

BLUE LAKE RANCHERIA

BLUE LAKE HOUSING AUTHORITY DISPUTE RESOLUTION ORDINANCE

ORDINANCE NO. 04-02

WHEREAS, the Blue Lake Rancheria, California ("Tribe"), is a federally recognized Indian tribe;

WHEREAS, the Tribe adopted a Tribal Constitution, which authorizes the formation of economic entities for the benefit of the Tribe;

WHEREAS, the Tribe formed Blue Lake Housing Authority ("BLHA") as a Tribal governmental instrumentality of the Tribe to do business in the name of "Blue Lake Housing Authority" and/or "Blue Lake Communities, A Housing Authority";

WHEREAS, BLHA will engage in retail home construction activities as its primary business activity pursuant to the Tribal Resolution adopted by the Tribe on April 2, 2004 (Resolution No. 04-14)

WHEREAS, BLHA will necessarily enter into contracts with other persons and entities for services and products, including employment agreements;

WHEREAS, BLHA enjoys sovereign immunity from unconsented suit;

WHEREAS, the Tribe recognizes that, at times, it may be necessary to offer to other persons or entities a limited waiver of sovereign immunity and authorize dispute resolution;

NOW, THEREFORE, BE IT RESOLVED THAT, the following is enacted as the Blue Lake Housing Authority Ordinance.

1. Title

This Ordinance shall be known as the Blue Lake Housing Authority Dispute Resolution Ordinance.

2. Purpose

The purpose of this Ordinance is to describe the terms and conditions under which BLHA may waive its sovereign immunity.

3. Scope

This Ordinance shall only apply to BLHA and those agreements entered into by BLHA that contain an express waiver of sovereign immunity.

4. Effective Date of Ordinance

This Ordinance shall become effective immediately upon approval by the Tribal Business Council.

5. Authorization to Waive Sovereign Immunity of Blue Lake Housing Authority

A. Notwithstanding any other provision contained in this Ordinance, BLHA shall have the power to consent, on behalf of BLHA only, to being sued in courts or to have claims against it resolved through arbitration; provided, however, any such waiver shall be memorialized in the form of a resolution adopted by the governing body of BLHA.

1. Limitation of Actions. Any waiver of BLHA's immunity from suit is specifically limited to the following actions and judicial remedies:

a. Damages. The enforcement of an award of money and/or damages against BLHA and as against the assets of BLHA; provided that the arbitrator(s) and/or the court shall have no authority or jurisdiction to order execution against any assets or revenues of the Tribe.

b. Injunctive Relief and Specific Performance. The enforcement of a determination by an arbitrator that prohibits BLHA from taking any action that would prevent the other party from performing its obligations pursuant to the terms of its agreement(s), or that requires BLHA to specifically perform any obligation under its agreement or injunctive relief from a civil court.

c. Action to Compel Arbitration. An action to compel arbitration.

B. Statute of Limitations; Notice Requirements

1. A written notice filed with BLHA by the Claimant or the Claimant's representative within 360 days after the Claim accrues. Claims brought under this Ordinance shall be deemed to accrue on the date when the Breach occurred.

2. The notice shall state the substance and scope of the Claim, the Claimant's position, including legal and factual justifications, the remedy sought, a concise statement of the nature, extent and amount of the monetary or property damages claimed to have been suffered, and any other pertinent matters.

3. Exclusive Remedy; Failure to Comply with Ordinance. The remedies against BLHA described in this Ordinance are exclusive of any other civil action or proceeding against BLHA.

6. Dispute Resolution

A. Contractual Provisions

BLHA may agree in a contract to dispute resolutions provisions in addition to the provisions of this Ordinance, including non-binding mediation or other alternative dispute resolution.

B. Arbitration

1. This Ordinance applies to any written contract, agreement or other instrument entered into (a) by BLHA, in which the parties thereto agree to settle by arbitration (x) any claim, dispute or controversy arising out of such contract, agreement or other instrument, or (y) any other claim, dispute or controversy existing between them at the time of the agreement.

2. Agreements to Arbitrate are Enforceable. An agreement by BLHA in any written contract, agreement or other instrument, or in a separate writing executed by the parties to any written contract, agreement or other instrument, to settle by arbitration any claim, dispute or controversy thereafter arising out of such contract, agreement or other instrument, or any other transaction contemplated thereunder, including the failure or refusal to perform the whole or any part thereof, or a written agreement between two or more persons to submit to arbitration any claim, dispute or controversy existing between them at the time of the agreement, shall be valid, irrevocable and enforceable.

3. Law to be Applied.

a. In any contract, agreement or instrument described in Section 6(B) of this Ordinance, the parties may agree upon the jurisdiction whose substantive

law shall govern the interpretation and enforcement of the contract, agreement, instrument or claim, dispute or controversy. Such choice of law shall be valid and enforceable, and not subject to revocation by one party without the consent of the other party or parties thereto, provided that the subject matter of the contract, agreement, instrument or claim, dispute or controversy, or at least one of the parties thereto, shall have some contact with the jurisdiction so selected.

b. In any proceeding under this Ordinance, whenever the contract, agreement or other instrument sets forth a choice of law provision, the Tribal Court, if and after it is established, shall apply the procedural rules of the Tribal Court and the substantive law of the jurisdiction selected in such choice of law provision; provided that no procedural rule of the Tribal Court shall bar, delay or impair any action, proceeding or remedy where such action, proceeding or remedy would not be barred, delayed or impaired by the procedural rules of the courts of the jurisdiction whose substantive law applies.

c. In any proceeding under this Ordinance, whenever the contract, agreement or other instrument does not set forth a choice of law provision, the Tribal Court, if and after it is established, shall first apply the substantive law of the Tribe, including any applicable choice of law principles, and then the substantive law of the State of California, including any applicable choice of law principles, provided that such law does not conflict with this Ordinance or other applicable tribal law.

d. In the event that a Tribal Court is not established, BLHA may expressly consent to jurisdiction of the Superior Court of California, as appropriate.

4. Stay of Proceedings and Order to Proceed with Arbitration.

a. If any action for legal or equitable relief or other proceeding is brought in Tribal Court, if and after it is established, by any party to any contract, agreement or instrument described in Section 6 of this Ordinance, the Tribal Court Judge who is presiding over the pending action or proceeding shall not review the merits of the pending action or proceeding, but shall stay the action or proceeding until an arbitration has been had in compliance with the agreement.

b. A party to any contract, agreement or instrument described in Section 6(B) of this Ordinance claiming the neglect or refusal of another party thereto to proceed with an arbitration thereunder may make application to the Tribal Court, if and after it is established, for an order directing the parties to proceed with the arbitration in compliance with their agreement. In such event, the Tribal Court shall order the parties to arbitration in accordance with the provisions of the contract, agreement or instrument and the question of whether an obligation to arbitrate the dispute at issue exists shall be decided by the arbitrator(s).

c. In the event that a Tribal Court is not established, BLHA may expressly consent to jurisdiction of the Superior Court of California, as appropriate.

5. Time Within Which Award Shall be Rendered.

a. If the time within which an award is rendered has not been fixed in the arbitration agreement, the arbitrator(s) shall render the award within thirty days from the date the arbitration has been completed. The parties may expressly agree to extend the time in which the award may be made by an extension or ratification thereof in writing.

- b. An arbitration award shall be in writing and signed by the arbitrator(s). The arbitrator(s) shall provide written notice of the award to each party by certified or registered mail, return receipt requested.
6. Application for Order Confirming Award; Record to be Filed with Clerk of Court; Effect and Enforcement of Judgment.
- a. At any time within one year after an arbitration award has been rendered and the parties thereto notified thereof, any party to the arbitration may make application to the Tribal Court, if and after it is established, for an order confirming the award.
- b. Any party applying for an order confirming an arbitration award shall, at the time the order is filed with the Clerk of the Tribal Court for entry of judgment thereon, file the following papers with the Clerk: (1) the agreement to arbitrate; (2) the selection or appointment, if any, of the arbitrator(s); (3) any written agreement requiring the reference of any question as provided in Section 5; (4) each written extension of the time, if any, within which to make the award; (5) the award; (6) each notice and other paper used upon an application to confirm; and (7) a copy of each order of the Tribal Court upon such an application.
- c. An arbitration award shall not be subject to review or modification by the Tribal Court, but shall be confirmed strictly as provided by the arbitrator(s). The judgment confirming an award shall be docketed as if it were rendered in a civil action. The judgment so entered shall have the same force and effect in all respects as, and be subject to all the provisions of law relating to, a judgment in a civil action, and it may be enforced as if it has been rendered in a civil action in the Tribal Court. When the award requires the performance of any other act than the payment of money, the Tribal Court may direct the enforcement thereon in the manner provided by law.
- d. In the event that a Tribal Court is not established, BLHA may expressly consent to jurisdiction of the Superior Court of California, as appropriate.
7. Arbitration Award Not Appealable. No further appeal may be taken from an order issued by the Tribal Court, if and after it is established, pursuant to this Ordinance enforcing an agreement to arbitrate or an award issued by an arbitrator.
8. Jurisdiction of the Tribal Court in Actions to which the Tribe is a Party; Qualification of Judges.
- a. The Tribal Court, if and after it is established, shall have exclusive Tribal Court jurisdiction over any action to enforce an agreement to arbitrate, to compel arbitration pursuant to such an agreement to arbitrate and to enforce an award made by an arbitrator pursuant to such agreement to arbitrate, contained in any contract, agreement or other instrument described in Section 6(B) of this Ordinance to which BLHA is a party; provided that the BLHA has explicitly waived the defense of sovereign immunity in the contract, agreement or other instrument; and provided further that the said contract, agreement, or other instrument does not expressly prohibit the Tribal Court from exercising jurisdiction thereunder.
- b. The jurisdiction of the Tribal Court, if and after it is established, under this Ordinance shall be concurrent with the jurisdiction of any state or federal court to the jurisdiction of which the Council shall have explicitly consented in such contract, agreement or other instrument. Any consent to the jurisdiction of a state or federal court contained in a contract, agreement or other instrument

described in Section 6(B) of this Ordinance to which BLHA is a party shall be valid and enforceable in accordance with its terms.

c. In addition to the general qualifications for Tribal Court Judges, a Tribal Court Judge that may be assigned to preside over an action brought under this Ordinance to enforce an agreement to arbitrate, to compel arbitration pursuant to such an agreement to arbitrate or to enforce an arbitration award in connection with a contract described in paragraph a of this Section 6(B)(8) shall also have had substantial experience as a federal district court judge or magistrate or shall have been a judge in a federal court of appeals, the California superior or appellate courts, or a tribal court or court of appeals. The Tribal Court, if and after it is established and the Council shall at all times retain at least one Tribal Court Judge who meets these qualifications.

7. No Waiver of Tribe's Sovereign Immunity

- A. Nothing herein shall be construed as waiving or abrogating the sovereign immunity of the Tribe, its officials, employees, or agents from unconsented suit in any federal, state or tribal court.
- B. Notwithstanding any other provision contained in this Ordinance, BLHA may not dispose of, mortgage, pledge, or otherwise encumber real or personal property of the Tribe.

8. Definitions

- A. "BLHA" means Blue Lake Housing Authority, a governmental arm of the Tribe.
- B. "Tribe" means the Blue Lake Rancheria, California, a federally recognized Indian tribe.
- C. "Ordinance" means this Blue Lake Housing Authority Ordinance.
- D. "Tribal Court" means the Blue Lake Rancheria Tribal Court, if any.
- E. "Tribal Business" Council means the governing body of the Tribe pursuant to the Tribe's Constitution.

9. Savings Clause.

In event that any provision of this Ordinance shall be found or declared to be invalid, the remaining provisions of this Ordinance shall be unaffected thereby, and shall remain in full force and effect.


CERTIFICATION: As the Chairperson of the Business Council for the Blue Lake Rancheria, I hereby certify that the Business Council adopted this resolution by a vote of 5 for, with 0 against, with 0 abstaining, with 0 absent on this 2nd of April, 2004.



Claudia Brundin, Chairperson



Date of Approval

ATTEST:


Melanie Shelanskey, Tribal Secretary



Date of Approval