promote and advance the development of well constructed and adequate supply of affordable homes for members of the Nation, in compliance with its admission policy; to create and establish community partnership programs, and community self-sufficient and economic development plans, projects and programs; and to leverage its federal funds, in a manner consistent with applicable federal and other rules and regulations, with other available funds or funding sources for the purpose of obtaining necessary funding to implement and achieve the short- and long-term housing objectives of the Tohono O’odham Nation.
- e. The TOKA will be charged with the responsibility for fulfilling the unmet housing needs for persons of low income and all income levels, in order to create a more desirable community. Assist in the achievement of some community enhancements and economic opportunities within its Indian Area.
- f. The TOKA will provide maintenance and modernization for all existing units that will be placed under its management, and will conduct an overall assessment of its unmet needs to implement a comprehensive program, with a regulated schedule of actions to bring the modernization projects up to date.

## ARTICLE II

### PURPOSE

- 1. The Association is authorized to administer the governmental housing program on behalf of the Tohono O’odham Nation for the primary purpose of providing well constructed and affordable homes for members of the Tohono O’odham Nation in accordance with applicable eligibility criteria. It shall be the responsibility of the association to: provide safe, decent, and affordable housing that is well built and energy efficient; the maintain the governmental current assisted stock; serve primarily the needs of low-income families; create programs and projects that will reinforce traditional values; create programs and projects to promote the community enhancement and economic development; develop plans to meet the future housing needs for the members of the Tohono O’odham Nation; and obtain necessary funding to implement the short and long term housing objectives of the Tohono O’odham Nation.

## ARTICLE III

### DEFINITIONS

As used in this Ordinance,

1. Association means the Tohono O’odham Ki:Ki Association, (TOKA), as designated in this Ordinance.
2. Board means the Board of Directors of the Association established in accordance with the provisions of this Ordinance.
3. Constitution means the Constitution of the Tohono O’odham Nation adopted by the qualified voters of the Tohono O’odham Nation and approved by the Secretary of Interior on March 6, 1986, pursuant to Sec. 16 of the act of June 18, 1934 (48 Stat. 984, 25 U.S.C. Sec. 476).
4. Director means a member of the Board of the association appointed pursuant to the provisions of this Ordinance.
5. Indian Area of Responsibility means all lands within the Nation and the adjacent border communities, including but not limited to Ajo, Casa Grande, Tucson, Gila Bend, San Lucy Farms, and Florence in which O’odham reside.
6. Indian Housing Plan means a plan for the development and construction of homes, which meets the requirements of NAHASDA, 25 U.S.C. Sec. 4112.
7. Legislative Council means the Tohono O’odham Legislative Council, in which the legislative powers of the Nation are vested pursuant to articles IV, V, and VI of the Constitution.
8. NAHASDA means the Native American Housing Assistance and Self-Determination act of 1996, 25 U.S.C. SEC 4101 et seq., P.L. 104-330, 110 Stat. 4016.
9. Nation means the Tohono O’odham Nation, a federally recognized Indian Tribe, organized under the Constitution.
10. Tribal Employment Rights Ordinance means the Tribal Employment Rights Organization, Ord. No. 01-85, enacted by the Papago Council, predecessor to the Legislative Council.

## ARTICLE IV

### PLACE OF BUSINESS

The new Housing Entity will conduct its business affairs in the current existing office of the former Housing Authority located in Sells. The principal place of business and the principal office of the Association shall be at such place within the nation as the Board may designate. The Association may also have offices at such other places with the Nation as the Board may from time to time direct.

## ARTICLE V

### BOARD OF DIRECTORS DUTIES AND RESPONSIBILITIES

1. TOKA's general business direction, policies, and oversight will be provided by the Board, which is responsible for monitoring and ensuring compliance with TOKA's general purposes and contractual requirements; provided that the day-to-day administration and management of the TOKA are delegated to the Executive Director. If needed, the Board will provide corrective actions to keep projects on schedule and in such a manner that is cost-effective and efficient. It may create a special committee that would assume responsibility for any given area of implementation for a period of no more than 3 months.

All Board duties and responsibilities shall be addressed by the Board, as their primary and exclusive responsibility, which are enumerated within this Ordinance, subject to amendments or restrictions as deemed necessary by the Tohono O'odham Legislative Council.

- a. The Board shall consist of five (5) voting members appointed by the Tohono O'odham Legislative Council. The selection process shall provide as much geographical consideration as possible. The Board members' shall serve for a period of four (4) years, or until their successors are appointed; provided, however, that appointments to the Board shall be staggered in such a way that the terms of office of no more than two members end in a single year. The Legislative Council may appoint no more than five (5) Board members to a single term of more or less than four (4) years for the limited purpose of implementing the staggered term system. Thereafter, all Board members' terms shall commence on March 1 and end on the last day of February.
- b. At least three Board members shall be enrolled members of the Tohono O'odham Nation. All Board members shall have sufficient education and experience in housing, construction, business, and finance to provide oversight of the Association in order to achieve the Association's mission of providing safe, affordable, and well-constructed housing.

- c. The Board officers shall consist of a Chair, Vice Chair, Secretary, Treasurer and Sergeant of Arms and they shall meet on a bi-monthly basis as well as for special meetings as may be necessary to conduct the business affairs of the TOKA. A quorum for meetings shall consist of (3) voting members.
  - d. The Board shall have the power to adopt, amend, rescind and repeal By Laws and to establish or correct those organizational structures, and instruments as it may be deemed necessary. Those powers include but are not limited to creating sub-committees, contracting, or appointing positions to meet the requirements of the overall program goals and objectives.
  - e. The Board meetings will be public meetings, with the exception of those closed executive session proceedings and matters of a confidential nature.
  - f. The Board meeting schedules will be prepared and submitted on a timely basis, except for emergency meetings, to the Districts for their information and notice of the agenda items, and to invite and encourage their active participation.
2. The Board of Directors may delegate only those powers enumerated within this Ordinance to the Officers of the TOKA, as may be deemed necessary to conduct the duties and responsibilities of its programs, projects and plans. The Board shall maintain the general powers to establish the financial income criteria to ensure that the dwelling accommodations in a housing project are consistent with making and providing well constructed affordable homes to persons of all income levels.
3. The Board of Directors may be removed, either individually or as a whole, by resolution of the Tohono O’odham Legislative Council, with or without cause. In addition, the Legislative Council may, by resolution, suspend some or all of the duties and responsibilities of a Director of the Board for a period not to exceed six months.
- a. A Director may resign at any time by giving written notice to the Chairperson of the Board. Resignations shall become effective at the time specified in said notice, or if no time is specified, on the date of receipt. Any Director who fails to Attend three consecutive properly called and notice meetings of the Board or who fails to attend six Board meetings properly notice in any fiscal year shall, unless excuse from attendance by the Chairperson of the Board for a justifiable cause, be considered to have resigned. The Chairperson of the Board shall promptly notify the Legislative Council concerning any such resignation.
  - b. Any vacancy in the Board because of death, resignation, removal, or any other cause shall be filled for the unexpired portion of the term in accordance with the requirements of this Article.

## ARTICLE VI

### SCOPE OF GENERAL POWERS

1. The scope of general powers established by this Ordinance will be in conformance with the general policies and procedures of the Tohono O'odham Nation, and shall include, but is not limited to, the purposes exercising Indian Self Determination and Self Governance with a special emphasis on developing and maintaining affordable housing, community self-sufficient development, and employment program enhancements.
  - a. The powers to authorize and implement the creation of all contracts, with any firm, person, association, corporation, city, county, state, Tribal government(s) or federal government agencies, subject to the policies and contracting procedures of the Nation, and subject to the following restrictions:
    - (1) The TOKA shall not enter into any contract or obligations which require expenditures in excess of the approved annual budget, without the Board's approval.
  - b. The powers to authorize the borrowing of money for any of the general purposes of the TOKA. Any borrowing from the Nation shall be treated similar to a commercial lender. The TOKA is also authorized to lend money in furtherance of any of its purposes, and is herein authorized to take investigatory, collection, eviction, foreclosure and any other action reasonably necessary to protect the interests of the TOKA and the Nation.
  - c. The powers to establish the TOKA policies, which include but are not limited to the following; TOKA housing eligibility, personnel, collection, eviction, foreclosure, procurement, occupancy, and investment policies.
2. The TOKA Board and Officers in the appropriate and proper execution of their duties and general responsibilities shall not be liable for the debts of the TOKA. The private property of the Board and Officers of the TOKA shall also be exempt from the debts. The Tohono O'odham Nation indemnifies and shall hold harmless the Board and Officer from liability or other claims arising out of their duties of or functions as Board, Officers, and employees of the TOKA.
3. The Board of Directors will select the TOKA Executive Director who shall be responsible for the day-to-day administration and management of the TOKA.

## ARTICLE VII

### EXECUTIVE DIRECTOR'S DUTIES, RESPONSIBILITIES AND POWERS

1. The Executive Director of the TOKA shall have the following powers, duties and responsibilities, which he or she may exercise subject to Board approval and consistent with the purposes for the Nation's housing program.
  - a. To enter into agreements, contracts and understandings with any local, state or federal governmental agencies, or any person, partnership, corporation or Indian Tribe, to agree to those conditions that are in the best interest of the TOKA and its general and affordable housing purposes. The TOKA may also enter into contracts with other department, divisions, and agencies of the Nation for goods and services.
  - b. To apply for and to expend and obligate the funds according to the contractual agreements, in order to effectively manage the business and program affairs of the organization and to enhance community development. To agree, pursuant to the right of Indian Self Determination and Self Governance, to those conditions attached to Federal financial assistance relating to the determination of prevailing salaries or wages or compliance with labor standards, and / or other certifications in the development or operation of projects.
  - c. To implement the primary purposes of planning, developing, constructing, operating, modernizing, and maintaining an adequate supply of affordable homes for the members of the Nation. To lease property, with the prior approval of the Board, for such periods as are authorized by the policies and procedures of the Nation, and to manage or to sublease the same. Any acquisition of property by TOKA through a lease agreement must have Board approval.
  - d. To lease, rent, or sell with Board approval, enter into lease-purchase agreements or leases with option to purchase, to establish and revise rents or required monthly payments, for any dwellings, accommodations, buildings or facilities embraced within any project (including individual cooperative or condominium units):
  - e. To provide financing opportunities for the purchase of a home by an eligible home buyer in accordance with these provisions and the NAHASDA requirements.
  - f. To terminate any lease, rental agreement, or lease purchase agreement when the tenant or home buyer has violated the terms of such agreement, or failed to meet any of its contract obligations, or has violated the policies of the TOKA. However, due process shall be provided in any termination proceedings, and prior

to any non-payment eviction proceedings the tenant or home buyer shall be afforded an opportunity to utilize a payment plan to cure non-payment problems.

- g. To purchase insurance from any stock or mutual company for any property that is embraced by its programs, or against any program risk or hazards, and to obtain or provide for the adequate fidelity bond coverage of its officers, agents, or employees handling cash or authorized to sign checks or certify vouchers.
- h. To borrow money for any of the general purposes of the TOKA, with the approval of the Board, and in connection with implementing its goals to make, draw, execute, accept, endorse, discount, pledge, issue, sell or otherwise dispose of promissory notes, drafts, bills of exchange, warrants, bonds, debentures and other evidences of indebtedness, negotiable or non-negotiable, transferable or not transferable, and grant collateral or other security to secure the indebtedness, provided that the collateral or security are the thing(s) purchased with the funds borrowed in the same transaction (purchase money collateral).
- i. To undertake and carry out studies and analysis of housing needs, update and prepare housing plans, and implement the activities necessary to accomplish the goals and objectives of the Annual Indian Housing Plan.
- j. In order to utilize the budgeted funds effectively, the TOKA shall create and establish a finance component, consisting of an accountant (CPA), bookkeeper, accounts receivable clerk and an accounts payable clerk, in order to properly record and document the financial condition as well as to provide quarterly and annual reports to the Board. Annual reports shall be provided to the Nation's Chairman, and the Legislative Council. The Nation's financial policies, procedures, general accounting principles, and procurement system, will be used to the maximum extent possible, however, TOKA is obligated to use the best accepted standards in accounting and financial principles, to provide a financial basis for preparing the TOKA Annual Audit, and to report its financial condition to other agencies and institutions, as required.
- k. To hire, promote and discharge such personnel as may be required to conduct the affairs of the TOKA provided that the terms and conditions of the employment, including wages and benefits (including any pension plans or other deferred compensation arrangements), Board-approved personnel policies and disciplinary procedures utilized shall be similar to those of the Tohono O'odham Nation. The Board will be involved in the review of the administration of the personnel policies and procedures, but shall not hire, terminate, or discipline any employee other than the Executive Director. Disciplinary action against a permanent employee may be appealed to the immediate supervisor, and the immediate supervisor's decision may be appealed to the departmental manager, then to the Executive Director, and finally to the Board; provided that an at-will and

probationary employee is not entitled to such an appeal unless expressly authorized by TOKA policies.

- l. To join or cooperate with any other public housing agency or agencies, or with Indian Housing Associations operating under its respective laws and ordinances, for the purposes of financing (including but not limited to the issuance of notes or other obligations and giving security), planning, undertaking, underwriting, owning, constructing, operating, or contracting with respect to a housing project or projects of the TOKA, or such other public housing agency or agencies. For such limited purposes, as the Board may by resolution prescribe and authorize its participation.
- m. To exercise such powers as are necessary to effect the purposes for which the TOKA is organized and consistent with this ordinance. To include but not limited to the authority to invest grant amounts for the purposes of carrying out affordable housing activities in investment securities, in prudent money-market accounts, brokerage firms or other income generating instruments, in accordance with the Nation's investment policy, in order to develop additional financial resources to maintain and operate affordable housing and services.

## ARTICLE VIII

### OBLIGATIONS

1. At the TOKA's discretion for any of its affordable housing purposes may also issue refunding obligations for the purpose of paying or retiring obligations previously issued by it, or the former Housing Authority. Obligations of the TOKA are declared to be essential public purposes and to be public instrumentalities and, together with interest thereon and income therefrom, shall be exempt from taxes imposed by the Nation.

The types of obligations it may determine necessary, include but are not limited to, obligations on which the principal and interest are payable;

- a. Exclusively from the income and revenues of the project financed with the proceeds of such obligations, or with such income or revenues together with a grant from the Federal government, or other financing agency or institution, in the aid of such project, or
- b. Exclusively from the income and revenues of certain designated projects whether or not they were financed in whole or in part with the proceeds of such obligations, or from its revenues, and
- c. Any such obligations may be additionally secured by a pledge or promissory note of any revenues or project or other property of the TOKA.

2. The tax exemption provisions of this ordinance shall be considered part of the security for the repayment of obligations and shall constitute, by virtue of this ordinance and without necessity of being restated in the obligations, a contract between the TOKA and the holders of such obligations and each of them, including all transferees of the obligations from time to time.
3. Obligations shall be issued and sold in the following manner:
  - a. Obligations of the TOKA shall be authorized by the Board of Directors, by a resolution, and may be issued in one or more series.
  - b. The obligations shall bear such dates, mature at such times, bear interest at such rates, be in such denominations, be in such form, either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment and at such places, and be subject to such terms of redemption with or without premium, as such resolution may provide.
  - c. The obligations may be sold at public or private sale at not less than par.
  - d. In the event that any person, acting as an official of the TOKA, whose signature appears on any obligations ceases to be an official before the delivery of such obligations, the signatures shall, nevertheless, be valid and sufficient.
4. Obligations of the TOKA shall be fully negotiable, in any suit, action or proceeding involving the validity or ability to enforce any such obligations or the security thereof, any obligation reciting in substance that it has been issued by the TOKA to aid in financing a project pursuant to this ordinance shall be conclusively deemed to have been issued for such purpose, and the project for which such obligation was issued for such purpose. The project for which such obligation was issued shall be conclusively deemed to have been planned and carried out in accordance with the purposes of this ordinance.
5. In connection with the issuance of obligations or incurring of obligations under leases and to secure the payment of such obligations, the TOKA, subject to the limitations in this ordinance, may:
  - a. Pledge all or any part of a gross or net rents, fees or revenues to which its right then exists or may thereafter come into existence.
  - b. Provide for the powers and duties of obligees and limit their liabilities, provide the terms and conditions on which such obligees may enforce any covenants or rights securing or relating to the obligations.

- c. Covenant against pledging all or any part of its rents, fees and revenues or against mortgaging any or all of its real or personal property to which its title or right then exists or may thereafter come into existence or permitting or suffering any lien on such revenues or property.
- d. Covenant with respect to limitations on its right to sell, lease or otherwise dispose of any project or any part thereof.
- e. Covenant as to what other or additional debts or obligations may be incurred by the TOKA.
- f. Covenant as to the obligations to be issued and as to the issuance of such obligations in escrow or otherwise, and as to the use and disposition of the proceeds thereof.
- g. Provide for the replacement of lost, destroyed or mutilated obligations.
- h. Covenant against extending the time for the payment of its obligations or interest thereon.
- i. Redeem the obligations and covenant for their redemption and provide the terms and conditions thereof.
- j. Covenant concerning the rents and fees to be charged in the operation of a project(s), the amount to be raised each year or other period of time by rents, fees and other revenues, and the use and disposition to be made thereof.
- k. Create or authorize the creation of special funds for monies held for construction or operating costs, debt service, reserves or other purposes, and covenant as to the use and disposition of the monies held in such funds.
- l. Prescribe the procedure, if any, by which the terms of any contract with holders of obligations may be amended or abrogated, the proportion of outstanding obligations the holders of which must consent thereto, and the manner in which such consent may be given.
- m. Covenant as to the use, maintenance and replacement of its real or personal property, the insurance to be carried thereon and the use and disposition of insurance monies.
- n. Covenant as to the rights, liabilities, powers and duties arising upon the breach by it of any covenant, condition or obligation.
- o. Covenant and prescribe as to events of default and terms and conditions upon

which any or all of its obligations become or may be declared due before maturity, and as to the terms and conditions upon which such declaration and its consequences may be waived.

- p. Vest in any obligees or any proportion of them the right to enforce the payment of the obligations or any covenants securing or relating to the obligations.
- q. Exercise all or any part or combination of the powers granted in this section and the provisions of this ordinance.
- r. Make covenants other than and in addition to the covenants expressly authorized in this section of like or different character.
- s. Make any covenant and do any acts and things that are reasonable and necessary, convenient or desirable in order to secure its obligations, or in the absolute discretion of the TOKA, tending to make the obligations more marketable although the covenants, act or things are not enumerated in this section.

## ARTICLE IX

### COMPLIANCE WITH NAHASDA

- 1. Preparation and Submission of the Nation's Indian Housing Plan.
  - a. In accordance with Section 102 of NAHASDA regarding submission of the Nation's annual Indian Housing Plan, the TOKA shall submit annually to the United States Department of Housing and Urban Development's Southwest Area Office of Native American Programs ("SWONAP") the Nation's Indian Housing Plan after review by the Legislative Council and approval by Legislative Council resolution. The TOKA shall attach the Legislative Council's approving resolution to each Indian Housing Plan.
  - b. In order to meet the required annual NAHASDA deadline:
    - i. Under the direction of the Executive Director, the TOKA shall prepare the Indian Housing Plan in accordance with the requirements of Section 102(b) of NAHASDA and 24 C.F.R. Part 1000, Subpart C regulations, as may be amended.
    - ii. The Executive Director shall present the Indian Housing Plan to the Board in sufficient time for the Board to approve by resolution the Indian Housing Plan not less than 60 days before the statutory submission deadline.

- iii. The Indian Housing Plan, with the Board resolution attached, shall be provided to the legislative oversight committee and the Nation's Chairperson within five days after the Board resolution is approved. The Board shall review the Indian Housing Plan with the oversight committee at the committee's request.
  - iv. A Legislative Council resolution approving the Indian Housing Plan shall satisfy the requirements for submission under Section 102(b) and (c) of NAHASDA that the Nation has had an opportunity to review the Indian Housing Plan and has authorized the TOKA to submit the Nation's Indian Housing Plan on or before the statutory deadline. The Legislative Council resolution shall also include authorization for the Nation's chairperson to sign the certification authorizing the submission of the Indian Housing Plan.
  - c. Once the Nation's annual Indian Housing Plan is approved by Legislative Council resolution and submitted by the TOKA, any proposed amendments to the Nation's Indian Housing Plan shall be reviewed and approved by the Board, reviewed by the legislative oversight committee, and reviewed and approved by Legislative Council resolution before submission to the SWONAP.
2. Preparation and Submission of the Nation's Performance Report.
- a. In accordance with Section 404 of NAHASDA regarding submission of the Nation's annual Performance Report, which shall include a Compliance Assessment as required under Section 403 (b) of NAHASDA, the TOKA shall submit annually to SWONAP the annual Performance Report after review by the Legislative Council.
  - b. In order to meet the required annual NAHASDA deadline:
    - i. Under the direction of the Executive Director, the TOKA shall prepare the annual Performance Report in accordance with the requirements of Section 404 of NAHASDA and 24 C.F.R. Part 1000, Subpart C regulations, as may be amended.
    - ii. The Executive Director shall present the annual Performance Report to the Board in sufficient time for the Board to approve by resolution the annual Performance Report not less than 90 days before the statutory submission deadline.
    - iii. The annual Performance Report, with the Board resolution attached, shall be provided to the legislative oversight committee within five days after the Board resolution is approved. The Board shall review the annual

Performance Report with the oversight committee at the committee's request.

- iv. Once the annual Performance Report is reviewed by the legislative oversight committee, the TOKA shall issue a notice to the public requesting comments to the annual Performance Report not less than 30 days before presentation of the Performance Report to the Legislative Council. The TOKA shall include a summary of any comments received from the Nation's members in the annual Performance Report.
- v. Once the 30-day comment period expires, the TOKA will coordinate with the legislative oversight committee to schedule a presentation of the annual Performance Report, including a summary of any public comments, to the full Legislative Council during a general or special session. The presentation by the TOKA of the annual Performance Report to the Legislative Council will satisfy the Nation's monitoring obligations under 24 CFR § 1000.502 of the NAHASDA regulations, as may be amended.
- vi. The TOKA shall submit the annual Performance Report prior to the NAHASDA regulatory deadline, or as such extensions are granted by SWONAP.

## ARTICLE X

### OCCUPANCY POLICY REQUIREMENTS

1. The TOKA Board shall adopt and enforce an occupancy policy that, at a minimum, complies with the requirements of 25 U.S.C. Section 4137(a)(6), as may be amended, and other applicable laws and regulations designed to keep the Nation's housing programs free of criminal activity, including illegal drug and alcohol activity.
2. As required by NAHASDA, TOKA's occupancy policy will mandate that rental dwelling unit leases provide that the TOKA may terminate the tenancy of a resident for any activity, engaged in by the resident, any member of the household of the resident, or any guest or other person under the control of the resident, that:
  - a. threatens the health or safety of, or right to peaceful enjoyment of the premises by, other residents or employees of the owner or manager of the housing;
  - b. threatens the health or safety of, or right to peaceful enjoyment of their premises by, persons residing in the immediate vicinity of the premises; or
  - c. is criminal activity (including drug-related criminal activity) on or off the premises.

## ARTICLE XI

### CAPITALIZATION OF TOHONO O'ODHAM KI:KI ASSOCIATION AND FINANCE RESPONSIBILITY

1. The TOKA shall be capitalized as shall be determined by the Tohono O'odham Legislative Council. The determination will be based upon the immediate and final accounting of all current and existing financial resources, assets and liabilities of the Tohono O'odham Housing Authority. This provision expressly and immediately transfers all assets to the Tohono O'odham Ki:Ki Association.
2. Sovereign Immunity. The TOKA is solely responsible for the contractual obligations and payment of all indebtedness of the TOKA. The TOKA is an entity of the Nation and is established for the benefit of the Nation. As such, it has the same immunity from suit as the Nation possesses. Notwithstanding the fact that the TOKA is immune from suit, the TOKA is hereby expressly granted the right to sue in its own name, and a limited right to be sued in its own name as more fully set out below. The TOKA is not immune from suits, actions or proceedings initiated by the Nation or its regulatory agencies and departments. Nothing in this section 2 or this ordinance shall be construed as a waiver of or limitation on the sovereign immunity of the Nation.
  - a. The TOKA may be sued only in the Tohono O'odham Judicial Court and no court of the United States or any state court, and only in the following limited circumstances:
    - (1) Claims within Insurance Coverage. With respect to claims against the TOKA for any personal injury or property damage, the amount and name of which are within the express coverage of a policy of insurance procured and maintained by TOKA, as acknowledged by the insurer under such policy, the TOKA's immunity is waived to the extent of such coverage, provided that any judgment order or award may only be satisfied pursuant to:
      - (A) the express provisions of the insurance policy that is in effect at the time of each such judgment, order or award; and
      - (B) an action, if necessary, brought by the prevailing party against the insurer under such policy.
    - (2) Contract Claims. With respect to claims against the TOKA (i) arising out of any written contract to which the TOKA is a party, and (ii) the amount and nature of which are not within the express coverage of any policy of insurance procured and maintained by the TOKA, the TOKA's immunity

may be waived in an amount that shall not exceed the value of the pledge of, or security interest in, the TOKA's personal property, cash, accounts receivable and other assets granted by the TOKA as collateral for any payment obligations under such contract; provided that execution on any such collateral shall be solely by judicial process pursuant to a judgment, order or award of the Tohono O'odham Judicial Court or other courts of competent jurisdiction.

- b. Any claims for which the TOKA's immunity is waived shall be tried to the court. Nothing herein shall be construed as a consent to trial by jury.
  - c. Except as otherwise expressly provided in this section, nothing contained in this ordinance shall be interpreted or construed as:
    - (1) A waiver of the sovereign immunity of the TOKA beyond the limits set forth in this section.
    - (2) A waiver of sovereign immunity of the TOKA from the imposition in any judgment, order or award of interest prior or subsequent to judgment, attorney fees, court costs, civil penalties, or punitive, double, treble, incidental or consequential damages.
    - (3) A waiver of the sovereign immunity of the TOKA from levy on any judgment, or a lien, attachment, execution or other judicial or non-judicial process upon any assets of the TOKA, except as set forth in this section.
    - (4) A waiver of the sovereign immunity of the Nation; all obligations and liabilities asserted against the TOKA, arising out of TOKA's operations or otherwise determined to have been incurred by the TOKA, are the sole and separate obligations and liabilities of the TOKA payable solely from the financial assets of the TOKA, as set forth in this section, and not from those of the Nation.
  - d. The Legislative Council retains the power to prospectively modify this limited waiver of the TOKA's immunity either generally or with respect to particular circumstances.
3. All obligations determined to have been incurred in the execution of the TOKA duties and responsibilities shall be obligations payable solely from the financial assets described in this section. The TOKA shall accept service of process upon the TOKA by delivery to its office, Executive Director, or the legal representative designated as the agent for service of process.

## ARTICLE XII

### REPORTING REQUIREMENTS

The Executive Director is primarily responsible for meeting the overall reporting requirement of the TOKA. Record keeping will be used to monitor the efficient implementation of the IHP, but will be an essential tool to provide timely and accurate reports for each project developed or operated with Federal, State, Private or Public funding.

1. The TOKA shall provide all required reports to meet the conditions of any federal grant or loan program, and those requisite conditions from public and private sector institutions or organizations that are providing affordable housing program assistance.
2. The TOKA shall provide Annual Reports to the Tohono O'odham Legislative Council, and the Tohono O'odham Nation's Chairman, which will include a summary of the accomplishments, problem areas, financial conditions, unit availability, and an overall evaluation of its ability to meet the goals and objectives of the 1 Year Indian Housing Plan on a timely basis.
  - a. The reports may include proposed corrective actions to bring the programs into compliance, or amendments that provide program adjustments to allow orderly progress and success.
3. The TOKA shall provide an Annual Report to the Tohono O'odham Legislative Council, the Nation's Chairman, and the Department of HUD. The Annual Report will reflect the affordable housing assistance program and project accomplishments, along with a detailed report of the financial status of each major activity implemented to meet the 1 Year Plan's goals and objectives.
4. The TOKA shall collect, organize and report any and all relevant financial statements, transactions, ledgers, accounts and other financial documentation needed to conduct an Annual Audit on a timely basis.

## ARTICLE XIII

### CONFLICT OF INTEREST

The provisions of this Ordinance are intended to provide a process for determining the conflict of interest issue on a case by case basis, but is not intended to exclude the fair and equal employment of relatives, and includes but is not limited to the following:

1. The Tohono O'odham Legislative Council members, TOKA Board members, Officers, employees or any Tribal or public officials that are closely associated with the Nation's housing program, and who exercise considerable responsibilities or essential functions

with the TOKA will be required to immediately declare any potential conflict of interest they may personally acquire as a result of their ongoing participation in a particular plan, project, program or any affordable housing assistance activities, and they shall refrain from voting on final decisions on those issues or areas of concern.

2. Those members, employees or officials are also required to immediately declare any possible conflict of interest they may have personally acquired prior to their appointment or employment or positions of influence with the TOKA, and they shall refrain from voting or participating in meaningful decision making regarding those areas of possible conflict.
3. Any intentional violation of these provisions shall be considered wrongful and misconduct of office or abuse of power and responsibility, and such violations shall be cause for legal action.

## ARTICLE XIV

### SELF EVALUATION AND MONITORING

The Tohono O'odham Ki:Ki Association's exercise of Indian Self Determination is consistent with the responsibility of self monitoring and self evaluation of the TOKA's goals and objectives as well as the accomplishment of its planned activities. The TOKA's Executive Director will conduct a comprehensive evaluation process and establish procedures that ensure the success of the Housing program and will provide a contingency plan for the unexpected obstacles or challenges.

1. A systematic review of the Housing program will determine how well the program is operating.
2. An evaluation will provide the funding sources with a meaningful tool that can assess if they are making a wise investment.
3. An objective evaluation will determine the long term effectiveness of specific activities, and provide an effective method to review and decide whether the activities should be continued, expanded, modified, or eliminated in future plans.
4. The process evaluation will review the process rather than the long term accomplishments and it relies upon accurate and updated record keeping.
  - a. The internal mechanism of record keeping will provide an explanation for the success or failure in meeting objectives, by providing brief summaries and will identify a percent of the activities accomplished.
  - b. This evaluation method will allow the process to be corrected during the

implementation.

5. The outcome evaluation will require a review of official records, conducting surveys, interview or questionnaires to determine the communities acceptance and involvement with the Housing program.
6. The efficiency evaluation will determine if a program can be more cost effective regarding the amount of resources used, or staff time and the manner in which the activities were conducted.
7. The TOKA will use these evaluation tools to monitor its performance and provide corrective actions where necessary, in order to have the program in compliance, and to be able to document the necessary information for all of its reporting requirements.

#### ARTICLE XV

##### REPEAL OF PRIOR AND INCONSISTENT LEGISLATION

Ordinance No 56-77, known as the 1937 Housing Ordinance, which created Papago Housing Authority and later became known as the Tohono O'odham Housing Authority, is hereby rescinded in its entirety to implement the provisions of this ordinance.

#### ARTICLE XVI

##### EFFECTIVE DATE OF ORDINANCE

The effective date of this ordinance shall be the date on which this Ordinance is approved in accordance with the Constitution. The "Interim Directors" (i.e., Legislative Council Housing Committee members who serve on the Ki:ki Board pursuant to Resolution No. 97-346) shall continue to serve until either (1) their successors are appointed pursuant to the terms of this Ordinance or (2) they are removed without cause by Legislative Council resolution. Interim Directors shall not be subject to the removal or successor provisions of Article V of this Ordinance.