January 26, 2009

Via Facsimile and U.S. Mail

Paul T. Martinez, Governor
Taos Pueblo
P.O. Box 1846
Taos, New Mexico 87571
Fax: (505)758-4604

RE: Taos Pueblo Second Amended and Restated Gaming Ordinance

Dear Governor Martinez:

This letter responds to your request to the National Indian Gaming Commission (NIGC) to review and approve the Taos Pueblo Second Amended and Restated Gaming Ordinance (Ordinance). The Ordinance was adopted by the Tribal Council by Resolution TPTC-2008-14 on October 29, 2008, and submitted to the NIGC on November 3, 2008.

This letter constitutes approval of the Ordinance under the Indian Gaming Regulatory Act (IGRA). It is important to note, however, that approval is granted for gaming only on Indian lands, as defined in the IGRA, over which the Pueblo has jurisdiction.

Thank you for submitting the Ordinance for my review and approval. The NIGC staff and I look forward to working with you and the Pueblo on future gaming issues. If you have any questions or require assistance, please do not hesitate to contact Frances Fragua, Legal Staff Assistant, or Esther Dittler, Staff Attorney, at 202-632-7003.

Sincerely yours,

Philip N. Hogen
Chairman

Taos Pueblo Gaming Commission

P.O. Box 2159
El Prado, New Mexico 87529
Phone - (575) 737-9776
Fax - (575) 737-9204
E-mail - tpgc@newmex.com

NOV - 3 2008

October 30, 2008

Chairman Phil Hogan
National Indian Gaming Commission
1441 L Street NW
Suite 9100
Washington, D. C. 20005

RE: Taos Pueblo Second Amended & Restated Gaming Ordinance

Dear Sir:

The Taos Pueblo Gaming Commission hereby respectfully submits our Taos Pueblo Second Amended and Restated Gaming Ordinance to your office for review and approval.

To summarize the amended portions, we basically updated this important document to meet the 2007 Gaming Compact between the State of New Mexico and Taos Pueblo and to include the new National Indian Gaming Commission requirements. Please see attached break down.

Should you have any questions, please contact me at (575) 737-9776. We thank you in advance for taking the time to review this document.

Sincerely,

Yvonne C. Trujillo

Yvonne C. Trujillo
Executive Director

Xc: Taos Pueblo Governor's Office
Taos Pueblo Warchief's Office
Ken Billingsley, NIGC Region III Director
Commissioners
Files

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NATIONAL INDIAN
GAMING COMMISSION

Governor
P.O. Box 1846
Taos, NM 87571
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Fax: 505/758-4604

TAOS PUEBLO
Government Offices

War Chief
P.O. Box 2596
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NOV - 3 2008

TAOS PUEBLO TRIBAL COUNCIL RESOLUTION

ADOPTION OF SECOND AMENDED & RESTATED TAOS PUEBLO GAMING ORDINANCE
TPTC-2008 - 14

WHEREAS, Taos Pueblo, formally recognized as the Pueblo of Taos, New Mexico (hereafter "Pueblo"), is a federally recognized Indian tribe whose traditional law and inherent sovereignty empowers its Tribal Council ("Tribal Council") to enact ordinances; and

WHEREAS, on June 08, 1994, the Pueblo adopted the Taos Pueblo Class II and Class III Gaming Ordinance, which was approved by the National Indian Gaming Commission ("NIGC") on July 14, 1994; and

WHEREAS, on May 26, 1995, the Pueblo amended and consolidated its existing gaming ordinance into an ordinance known at the Taos Pueblo Amended Gaming Ordinance ("Gaming Ordinance"), that complied with applicable federal law and which was approved by the NIGC on July 10, 1995; and

WHEREAS, the Pueblo's Gaming Ordinance, as amended, now requires further amendment and restatement to clarify and ensure that it fully complies with applicable federal law and the Tribal-State Compact Between the Pueblo of Taos and the State of New Mexico, executed on April 24, 2007 Secretary of the Interior effective July 05, 2007;

NOW THEREFORE BE IT RESOLVED THAT the Tribal Council hereby further amends and restates the Gaming Ordinance and enacts in its entirety the attached Second Amended and Restated Gaming Ordinance to govern, regulate, and control gaming activities on the Pueblo of Taos Indian Reservation; and

BE IT FURTHER RESOLVED THAT the Tribal Council hereby directs that, on behalf of the Pueblo, the Taos Pueblo Gaming Commision shall submit or cause to be submitted within fifteen (15) days after adoption, this Resolution, along with the Second Amended and Restated Gaming Ordinance, incorporating the amendments adopted herein, to the NIGC for approval as required by IGRA, 25 U.S.C. §§2710 (b)(1)(B) and 2710 (d)(1)(A)(iii), and the federal regulations promulgated thereunder; and

BE IT FINALLY RESOLVED THAT, pursuant to Section 4(B) of the Compact, the Taos Pueblo Gaming Commission is directed to submit or cause to be submitted within

thirty (30) days after its enactment (or approval) the attached Second Amended and Restated Gaming Ordinance to the State Gaming Representative.

CERTIFICATION

The forgoing resolution was adopted by the Taos Pueblo Tribal Council at a duly called meeting on the 29TH day of OCTOBER, 2008, at which time a quorum was present, by a vote of 20 in favor, Ø opposed, and 5 abstaining.

Paul T. Martinez, Governor

Luis Romero, WarChief

Carl N. Concha, Cacique

for David Gomez, Sr., Sr. Councilman

ATTEST:

Frank Marcus Sr., Tribal Council Secretary

Delbert Chisholm, Governor's Secretary

Michael A. Martinez, WarChief Secretary

NOV - 3 2008

TAOS PUEBLO
SECOND AMENDED AND RESTATED GAMING ORDINANCE

Taos Pueblo Class II and Class III Gaming Ordinance,
Adopted June 8, 1994, and Approved by NIGC July 14, 1994

Taos Pueblo Amended Gaming Ordinance,
Adopted May 26, 1995, and Approved by NIGC July 10, 1995

Taos Pueblo Second Amended and Restated Gaming Ordinance,
Adopted _____, 2008, and Approved by NIGC _____, 2008

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TAOS PUEBLO
SECOND AMENDED AND RESTATED GAMING ORDINANCE

Section 1. **Name.** The title of this Gaming Ordinance is the Taos Pueblo Second Amended and Restated Gaming Ordinance.

Section 2. **Definitions.** Unless the context otherwise requires, the following words shall have the following meanings:

A. **"Bingo Game"** means the Game of Chance commonly known as "bingo" (whether or not electronic, computer, or other technologic aids are used in connection therewith) which is played for prizes, including monetary prizes, with cards bearing numbers or other designations in which the holder of the card covers such numbers or designations when objects, similarly numbered or designated, are drawn or electronically determined, and in which the game is won by the first person covering a previously designated arrangement of numbers or designations on such cards, including (if played in the same location) pull-tabs, lotto, punch boards, tip jars, instant bingo, and other games similar to bingo;

B. "**Chief Financial Officer**" means that person designated as the chief financial officer of the Pueblo;

C. **"Class II Gaming"** means those games described in 25 U.S.C. § 2703(7)(A) and 25 C.F.R. § 502.3, including but not limited to Bingo Games;

D. **"Class III Gaming**" means all forms of gaming as defined in 25 U.S.C. § 2703(8) and 25 C.F.R. § 502.4;

E. **"Commission"** means the Taos Pueblo Gaming Commission established by this Gaming Ordinance, which also is the agency of the Pueblo to be identified to the State Gaming Representative as the Tribal Gaming Regulatory Agency responsible for the regulatory actions of the Pueblo under the Compact;

F. "**Compact**" means the Tribal-State Compact Between the Pueblo of Taos and the State of New Mexico, executed on April 24, 2007 and approved by the Secretary of the Interior effective July 5, 2007, as it now exists or may hereafter be amended, and also means any subsequent

Class III Gaming compact that hereafter may be executed between the Pueblo and the State of New Mexico and approved under IGRA;

G. **"Facility License"** means a license duly issued by the Commission for each place, facility, or location where Class II or Class III Gaming is allowed on the Reservation;

H. **"Games of Chance"** includes Class II and Class III Gaming, but does not include social games played solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as a part of, or in connection with, tribal ceremonies or celebrations;

I. **"Gaming Employee"** means any natural person employed by a Gaming Enterprise or Management Contractor, who is connected directly with the conduct of Class II or Class III Gaming, or handling the proceeds thereof or handling any Gaming Machine; *provided* that "Gaming Employee" does not include:

1. Bartenders, cocktail servers, or other persons engaged solely in preparing or serving food or beverages;

2. Secretarial or janitorial personnel;

3. Stage, sound, and light technicians; and

4. Other non-gaming personnel;

J. **"Gaming Enterprise"** means Taos Mountain Casino or such other business entity established, owned, and operated by the Pueblo, acting through the Tribal Council, to conduct and operate Games of Chance on the Reservation;

K. **"Gaming Facility"** means the place, building, structure, or location on the Reservation where Class II and/or Class III Gaming is conducted under this Gaming Ordinance; *provided* that, pursuant to the Compact, a Class III Gaming Facility means all buildings or structures in which Class III Gaming is conducted on the Reservation; *provided further*, that pursuant to the Compact, in no event may a Class III Gaming Facility consist of more than two (2) separate physical buildings or structures on the Reservation;

L. "**Gaming Machine**" means a mechanical, electromechanical, or electronic contrivance or machine that, upon insertion of a coin, token, or similar object, or upon payment of any consideration in any manner, is available to play or operate a Game of Chance in which the outcome depends to a material degree on an element of chance, notwithstanding that some skill may

be a factor, whether the payoff is made automatically from the Gaming Machine or in any other manner; but Gaming Machine does not include a Table Game or any device used in Table Games; *provided, however*, that, as technology changes in the area of gaming, new Gaming Machines may be characterized for purposes of revenue sharing and accommodated in accordance with the general distinctions between Gaming Machines and Table Games set forth in Section 1 of the Appendix to the Compact;

M. **"Gaming Ordinance"** means this Taos Pueblo Second Amended and Restated Gaming Ordinance, as it now exists or may hereafter be amended from time to time;

N. **"Gaming Services"** means any goods or services, except legal and accounting services, provided or sold to the Pueblo or the Gaming Enterprise in connection with the operation of Class II or Class III Gaming in any Gaming Facility, including but not limited to equipment, transportation, food, linens, janitorial supplies, maintenance, or security services, in an amount in excess of $10,000 in any one month or having a value of $25,000 or more annually *provided* that no contract may be broken up into parts for the purpose of avoiding this definition or any requirement of licensing, certification, or audit hereunder;

O. **"Governor"** means the Governor of the Pueblo;

P. **"Gross receipts"** means receipts from the sale of shares, tickets, or rights in any manner connected with participation or the right to participate in any Game of Chance, including but not limited to, any admission fee or charge, the sale of merchandise, refreshments, souvenirs, services, equipment, or supplies, interest earned on deposits, and all other miscellaneous receipts;

Q. **"IGRA"** means the Indian Gaming Regulatory Act, Pub. L. No. 100-447, 25 U.S.C. §§ 2701-2721, as it now exists or hereafter may be amended, including for purposes of this Gaming Ordinance any regulations promulgated thereunder;

R. **"Joint Powers Agreement"** means an agreement concerning Games of Chance on the Reservation entered into under the Joint Powers Agreement Act, §§ 11-1-1 through 11-1-7 NMSA 1978 (2001).

S. **"Key Employee"** means:

1. A person who performs one or more of the following functions:

a. Bingo caller;

b. Counting room supervisor;
c. Chief of security;
d. Custodian of gaming supplies or cash;
e. Floor manager;
f. Pit boss;
g. Any Table Game Dealer;
h. Croupier;
i. Approver of credit; or
j. Custodian of gambling devices including persons with access to cash and accounting records within such devices;

2. If not otherwise included, any other person whose total cash compensation is in excess of $50,000 per year; or

3. If not otherwise included, the four (4) most highly compensated persons in the gaming operation;

T. **"License"** means a license duly issued by the Commission to any Person required to be licensed in accordance with the licensing procedures set forth in this Gaming Ordinance;

U. **"Licensee"** means any Person who has been duly licensed by the Commission;

V. **"Management Contract"** means any contract, subcontract, or collateral agreement between the Pueblo and a Management Contractor or between a Management Contractor and a subcontractor if such contract or agreement provides for the management of all or part of a gaming operation, as described in IGRA, 25 U.S.C. §§ 2710 (D) (9) and 2711, and, as defined in 25 C.F.R. Sec. 502.15;

W. **"Management Contractor"** means any Person that has entered into a Management Contract with the Pueblo or the Gaming Enterprise;

X. "**Manager**" means the manager of the Gaming Enterprise hired directly as an employee or pursuant to a Management Contract;

Y. **"Member of the Pueblo"** means an enrolled member of the Pueblo;

Z. **"National Indian Gaming Commission"** means the National Indian Gaming Commission established by IGRA;

AA. **"Net revenues"** means the Gross Receipts of a gaming operation at a Gaming Facility, less amounts paid for prizes and total gaming-related operating expenses, excluding management fees;

BB. "**Net Win**" means the total amount wagered in Class III Gaming at a Gaming Facility on all Gaming Machines, less:

1. The amount paid out in prizes to winning patrons, including the cost to the Pueblo of noncash prizes, won on Gaming Machines; *provided* that the phrase "won on Gaming Machines" means the patron has made a monetary wager and, as a result of that wager, has won a prize of any value; *provided* that any rewards, awards, or prizes, in any form, received by or awarded to a patron under any form of a players' club program (however denominated) or as a result of patron-related activities are not deductible; and *provided further* that the value of any complimentaries given to patrons, in any form, are not deductible;

2. The amount paid to the State by the Pueblo under the provisions of Section 4(E)(6) of the Compact; and

3. The sum of two hundred seventy-five thousand dollars ($275,000) per year as an amount representing tribal regulatory costs, which amount shall increase by three percent (3%) each year beginning on the first day of January occurring after the Compact has been in effect for at least twelve months;

CC. **"Person"** means a natural individual, firm, trust, association, corporation, partnership, limited liability company, political subdivision, government agency, municipality, joint venture, or other legal entity;

DD. **"Person Having a Direct or Indirect Financial Interest in a Management Contract"** means any person having a direct financial interest in a Management Contract as defined in 25 C.F.R. § 502.17;

EE. **"Primary Management Official"** means:

1. The person having management responsibility for a management contract;

2. Any person who has authority:

   a. To hire and fire employees; or

   b. To establish working policy for the gaming operation; or:

3. The Chief Financial Officer or other person who has financial management responsibility for the Gaming Enterprise;

FF. **"Premises"** means the Gaming Facility, together with its surrounding land and outbuildings;

GG. **"Pueblo"** means the Taos Pueblo, formally known as the Pueblo of Taos, New Mexico;

HH. "**Pueblo's Law Enforcement Agency**" means any agency or department duly authorized to enforce the Pueblo's laws within the Reservation;

II. **"Reservation"** means all lands within the exterior boundaries of the Taos Indian Reservation, including but not limited to any confirmed grants from prior sovereigns, any lands title to which is held in trust by the United States for the benefit of the Pueblo or held by the Pueblo or a member thereof, and any lands held by the Pueblo subject to a restriction by the United States against alienation, and over all which lands the Pueblo exercises governmental power;

JJ. **"Table Game"** means a Class III Game of Chance, in which the outcome depends to a material degree on an element of chance, notwithstanding that some skill may be a factor, that is played using a wheel, cards, or dice, and that requires an attendant to initiate the game or to collect wagers or pay prizes.

KK. **"State"** means the State of New Mexico;

LL. **"State Gaming Representative"** means the person designated by the State to be responsible for actions of the State set out in the Compact;

MM. **"Tribal Council**" means the Tribal Council of the Pueblo, which is the governing body of the Pueblo;

NN. **"Tribal Court**" means the Pueblo's Tribal Court; and

OO. **"War Chief"** means the War Chief of the Pueblo.

Section 3. **Purposes.** The purposes of this Gaming Ordinance are to make lawful and to regulate the operation, conduct, and playing of Games of Chance on the Reservation so that such games are conducted in a fair and honest manner that affords patrons a fair chance to win in accordance with the nature of the games; to protect the integrity of such gaming; to prevent improper or unlawful conduct with respect to such gaming; and to generate revenue by such games to strengthen and fund

tribal governmental operations and programs that promote the health, education, and welfare of the Pueblo and its members, tribal economic sufficiency, and tribal land acquisition.

Section 4. **Interpretation.** This Gaming Ordinance is an exercise of sovereign power of the Pueblo and shall be liberally construed for the accomplishment of its purposes and to comply with IGRA, its regulations, the Compact, and other applicable federal law.

Section 5. **Gaming Policy.**

A. **Games of Chance Prohibited.** No person may operate or conduct any Games of Chance within the boundaries of the Reservation except in accordance with this Gaming Ordinance.

B. **Ownership of Gaming Enterprise.** The Pueblo, acting through the Tribal Council, shall have the sole proprietary interest in and responsibility for any Gaming Facility and any Games of Chance operated or conducted by the Gaming Enterprise on the Reservation.

C. **Protection of Environment; Public Health, Employee and Patron Safety, and Property.** The construction and maintenance of any Gaming Facility, and the operation and conduct of any and all Games of Chance, shall be done in a manner that adequately protects the environment, the public health and safety, the safety and property of patrons at the Gaming Facility, the safety of employees of the Gaming Enterprise, and the property and assets of the Gaming Enterprise. Towards that end, the Pueblo shall identify and enforce laws, resolutions, codes, policies, standards, or procedures applicable to each Gaming Facility covering at a minimum:

1. Emergency preparedness, including but not limited fire suppression, law enforcement, and security;
2. Food and potable water;
3. Construction and maintenance;
4. Hazardous materials;
5. Sanitation (both solid waste and wastewater); and
6. Other environmental or public health and safety standards adopted by the Pueblo in light of the climate, geography, and other local conditions applicable to its Gaming Facilities. Upon request by the National Indian Gaming Commission Chairman, the Pueblo shall

submit environmental and public health and safety documentation to the National Indian Gaming Commission.

D. **Government-to-Government Relationship Between the Pueblo and State.** In accordance with Section 4(G) of the Compact and in furtherance of the government-to-government relationship between the Pueblo and the State, at least annually, representatives of the Pueblo shall meet with one more appointed representatives of the Office of the Governor of the State, one or more members of the House of Representatives appointed by the Speaker of the New Mexico House of Representatives, and one or more members of the Senate appointed by the President *Pro Tempore* of the New Mexico Senate, to discuss matters of mutual interest arising under the Compact and concerning Indian gaming in the State.

Section 6. Taos Pueblo Gaming Commission.

A. **Establishment.** The Pueblo hereby establishes the Commission for the purposes of regulating all Games of Chance within the Reservation and enforcing this Gaming Ordinance.

B. **Powers and Duties.** The Commission shall have the following powers and duties:

1. To recommend to the Tribal Council whether to permit the operation or conduct of any Games of Chance within the Reservation, and to specify the conditions therefore, *provided* that the operation or conduct of any Games of Chance must be approved by the Commission;

2. To adopt and enforce strictly licensing procedures for all employees of Class II and Class III Gaming operations pursuant to 25 C.F.R. § 558.1(b), including but not limited to the Manager, Primary Management Officials, Key Employees, and all others subject to the licensing requirements of this Gaming Ordinance;

3. Subject to ultimate appeal to the Tribal Court, to grant, suspend, reinstate, or revoke any and all Licenses issued or required to be issued in accordance with this Gaming Ordinance;

4. To regulate and monitor the conduct of Class II and Class III Gaming activities within the exterior boundaries of the Reservation to ensure compliance with the requirements of the Gaming Ordinance and any regulations or standards promulgated hereunder, the

Compact, IGRA, and any other applicable federal law; *provided* that the Commission shall refrain from becoming involved in operational or managerial matters involving a Gaming Facility or Gaming Enterprise except to the extent that the Commission identifies compliance violations;

5. To inspect and examine all Gaming Facilities and Premises within the Reservation at which Games of Chance are played to insure that all Gaming Facilities are constructed, maintained, and operated in a manner that adequately protects the environment and the public health and safety as required by Section 5(C) above; *provided* that the Commission may inspect and examine all such Gaming Facilities during all hours of Class II and Class III Gaming activity and shall have immediate, unrestricted access to any and all areas of a Gaming Facility for ensuring compliance with this Gaming Ordinance and any regulations promulgated hereunder, the Compact, IGRA and its regulations, and any other applicable federal law;

6. To conduct or cause to be conducted background investigations of all Persons required to licensed by the Commission pursuant to the licensing procedures set forth in this Gaming Ordinance and any regulations promulgated hereunder;

7. To adopt by regulation, and to enforce compliance with, minimum internal control standards, as required under this Gaming Ordinance and any regulations promulgated hereunder, or under IGRA and its implementing regulations, the Compact, or equivalent procedures prescribed by the Secretary of the Interior;

8. To issue a separate Facility License to each Gaming Facility on the Reservation at which the Tribal Council permits Class II or Class III Gaming to occur.

9. Consistent with its regulatory duties hereunder, to inspect, examine, photocopy, and audit all papers, books, and records respecting Gross Receipts of gaming activities at a Gaming Facility that are required to be kept by the Manager and/or Chief Financial Officer of the Gaming Facility by this Gaming Ordinance and any regulations promulgated hereunder, the Compact, IGRA and its regulations, or other applicable federal law; *provided* that such documents must concern the financial activities and assets of the Gaming Enterprise in connection with its operation of Games of Chance;

10. Subject to the approval of the Tribal Council, to enter into contracts with tribal, federal, state, and private entities for activities necessary to the discharge of the duties of the

Commission and to contract with the National Indian Gaming Commission for the enforcement of federal regulations governing gaming on Indian reservations, *provided* that the Commission shall use the services of the Tribal Attorney unless, upon the request of the Commission, the Tribal Council approves a contract with another attorney or law firm;

11. At the request of and subject to final approval by the Tribal Council, to negotiate tribal-state compacts on behalf of the Pueblo;

12. Subject to final approval by the Tribal Council, to negotiate and enter into, on behalf of the Pueblo, Joint Powers Agreements related to Games of Chance on the Reservation.

13. To implement and administer a system, including the promulgation of regulations, for investigating, licensing, and monitoring management, employees, vendors and others connected with gaming activities and the verification of internal controls, as required under this Gaming Ordinance, IGRA and its regulations, the Compact, and any other applicable federal law;

14. Subject to the approval of the Tribal Council, to establish regulatory fees, including but not limited to fees for applications for Licenses, Facility Licenses, and fees for Licensees;

15. To hold hearings, take testimony, and receive such evidence as the Commission deems relevant in fulfilling its duties;

16. To require by written subpoena the attendance and testimony of witnesses and the production of all books, papers, and documents relating to any matter under consideration or investigation by the Commission, and to bring actions in the Tribal Court for the enforcement of such subpoena;

17. To administer oaths and affirmations to witnesses appearing before the Commission;

18. To keep minutes, records, and books in which shall be kept a true, faithful, and correct record of all proceedings before the Commission;

19. To hear appeals authorized by this Gaming Ordinance;

20. To approve Management Contracts in accordance with this Gaming Ordinance;

21. To recommend amendments to this Gaming Ordinance to the Tribal Council;

22. To submit an annual report to the Tribal Council, Governor, and War Chief on the activities of the Commission, including but not limited to its funding, income, and expenses;

23. Subject to the approval of the Tribal Council, to adopt a budget annually for the Commission and to adopt modifications of such budget as necessary;

24. To carry out the responsibilities and exercise the rights of the "Tribal Gaming Agency" under the Compact, to obtain any necessary approvals from the Governor or Tribal Council for all such activities, and to report to the Governor and Tribal Council on all such activities annually and upon request;

25. To certify annually to the State Gaming Representative that the Commission has met its obligations under the Compact;

26. To inspect and copy State records concerning all Class III Gaming conducted under this Gaming Ordinance;

27. Through an Executive Director, to hire and discharge employees as necessary to fulfill its duties under this Gaming Ordinance;

28. To record and investigate unusual and/or suspicious occurrences related to Class II and Class III Gaming at a Gaming Facility, to cause persons who may be involved in illegal acts to be detained for the purpose of notifying appropriate law enforcement authorities, and to conduct hearings as necessary on the same;

29. To bring suit in the Tribal Court seeking temporary and permanent orders closing a Game of Chance or Gaming Facility in accordance with this Gaming Ordinance;

30. To promulgate regulations for any Class II or Class III Gaming activity on the Reservation; *provided* that any regulations for Class III Gaming must be consistent with applicable law;

31. To take any other action as may be reasonable and appropriate to enforce this Gaming Ordinance and any regulations promulgated hereunder.

C. **Composition; Selection;Terms.** The Commission shall consist of not less than three (3) nor more than five (5) Commissioners appointed by the Tribal Council; *provided* that the Commission shall consist of three (3) Commissioners until such time as a new Gaming Facility is constructed or the Taos Mountain Casino expands or its operations otherwise requires a larger

Commission. Except as otherwise provided herein, each Commissioner shall serve a staggered four (4) year term and until he or she is reappointed, his or her successor is chosen and qualified, or until his or her death, resignation, or removal; *provided* that a Commissioner may not serve after the expiration of his or her term of office until a successor has been chosen and qualified if such Commissioner has been removed for cause under this Section. As needed to restore the effective stagger of the expiration of terms of office, the Tribal Council shall designate or appoint one (1) to two (2) Commissioners to serve a four-year term; one (1) to two (2) Commissioners to serve three-year terms; and two (2) Commissioners to serve two-year terms. Thereafter, as needed to ensure the effective stagger of the expiration of terms of office, the Tribal Council may from time to time adjust the terms of newly appointed Commissioners at the time of their appointment. A Commissioner may be reappointed to serve for one or more additional terms. No Commissioner may play any Games of Chance on the Reservation or win any prize or thing of value on the Reservation during his or her term as a Commissioner and for ninety (90) days thereafter. Failure to have five (5) appointed Commissioners at any time shall not render the Commission nor its acts invalid provide that the other requirements of this Section are met.

D. **Qualifications of Commissioners.**

1. Commissioners shall have the following qualifications:

a. At least one (1) Commissioner must be a Member of the Pueblo who has sufficient education and experience to qualify him or her for learning business practices and procedures and making sound business and management judgments;

b. At least one (1) Commissioner shall have substantial experience in the gaming industry;

c. At least one (1) Commissioner shall be a successful business person or possess a degree in business management, finance, accounting, banking, or be an attorney; and

d. Commissioners shall meet such other qualifications as may be established from time to time by Tribal Council resolution.

2. No person shall be eligible or qualified to serve or continue to serve as a Commissioner or as an appointee or employee of the Commission, who:

a. Has been convicted of a felony or any other offense related to gaming;

b. Is a Director or Officer of the Gaming Enterprise;

c. Is an employee of the Gaming Enterprise;

d. Is, or has any financial interest in or responsibility for, a Person who supplies Gaming Machines or Gaming Services to the Gaming Enterprise;

e. Is, or has any financial interest in or management responsibility for, any gaming-related or Management Contract submitted to the Tribal Council, Gaming Enterprise, or Commission for review or approval;

f. Is then serving as an elected or appointed official within the Pueblo's tribal government or is a current member of the Tribal Council; or

g. Has been denied a gaming license or has had such gaming license revoked.

E. **Removal of Commissioners.** A Commissioner may be involuntarily removed from office by the Tribal Council before the expiration of his or her term in accordance with the following procedures.

1. Removal of a Commissioner may be initiated by members of the Tribal Council, who shall provide the Secretary of the Tribal Council with a written request specifying the cause for removal, signed by not less than one-half (½) of the members of the Tribal Council.

2. The cause for removal shall be limited to:

a. Conviction in any court of a felony or crime involving moral turpitude;

b. Failure to meet or maintain the qualifications for Commissioners set forth in this Section;

c. Gross neglect of duty; or

d. Malfeasance in office or conduct which amounts to gross and intentional disregard of the laws and procedures applicable to the affairs of the Commission.

3. Not less than twenty (20) nor more than thirty (30) days following receipt of the written request for removal, the Tribal Council shall convene a special meeting for the sole purpose of voting on the removal of the Commissioner. Before any vote is taken, the Commissioner shall be given a full opportunity, either in person or through a representative of his or her choice, to answer or otherwise respond to any and all charges against him or her.

4. To remove a Commissioner from office, the affirmative vote of no less than two-thirds (2/3) of the members of the Tribal Council is required.

F. **Resignations and Vacancies**. Any Commissioner may resign at any time by giving written notice of such to the Secretary of the Commission and to the Secretary of the Tribal Council. The resignation shall become effective at the time specified in such notice, and the acceptance of such resignation shall not be necessary to make it effective. Any vacancy on the Commission, howsoever caused, shall be filled for the unexpired portion of the vacated Commissioner's term by a qualified person appointed by the Governor and War Chief with the written consent of the Tribal Council. If the Governor and War Chief cannot agree on a joint appointment to fill a Commission vacancy, the Governor and War Chief each shall submit a nominee to the Tribal Council, which shall appoint one of the nominees to fill the Commission vacancy.

G. **Selection of Officers**. The principal officers of the Commission shall consist of a Chairman, Vice Chairman, and Secretary. The Vice Chairman shall serve as Chairman during meetings of the Commission at which the Chairman is absent. A person may hold more than one office; *provided, however*, that no person may serve as both Chairman and Secretary. The Commission shall select the officers annually from its own membership by majority vote, and each officer shall hold office for one year and until he or she is reappointed, his or her successor is chosen and qualified, or until his or her death, resignation, or removal; *provided* that an officer may <u>not</u> serve after the expiration of his or her term of office until a successor has been chosen and qualified if his or her term as a Commissioner has been completed or otherwise terminated early due to resignation or removal.

H. **Motions and Resolutions; Meetings; Quorum**. The powers of the Commission are vested in the Commissioners. All official actions of the Commission shall be taken by motion or resolution approved by the affirmative vote of a majority of the Commission at a meeting at which a quorum is present. A majority of the Commissioners then in office shall comprise a quorum. The Commission shall meet at the call of the Chairman or of a majority of its members; *provided* that the Commission shall meet at least monthly.

I. **Notice of Meetings.**

1. Written notice of meetings stating the time and shall be given to each Commissioner not less than five (5) days before a meeting, excluding the day of the meeting. Notice may be given by mailing the notice to the Commissioner, or by personally giving the notice to the Commissioner. If mailed, a notice is deemed delivered when deposited postage prepaid in the United States mail addressed to the Commissioner at the address shown on the Commission records.

2. Notice may be waived in writing signed by all Commissioners entitled to such notices, whether before or after the time stated therein, and such waiver shall be deemed equivalent to the giving of such notice. At any meeting of the Commission, the attendance of any Commissioner at such a meeting constitutes a waiver of notice of the meeting, except where a Commissioner attends the meeting for the express purpose of objecting because the meeting is not lawfully called or convened.

J. **Cooperation with Law Enforcement Agencies**. The Commission shall cooperate with the Pueblo's Law Enforcement Agency and may cooperate with other law enforcement agencies, including but not limited to law enforcement officials of the State, the Bureau of Indian Affairs, and the Federal Bureau of Investigation, when such cooperation is in the best interests of the Pueblo and will help to insure that fair, honest, and efficient Games of Chance are operated and conducted within the Reservation.

K. **Compensation.** In accordance with the rates established in the Commission's budget that has been approved by the Tribal Council, Commissioners shall be compensated for serving on the Commission and reimbursed for all reasonable expenses incurred in connection with the performance of their Commission duties.

L. **Relationship to Tribal Government**. The Commission is an independent agency of the Pueblo's tribal government and, as such, shall adopt its own personnel and administrative policies. The Commission is not subject to the general and administrative policies of the Pueblo.

M. **Review of Decisions of the Commission.** Decisions of the Commission regarding licensing, suitability, compliance with applicable law, and other regulatory matters shall be within the exclusive province of the Commission; *provided* that any person adversely affected by a ruling of the Commission may petition the Tribal Court for review of such a decision in accordance with this Gaming Ordinance.

Section 7. Licenses for Operating and Conducting Games of Chance and Persons Providing Gaming Machines, Equipment and Supplies.

A. **Licenses Required.**

1. Each Gaming Facility and Gaming Enterprise; the Gaming Facility operator and its principals, Primary Management Officials, and Key Employees; the Management Contractor and its principals, Primary Management Officials, Key Employees, and any Person Having a Direct or Indirect Financial Interest in a Management Contract; any Person that supplies or proposes to supply any Gaming Machine to the Pueblo, Gaming Enterprise, or the Management Contractor, if any; any Person that may become an investor, contractor, or lending institution involving a new or renovated Gaming Facility; any Person that provides or proposes to provide any Class III or Class II Gaming equipment or supplies with a value of $25,000 or more annually to the Pueblo, Gaming Enterprise, or the Management Contractor, if any; and each Person providing Gaming Services within or without a Gaming Facility shall apply for and receive a License from the Commission pursuant to this Section in order to transact gaming-related business with the Gaming Enterprise or otherwise participating in any way in the operation or conduct of any Class II or Class III Gaming activities on the Reservation.

2. The Commission shall comply fully with the licensing procedures of § 5 of the Compact, IGRA, especially at 25 U.S.C. §§ 2710-2711, and the regulations promulgated thereunder at 25 C.F.R. Parts 550-559, as well as the requirements of this Gaming Ordinance and any regulations issued hereunder.

B. **License Application.** Each applicant for a License shall file with the Commission a written application in the form prescribed by the Commission, duly executed and verified, along with the applicant's fingerprint card and current photograph, if appropriate, and any fees required by the Commission.

1. The following notice shall be placed on the application form before that form is filled out by an applicant:

In compliance with the Privacy Act of 1974, the following information is provided:

Solicitation of the information on this form is authorized by 25 U.S.C. 2701 et seq.

The purpose of the requested information is to determine the eligibility of individuals to be employed in a gaming operation. The information will be used by members and staff of the Taos Pueblo Gaming Commission and of the National Indian Gaming Commission who have need for the information in performance of their official duties. The information may be disclosed to appropriate federal, tribal, state, local or foreign law enforcement and regulatory agencies when relevant to civil, criminal, or regulatory investigations or prosecutions or when, pursuant to a requirement by the Pueblo or another tribe or the National Indian Gaming Commission, the information is relevant to the hiring or firing of an employee, the issuance or revocation of a gaming License, or investigations of activities while associated with a tribe or a gaming operation. Failure to consent to the disclosures indicated in this notice will result in the Pueblo's being unable to hire you in a primary management official or key employee position. The disclosure of your Social Security Number is voluntary. However failure to supply a Social Security Number may result in errors in processing your application.

2. Existing Key Employees and Primary Management Officials or other existing persons required to be licensed shall be notified in writing that they shall either:

a. Complete a new application that contains a Privacy Act Notice: or

b. Sign a statement that contains the Privacy Act Notice and consent to the routine uses described in that Notice.

3. The following notice shall be placed on the application form before that form is filled out by an applicant:

A false statement on any part of your application may be grounds for not hiring you, or for firing you after you begin work. Also, you may be punished by fine or imprisonment. See 18 U.S. Code, Section 1001.

However, if the applicant is a Person that provides or proposes to provide any Class III or Class II Gaming equipment or supplies with a value of $25,000 or more annually to the Pueblo, Gaming Enterprise, or the Management Contractor, if any, the following notice shall be placed on the application form before that form is filled out by the applicant:

Inclusion of false or misleading information in the application may be grounds for denial or revocation of your vendor license.

4. The Commission shall notify in writing any Persons required to be licensed that they shall either:

a. Complete a new application form that contains a notice regarding false statements; or

b. Sign a statement that contains the notice regarding false statements.

5. The Commission shall request from each required to be licensed all of the following information:

a. Full name, other names used (oral or written), Social Security Number(s), birth date, place of birth, citizenship, gender, all languages (spoken or written);

b. Social Security Number(s), if applicable, provided that, as stated in the Privacy Act notice included on the application, such disclosure is voluntary, but an applicant's failure to supply a Social Security Number may result in errors in processing the application;

c. If the applicant is a partnership, corporation, or limited liability company: the federal tax identification number for the entity; the state or jurisdiction of incorporation, organization, or formation and if the applicant is in good standing in that state or jurisdiction; whether the applicant is qualified to do business in the State of New Mexico; any trade name or other names under which the applicant has done business; whether the applicant ever had a license revoked for any reason and the circumstances involved; a general description of the business; the names, addresses, and telephone numbers of three (3) business references with whom the applicant has regularly done business for the last five (5) years; the names and addresses of any licensing or regulatory agency with which the applicant has filed an application for a license or permit related to gaming and whether the license or permit was granted; a list of lawsuits to which the applicant has been a defendant, including the name and address of the court involved and the date and disposition, if any; a list of the applicant's funding sources and any liabilities of $50,000 or more or such other limit determined to be an appropriate limit by the Commission; and whether the applicant will be investing or loaning any money to the Gaming Enterprise and, if so, how much;

d. Currently and for the previous ten (10) years: business and employment positions held, ownership interests in those businesses, business and residence addresses, and driver's license numbers; *provided* that any applicant who is a principal, Primary Management Official, Key Employee, Management Contractor, manufacturer or supplier of Gaming Machines, and/or a person providing Gaming Services or any Class III or Class II Gaming equipment or supplies with a value of $25,000 or more annually to the Pueblo, Gaming Enterprise, or the Management Contractor, must provide such information currently, and from the age of eighteen (18);

e. Currently and for the previous ten (10) years: the names and current addresses of at least three (3) personal references, including one personal reference who was acquainted with the applicant during each period of residence listed under this Section;

f. Current business and residence telephone numbers;

g. A description of any existing and previous business relationships with Indian tribes, including ownership, financial, or management interests in those businesses, and a description of any potential or actual conflict of interests between such businesses and Indian tribes; *provided* that, in its discretion, the Commission may limit this list to an appropriate number if the applicant has had extensive business relationships with Indian tribes;

h. A full description of any existing and previous business relationships with the gaming industry, including, but not limited to, ownership interests in those businesses;

i. The name and address of any licensing or regulatory agency with which the person has filed an application for a License or permit related to gaming, whether or not such License or permit was granted;

j. For each felony for which there is an ongoing prosecution or a conviction, the charge, the name and address of the court involved, and the date and disposition, if any;

k. For each misdemeanor for which there is an ongoing prosecution or conviction (excluding minor traffic violations), the charge, the date of the charge, the name and address of the court involved, and the disposition, if any;

l. For each criminal charge (excluding minor traffic charges), whether or not there is a conviction, if such criminal charge is not otherwise listed pursuant to this Section,

the criminal charge, the date of the charge, the name and address of the court involved, and the disposition, if any;

m. The name and address of any licensing or regulatory agency with which the person has filed an application for an occupational License or permit, as an applicant, principal, Primary Management Official or Key Employee, and whether such License or permit was granted;

n. A current photograph;

o. Fingerprints taken by staff of the Commission;

p. The fee required by the Commission; and

q. Any other information which the Commission deems relevant.

C. **Background Investigations.**

1. Upon receipt of a completed application, the Commission shall conduct or cause to be conducted a background investigation to ensure that the applicant is qualified for licensing.

2. The background investigation shall be at least as stringent as is required by the Compact and 25 C.F.R. Part 556, and shall provide all available information necessary to make the eligibility determination required under 25 C.F.R. § 558.2.

3. More specifically, background checks of applicants will be performed pursuant to the following procedures:

a. The Human Resources Department shall conduct drug testing before advising the Commission that an applicant who is a natural person is ready to hire. After the Human Resources Department advises the Commission that the applicant has passed the required drug testing and is ready to hire, the Commission will provide applications to potential applicants.

b. Pursuant to a Memorandum of Understanding Regarding the Dissemination of Criminal History Record Information between the Pueblo and the New Mexico Gaming Control Board, the Commission shall collect fingerprints from all applicants and forward the fingerprint cards directly to the New Mexico Gaming Control Board. Upon receipt of the fingerprint cards, the New Mexico Gaming Control Board will submit the fingerprint cards to the

Federal Bureau of Investigation to obtain a criminal history record on each applicant. The New Mexico Gaming Control Board will then forward such information to the Commission.

c. The Commission shall investigate or cause to be investigated the information provided in the applications. Such investigation will include:

(1) contacting persons or entities identified in the application, and verifying by written or oral communication that the information contained in the application is accurate;

(2) interviewing a sufficient number of knowledgeable people, such a former employers, partners, business associates, and others referred to in the application, to provide a basis for the Commission to make a determination concerning whether the applicant meets applicable eligibility requirements;

(3) reviewing relevant financial records of the applicant for the three (3) years preceding the application;

(4) for applicants that are a partnership, corporation, or limited liability company, verifying the businesses incorporation and organizational status and qualification to do business in New Mexico; obtaining a business credit report, if available, and conducting a Better Business Bureau check on the business; conducting a check of the business' credit history; calling all references listed in the application, and investigating or causing to be investigated the principals of the business, including a criminal history check, credit report, and interviews with any personal references listed; *provided* that "principals of a business" include its officers, directors, management, owners partners, non-institutional stockholders that either own 10% or more of the stock or are the ten largest stockholders, and the on-site supervisor or manager under any agreement with the Gaming Enterprise; and

(5) contacting any state, federal, or other government agency that is referred to in the application.

d. The Commission shall document any information obtained that calls into question whether the applicant meets the eligibility requirements under this Gaming Ordinance. The disposition of these problem areas shall be documented in detail, indicating the follow-up investigations performed on the problem areas and the result of such investigations.

e. The Commission will review the results of the investigation for all persons subject to licensing, including a determination as to the scope of the investigation and whether sufficient information was obtained and verified. If such information is found not sufficient, the Commission will perform additional investigations.

f. Once the investigation is complete, the Commission will decide whether the applicant meets the eligibility criteria under this Gaming Ordinance.

4. In conducting a background investigation, the Commission and its agents and all persons privy to the information shall keep confidential the identity of each person interviewed in the course of the investigation.

D. **Eligibility Determination.** The Commission shall review the applicant's prior activities, criminal record, if any, and reputation, habit, and associations to make a finding concerning the eligibility of an applicant for employment by or involvement in the Gaming Enterprise. Upon completion of the investigation, the Commission shall either determine that an applicant is eligible to be licensed or deny the application. If the Commission determines that employment or involvement of any person or applicant poses a threat to the public interest or to the effective regulation of a Class II or Class III Gaming activity, or creates or enhances dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of a Class II or Class III Gaming activity, the Commission shall deny the application.

E. **Additional Background Investigations.** The Commission retains the right to conduct additional background investigations of any person required to be licensed at any time while the License is valid.

F. **Temporary License.** The Commission may issue a temporary License to the applicant while the background investigation is being completed. If the background investigation undertaken discloses that the applicant has a criminal history, or other grounds sufficient to disqualify the applicant are apparent on the face of the application, the Commission may revoke the temporary License without providing a hearing to the applicant. The temporary License shall become void and of no effect upon either (1) the issuance of the License; (2) the issuance of a notice of denial; or (3) ninety (90) days after the Licensee has begun working.

G. **Procedures for Forwarding Applications and Reports for Key Employees and Primary Management Officials to the National Indian Gaming Commission and the State Gaming Representative.**

1. Within sixty (60) days after a Key Employee or Primary Management Official begins work at a Gaming Enterprise, the Commission shall forward to the National Indian Gaming Commission and to the State Gaming Representative the employee's background investigation, fingerprint confirmation, and eligibility determination.

2. The Gaming Enterprise shall not employ as a Key Employee or Primary Management Official a person who does not have License after ninety (90) days.

H. **Report to the National Indian Gaming Commission and the State Gaming Representative.**

1. Pursuant to the procedures set out in this Section, the Commission shall prepare and forward to the National Indian Gaming Commission and the State Gaming Representative an investigative report on each background investigation on each applicant for a License. An investigative report shall include all of the following:

a. steps taken in conducting the background investigation;

b. results obtained;

c. conclusions reached; and

d. the bases for those conclusions.

2. The Commission shall submit with the report a copy of the eligibility determination made under this Section.

3. If a License is not issued to an applicant, the Commission shall:

a. notify the National Indian Gaming Commission and the State Gaming Representative; and

b. may forward copies of its eligibility determination and investigative report (if any) to the National Indian Gaming Commission for inclusion in the Indian Gaming Individuals Records System.

I. **Retention of Applications and Reports.** With respect to principals, Key Employees, or Primary Management Officials, the Commission shall retain applications for employment and

reports (if any) of background investigations for no less than five (5) years from the date of termination of employment.

J. **Granting a Gaming License.**

1. If, within thirty (30) days after the National Indian Gaming Commission receives an investigative report, it notifies the Commission that it has no objection to the issuance of a License, and the State Gaming Representative has no objections within thirty (30) days following its receipt of an investigative report, the Commission may issue a License to the applicant. Specifically, the Commission may issue a License to any person who:

a. Has provided a complete and accurate application and complied fully with any and all requests by the Commission for information concerning the background and activities of the applicant;

b. If the applicant is a natural person and has attained the age of twenty-one (21) years;

c. Has not been convicted of any felony or gaming offense;

d. Is not a Person whose prior activities, criminal record, if any, habits, or associations pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of gaming or the carrying on of the business and financial arrangements incidental thereto; and

e. Has not attempted to interfere or to influence, and has not interfered or influenced, unduly for its gain or advantage, any decision or process relating to Class II or Class III Gaming or the government of the Pueblo.

2. The Commission shall respond to any request for additional information from the National Indian Gaming Commission or the State Gaming Representative concerning a principal, Key Employee or Primary Management Official or other applicant who is the subject of an Investigative Report. Such a request shall suspend the thirty (30) day period under this Section until the National Indian Gaming Commission or the State Gaming Representative receives the additional information.

3. If, within the thirty (30) day period described above, the National Indian Gaming Commission or the State Gaming Representative provides the Commission with a statement itemizing objections to the issuance of a License to a principal, Key Employee, or Primary Management Official or other applicant for whom the Commission has provided an application and Investigative report, the Commission shall reconsider the application, taking into account the objections itemized by the National Indian Gaming Commission and/or the State Gaming Representative, and make a final decision whether to issue a License to such applicant.

K. **Duration and Renewal of Licenses.**

1. A License shall be effective for one (1) year from the date of issuance.

2. Applicants seeking renewal of a License shall pay a renewal fee and provide updated information, as requested, on the appropriate renewal forms at least thirty (30) days before the expiration of the License, but, in the discretion of the Commission, may not be required to resubmit historical data already available to the Commission. An applicant who has applied timely for a renewal, but whose License expires, may continue to be employed or engaged or to conduct business under a temporary License until action is taken on the renewal application by the Commission.

L. **License Fees**. The fees for Licenses and background investigations shall be as set forth in the Taos Pueblo Gaming Commission and the Taos Mountain Casino Memorandum of Understanding, dated January 1, 2000, relating to Licensing fees and fingerprint card fees, as such Memorandum of Understanding may be amended from time to time.

Section 8. **Management Contract.**

A. **Hiring of Manager**. The Pueblo or the Gaming Enterprise, acting through the Tribal Council, may hire and employ a Manager to manage and direct the day-to-day business affairs of the Gaming Enterprise. The Manager may be hired directly as an employee of the Pueblo or pursuant to a written Management Contract. A Management Contract must conform to the requirements of this Gaming Ordinance, tribal law, and the IGRA and regulations promulgated thereunder, and any such contract must be approved by the Tribal Council in accordance with the provisions of this

Section, and must further be approved by the National Indian Gaming Commission in accordance with the provisions of 25 C.F.R. Part 533.

B. License Required Upon Approval of Management Contract. Upon approval of any Management Contract, all Management Contractors including their principals and any Person Having a Direct or Indirect Interest in the Management Contract, Primary Management Officials, Key Employees, and Gaming Employees of the Management Contractor must obtain a License from the Commission within sixty (60) days.

C. **Standards for Approval.** The Pueblo or the Gaming Enterprise, acting through the Tribal Council, may enter into a Management Contract only if the Management Contract:

1. Provides for the adoption and maintenance of adequate accounting procedures and for verifiable financial reports to be prepared and submitted to the Tribal Council on a monthly basis;

2. Ensures access of the Commission to the daily operations of the gaming and any gaming-related information the Pueblo deems appropriate and for the right of the Commission to verify the daily Gross Receipts and income made from Class II and Class III Gaming activity;

3. Provides for a minimum guaranteed payment to the Pueblo, which payment must be made prior to retirement of any development and construction costs;

4. Provides for an agreed maximum dollar amount for the recoupment of development and construction costs;

5. Includes a contract term not exceeding five (5) years, except that the Tribal Council may authorize a contract term that exceeds five (5) years but does not exceed seven (7) years if the Tribal Council and the National Indian Gaming Commission are satisfied that the investment required and the income projections for the gaming activity require the additional time; *provided* that the term shall begin running no later than the date when the gaming activities authorized by the approved Management Contract will begin;

6. Includes grounds and procedures for terminating such contract;

7. Requires that all Class III Gaming covered by the Management Contract will be conducted in accordance with this Gaming Ordinance and the regulations promulgated hereunder, the Compact, IGRA and its implementing regulations, any other applicable law;

8. Enumerates the responsibilities of each of the parties for each identifiable function, including:

a. Maintaining and improving the Gaming Facility;

b. Providing operating capital;

c. Establishing operating days and hours;

d. Hiring, firing, training, and promoting employees;

e. Maintaining the Gaming Enterprise's books and records;

f. Preparing the Gaming Enterprise's financial statements and reports;

g. Paying for the services of the independent auditor engaged pursuant to 25 C.F.R. Sec. 571.12;

h. Hiring and supervising security personnel;

i. Providing fire protection services;

j. Setting advertising budget and placing advertising;

k. Paying bills and expenses;

l. Establishing and administering employment practices;

m. Obtaining and maintaining insurance coverage, including coverage of public liability and property loss or damage;

n. Complying with all applicable provisions of the Internal Revenue Code;

o. Paying the cost of public safety services; and

p. If applicable, supplying the National Indian Gaming Commission with all information necessary for the National Indian Gaming Commission to comply with the National Environmental Policy Act.

9. Provides for the establishment and maintenance of satisfactory accounting systems and procedures that shall, at a minimum:

a. Include an adequate system of internal controls no less stringent than those required by regulations of the National Indian Gaming Commission;

b. Permit the preparation of financial statements in accordance with generally accepted accounting principles;

c. Be susceptible to audit;

d. Permit the calculation and payment of the Management Contractor's fee; and

e. Provide for the allocation of operating expenses or overhead expenses among the Gaming Enterprise, the Management Contractor, and any other user of a shared Gaming Facility and/or Gaming Services;

10. Details the method of compensating and reimbursing the Management Contractor; *provided* that, if a Management Contract provides for a percentage fee, such fee shall be either:

a. Not more than thirty percent (30%) of the Net Revenues of the gaming operation, and only if the Tribal Council and the National Indian Gaming Commission determine that such percentage is reasonable considering the circumstances; or

b. Not more than forty percent (40%) of the Net Revenues, and only if the Tribal Council and the National Indian Gaming Commission are satisfied that the capital investment required and income projections for the Gaming Enterprise require the additional fee;

11. Provides the grounds and mechanisms for modifying or terminating the Management Contract;

12. Contains a mechanism to resolve disputes between:

a. The Management Contractor and customers consistent with the procedures in this Gaming Ordinance;

b. The Management Contractor and the Gaming Enterprise; and

c. The Management Contractor and Gaming Employees;

13. Indicates whether and to what extent contract assignments and subcontracting are permissible;

14. Indicates whether and to what extent changes in the ownership interest in the Management Contract requires advance approval by the Pueblo and/or Gaming Enterprise;

15. Does not transfer or, in any other manner, convey any interest in land or other real property, unless specific statutory authority exists and unless clearly specified in writing in the Management Contract;

16. States that the Management Contract shall not be effective unless and until approved by the Commission and the National Indian Gaming Commission, notwithstanding the date of the signatures of the parties to the Management Contract;

17. Includes any other provision required by 25 C.F.R. § 531.1; and

18. States that the Management Contractor has no authority to waive the Pueblo's sovereign immunity or that of the Gaming Enterprise without a duly passed resolution of the Tribal Council on a contract by contract basis.

D. **Management Contract Binding Upon Approval.** No Management Contract, and no modification, revision, or amendment thereto, shall be binding upon the Pueblo and/or Gaming Enterprise unless and until approved by the Commission, and by the Secretary of the Interior or the National Indian Gaming Commission.

E. **Action by Commission.** Within thirty (30) days after its receipt, the Commission shall approve or disapprove a Management Contract. Upon written notification to the Tribal Council and Gaming Enterprise of the reason for an extension, the Commission may extend the thirty (30) day period for not more than thirty (30) days.

F. **Grounds for Disapproval.** The Commission shall not approve any Management Contract if the Commission determines that:

1. The Manager or Management Contractor, or any principal or any Person Having a Direct or Indirect Interest in the Management Contract, Primary Management Official, or Key Employee of the Management Contractor, required to be Licensed is not Licensed or is ineligible to be Licensed; or

2. A trustee, exercising the skill and diligence that a trustee is commonly held to, would not approve such Management Contract.

G. **Modification and Revocation of Management Contract.** The Commission, after notice and hearing, shall have the authority to require appropriate contract modifications and may void any Management Contract if it determines that IGRA and/or its regulations, this Gaming Ordinance, or the Management Contract has been violated.

Section 9. **<u>Providers of Class III Gaming Equipment or Supplies</u>.**

A. **Standards.** The Commission shall adopt standards for any and all Class III Gaming Machines, equipment, or supplies to be purchased, leased, or otherwise acquired by the Pueblo or Gaming Enterprise for use in conducting Class III Gaming, which standards shall be at least as strict as the minimum internal control standards set by the National Indian Gaming Commission and, as required by the Compact, at least as strict as the comparable standards applicable to Class III Gaming Machines, equipment, or supplies within the State of Nevada. Any and all Class III Gaming Machines, equipment, or supplies used by the Pueblo, Gaming Enterprise, or Management Contractor, if any, must meet or exceed such adopted standards.

B. **Information Requests.** Before the Pueblo or Gaming Enterprise enters into any future lease or purchase agreement to acquire Class III Gaming Machines, equipment, or supplies for use in conducting Class III Gaming, the Commission shall obtain sufficient information from the proposed seller or lessor, and all Persons holding any direct or indirect financial interest in the seller or lessor or the lease or purchase agreement, to permit the Commission to license those persons according to applicable federal law, this Gaming Ordinance, and any regulations hereunder.

C. **Commission Approvals for Assembly and Installation.** Any and all Class III Gaming Machines, equipment, or supplies to be used by the Pueblo or Gaming Enterprise in conducting Class III Gaming must be assembled and installed in such a manner approved by the Commission, and Persons providing such Class III Gaming Machines, equipment, or supplies must be licensed according to applicable federal law, this Gaming Ordinance, and any regulations hereunder.

Section 10. Financial Practices and Reporting.

A. **Monthly Reports.** On or before the 21st day of each month, the Manager and the Chief Financial Officer shall file with the Commission, the Governor, the War Chief, and the Tribal Council a certified financial report for the preceding calendar month showing the amount of Gross Receipts, the operating expenses incurred or paid, the specific classifications of such expenses, the names and addresses of each Person paid Six Hundred Dollars ($600.00) or more in the aggregate for the month and the purpose of such payments, and the Net Revenues. It is the duty of the the Manager and the Chief Financial Officer to maintain and keep such books and records as may be

necessary to substantiate the particulars of each report. If the Manager and the Chief Financial Officer fails to file a report within the time allowed, or if a report is not properly certified or not fully, accurately, and truthfully completed, the License of the the Manager and the Chief Financial Officer may be suspended until such time as the deficiency has been corrected.

B. **Maintenance of Books and Records; Commission Access.** Full and accurate books of account, maintained in accordance with generally accepted accounting principles, shall be kept on the Premises of the Gaming Facility or at the places of business of the Manager or Chief Financial Officer or the Chief Financial Officer, showing the condition of the business and all transactions relating to Games of Chance on the Reservation. The Commission and persons authorized by written resolution of the Tribal Council or Commission shall have access to such books of account and shall be entitled to examine them, either in person or by an agent, without notice at any time during ordinary business hours. All records of Games of Chance in whatever medium shall be maintained for not less than five (5) years. Such records shall include:

1. Revenues, expenses, assets, liabilities and equity for each Gaming Facility;

2. Daily cash transactions for each Class III Gaming at each Gaming Facility, including but not limited to transactions relating to each gaming table bank, game drop box, and gaming room bank;

3. Individual and statistical game records (except card games) to reflect statistical drop and statistical win; for electronic, computer, or other technologically assisted games, analytic reports which show the total amount of cash wagered and the total amount of prizes won;

4. Contracts, correspondence, and other transaction documents relating to all vendors and contractors;

5. Records of all tribal gaming enforcement activities;

6. Audits prepared by or on behalf of the Pueblo; and

7. Personnel information on all Class III Gaming employees, including rotation sheets, hours worked, employee profiles, and background checks.

C. **Allowable Operating Expenses.** No item of expense shall be incurred or paid in connection with operating or conducting any Game of Chance except a *bona fide* expense in a reasonable amount. Expenses may be incurred for such items and purposes that a similar enterprise

would incur or pay under generally acceptable accounting principles, including but not limited to the following:

1. If there is a Management Contract, for Management fees of the Management Contractor, any expenses permitted to be reimbursed by the Management Contract;

2. If there is no Management Contract:

a. For the purchase of goods, wares, and merchandise furnished;

b. For services rendered by the Manager (including repayment of development fees and construction costs, if any) for maintenance or repairs of gaming and related equipment, and for operating or conducting a Game of Chance (including salaries, wages, fringe benefits, training, compensation and reimbursement of expenses to approved Pueblo government officials for gaming-related travel and training);

c. For regulatory fees required to be paid to the Pueblo, the National Indian Gaming Commission, or the State under the Compact or otherwise;

d. For revenue sharing under any Revenue Sharing Agreement with the State;

e. For rent, lease payments, janitorial, and security services;

f. For legal and accounting fees;

g. For taxes and License fees;

h. For utilities and trash removal costs;

i. For trade association dues;

j. For advertising or promotion;

k. For vehicle expenses;

l. For insurance;

m. For the interest portion of any debt payments;

n. For employee training;

o. For training Members of the Pueblo and their spouses and children so that they may be employed by a Gaming Enterprise;

p. For necessary and appropriate business travel;

q. For employee wages; and

r. For prizes for winners of Games of Chance.

D. **Deposit of Gross Receipts; Payment of Operating Expenses**. All Gross Receipts shall be deposited in a special account of the Gaming Enterprise, which account shall contain only Gross Receipts. All operating expenses shall be withdrawn from such account by consecutively numbered checks duly signed by the Manager or his designated representative and Chief Executive Officer or other representatives duly authorized by Tribal Council, payable to a specific Person. No check shall be drawn to "cash" or a fictitious payee.

E. **Annual Audit and Financial Statements.** The Gaming Enterprise and the Chief Financial Officer shall cause to be produced by an independent certified and state-licensed public accountant, an annual outside independent certified audit and a financial statement covering all financial activities of the Gaming Enterprise, including, as required by Section 4(C) of the Compact, written verification of the accuracy of the quarterly Net Win calculation. The financial statement shall specify the total amount wagered in Class III Gaming on all Gaming Machines at the Gaming Facility for purposes of calculating "Net Win" under Section 11 of the Compact using the format specified therein. The audit and financial statement, which shall be prepared in accordance with generally accepted accounting principles, shall be delivered within one hundred and twenty (120) days of the close of the Pueblo's fiscal year to the Tribal Council, the Commission, and the National Indian Gaming Commission in accordance with all applicable laws and regulations. In accordance with the Compact, within one hundred and twenty (120) days of the close of the Pueblo's fiscal year, the audit and a certified financial statement covering all Class III Gaming of the Gaming Enterprise also shall be delivered to the State Gaming Representative and the State Treasurer.

F. **Audit of Contracts**. All gaming-related contracts for supplies, services, or merchandise in an amount greater than $25,000.00 annually, except contracts for professional legal or accounting services, shall be specifically included within the annual outside independent certified audits referred to in this Section and subject to independent certified audits on the order of the Tribal Council or the Commission.

G. **Disposition of Net Revenues**. The Net Revenues (less any management fees required by a Management Contract), and after allocation by the Gaming Enterprise between its surplus reserve and any dividends to the Pueblo, shall be deposited respectively, at least quarterly,

into the Gaming Enterprise's surplus reserve accounts and into the general fund of the Pueblo. Net Revenues deposited into the general fund of the Pueblo shall not be used for purposes other than:

1. To fund Pueblo governmental operations and programs;

2. To provide for the general welfare of the Pueblo and its members, including but not limited to the protection and preservation of the traditions and culture of the Pueblo;

3. To promote tribal economic development, including land acquisition;

4. To donate to charitable organizations; or

5. To help fund operations of local government agencies.

H. **Compliance with Bank Secrecy Act and Internal Revenue Code.** The Manager and Gaming Enterprise shall comply with the applicable provisions of the federal Bank Secrecy Act and all applicable record-keeping and reporting requirements of the Internal Revenue Code.

Section 11. Gaming Enterprise.

A. **Establishment of the Gaming Enterprise.** There is hereby established the Taos Mountain Casino, a wholly owned Gaming Enterprise of the Pueblo, which enterprise shall have the authority to establish, equip, operate, and maintain Class II and Class III Gaming operations on the Reservation at such locations as the Tribal Council may designate. The Gaming Enterprise shall have the following powers and duties:

1. To acquire, construct, lease, modify, furnish, equip, and maintain such facilities and premises as the Gaming Enterprise determines are necessary or appropriate for the operation and conduct of gaming operations in accordance with this Gaming Ordinance;

2. To employ, direct, supervise, manage, control, promote, demote, discharge, fix the compensation of and define the powers and duties of such officers and other employees as the Gaming Enterprise determines are required for the operation and conduct of gaming activities in accordance with this Gaming Ordinance;

3. To operate and conduct gaming activities in accordance with this Gaming Ordinance, *provided* that the Gaming Enterprise may conduct any Class II Gaming activities it chooses, but only if such Class III Gaming activities are authorized or not prohibited by the Compact; and

4. Without in any way limiting or being limited by the foregoing, to do all other lawful things and perform all other lawful acts as the Gaming Enterprise determines are necessary or appropriate for the purpose of operating and conducting gaming activities, and all other activities reasonably related thereto, in accordance with this Gaming Ordinance.

B. **Supervision of Gaming Activities.** The Gaming Enterprise shall be under the overall direction of the Tribal Council. The day-to-day operations of the Gaming Enterprise shall be under the direction of the Manager, who shall be hired by the Pueblo in accordance with this Gaming Ordinance. The Manager shall hire and supervise the other employees of the Gaming Enterprise, and, subject to the guidance and supervision of the Tribal Government (Pueblo Governor's Office), shall have and perform all of the powers and duties of the Gaming Enterprise.

C. **Officer in Charge.** The Manager shall designate an employee of the Gaming Enterprise to be the Officer in Charge on each day during which any gaming activities are being conducted by the Gaming Enterprise; *provided* that no person shall be designated Officer in Charge unless such employee has held a valid gaming License issued by the Commission under the provisions of this Gaming Ordinance for no fewer than five (5) days prior to the date on which such employee is designated Officer in Charge. The Officer in Charge shall have direct responsibility for the operation and conduct of all gaming activities on that day. The Officer in Charge shall supervise all activities and shall be present on the Premises continuously throughout the period during which gaming activities are being conducted and for a period of at least one (1) hour after such activities have been concluded for the day.

D. **Premises Open to Commission.** The Premises where any gaming activities are being conducted or operated at a Gaming Facility, or where it is intended that such activities will be operated or conducted at a Gaming Facility, shall at all times be open to inspection by the Commission and its agents and employees and shall be open to inspection by the State Gaming Representative in accordance with the terms of the Compact.

E. **Provisions Applicable to Bingo Games.** The following provisions shall apply to the conduct of Bingo Games at any Gaming Facility operated by the Gaming Enterprise:

1. **Merchandise Prizes.** When any merchandise is awarded as a prize in a Bingo Game, the value of such merchandise shall be its current retail price. Merchandise awarded as a prize shall not be redeemable or convertible into cash, directly or indirectly.

2. **Usual Prices.** Equipment, prizes, and supplies for Bingo Games shall not be purchased or sold at prices in excess of the usual price thereof.

3. **Limits on Prizes.** The size of the prizes offered or given in any Bingo Game shall be subject to such limits as may be established by regulations duly promulgated by the Commission.

4. **Rules of Play.** The equipment used in playing Bingo Games and the method of play shall be such that each card shall have an equal opportunity to win. The objects or balls to be drawn shall be essentially the same as to size, shape, weight, balance and all other characteristics that may influence their selection. All objects or balls shall be present in the receptacle before each game has begun. All numbers or designations drawn shall be announced plainly and clearly, and shall be audible or visible to all the players present; *provided* that, if multiple rooms are used for any Bingo Game, drawn numbers or designations must be audible or visible to all players present in each room. The receptacle, the caller, and the person removing the objects or balls from the receptacle must be visible to all the players at all times, except that where more than one room is used for any Bingo Game, the receptacle and the caller must be present in the room where the greatest number of players is present. The cards or sheets of the players shall be part of a deck, group, or series of cards, no two of which shall be alike, and which deck, group, or series shall not be so prepared or arranged as to prefer any card. The particular arrangement of numbers or designations required to be covered in order to win the game and the amount of the prize shall be plainly and clearly described, and audibly or visibly announced to the players immediately before each game has begun.

5. **Players Entitled to Verification.** Any player shall be entitled to call for a verification of all numbers or designations drawn at the time a winner is determined, and for a verification of the objects or balls remaining in the receptacle and not yet drawn. The verification shall be made in the immediate presence of the Officer in Charge on the occasion.

6. **Players Required to be Present.** Only persons physically present on the Premises where a Bingo Game is actually operated and conducted may participate as players in the game.

7. **Additional Rules.** The Commission shall have the authority to promulgate additional rules, not inconsistent with this Gaming Ordinance, governing Bingo Games conducted hereunder, to protect the players and assure the fairness of such games.

F. **Provisions Applicable to Class III Gaming Activities**. The following provisions shall apply only to the conduct of Class III Gaming activities operated by the Gaming Enterprise:

1. **Class III Gaming to be Conducted in Accordance with Compact.** Any and all Class III Gaming activities to be conducted by the Gaming Enterprise shall be conducted in accordance with the Compact. In the event of any inconsistency between this Gaming Ordinance and such Compact, the Compact shall control; *provided* that, in the event of any inconsistency between the Compact and IGRA or other applicable federal law, federal law shall control. As required by the Compact, the following provisions are hereby adopted as a matter of Pueblo law and shall be enforced with respect to the Pueblo's conduct of Class III Gaming:

a. No person under twenty-one (21) years of age shall participate in Class III Gaming;

b. The Gaming Enterprise shall not employ any person in Class III Gaming who is under twenty-one (21) years of age or who has not been licensed in accordance with this Gaming Ordinance;

c. The Gaming Enterprise shall meet standards and requirements equivalent to or more stringent than those in the federal Fair Labor Standards Act of 1938, the federal Occupational Safety and Health Act of 1970, and other federal laws relating to wages, hours and conditions of work, and the regulations issued thereunder; *provided* that the imposition of such standards shall not be construed as a submittal by the Pueblo to federal jurisdiction under said laws or as creating under Pueblo law any causes of action available to any person under such federal laws;

d. On any construction project involving a Gaming Facility, which project is funded in whole or part by federal funds, workers shall be paid wages meeting or exceeding the standards established for the State under the federal Davis-Bacon Act;

e. The Pueblo, Gaming Enterprise, and any Management Contractor shall not discriminate in the employment of persons at the Gaming Facility or for the Gaming Enterprise on the grounds of race, color, national origin, gender, sexual orientation, age, or handicap; *provided* that they shall offer Indian preference in employment in Class II and Class III Gaming activities as set forth herein;

f. The Gaming Enterprise shall allow the State's Department of Environment inspectors to inspect the food service operations of a Gaming Facility during the normal business hours of the Gaming Facility to assure that standards and requirements equivalent to the State's Food Service Sanitation Act are maintained;

g. The Gaming Enterprise shall not:

(1) cash for patrons any paycheck or any type of government assistance check, including Social Security, Temporary Assistance for Needy Families, pension, and other similar checks; or

(2) extend credit to patrons by accepting IOUs or markers;

h. Each electronic and electromechanical Gaming Machine in use at the Gaming Facility must pay out a mathematically demonstratable percentage of all amounts wagered, which percentage shall be not less than eighty percent (80%), and odds of a player achieving a winning outcome from the games available on each Gaming Machine must be posted on each Gaming Machine;

i. Automatic teller machines located on Gaming Facility Premises where Class III Gaming is conducted shall be programmed so that such machines will not accept cards issued by the State to recipients allowing them to access their Temporary Assistance for Needy Families assistance;

j. All Gaming Machines on the Premises of the Gaming Facility will be connected to a central computerized reporting and auditing system on the Premises of the Gaming Facility, which shall collect on a continual basis the unaltered activity of each Gaming Machine in use, and which wager and payout data of each Gaming Machine shall be accessible electronically by the State Gaming Representative by a dedicated telecommunications connection, on a "read-only" basis, upon entry of appropriate security codes; *provided, however,* that in no event shall the State

Gaming Representative be able to alter or affect the operation of any Gaming Machine or other device on the Premises of the Gaming Facility, or the data provided to the central computer; and *provided further* that the system for electronic access to the machine wager and payout data collected by the Gaming Enterprise's central computer shall be constructed and installed at the State's cost, and shall be designed in conjunction with the Gaming Enterprise technical staff so as to preserve the integrity of the system and the data contained therein to minimize any access by the State Gaming Representative to information other than Gaming Machine wager and payout data residing in the central reporting and auditing system and any possibility of unauthorized access to the system or tampering with the data;

k. If the Tribal Council and Gaming Enterprise permit alcoholic beverages to be served and consumed at the Gaming Facility:

(1) No employee of the Gaming Enterprise shall sell, serve, give, or deliver an alcoholic beverage to an intoxicated person or procure or aid in the procurement of any alcoholic beverage for an intoxicated person at the Gaming Facility;

(2) Employees of the Gaming Facility that dispense, sell, serve, or deliver alcoholic beverages must attend Alcohol Server Education Classes similar to those classes provided for in the New Mexico Liquor Control Act;

(3) The Gaming Enterprise must purchase and maintain a liquor liability insurance policy that will provide personal injury coverage of at least one million dollars ($1,000,000) per incident and two million dollars ($2,000,000) aggregate per policy year; and

(4) No alcoholic beverages shall be sold, served, delivered, or consumed in that part of the Gaming Facility where Class III Gaming is allowed;

l. Neither the Gaming Enterprise nor the Pueblo shall provide, allow, contract to provide, or arrange to provide alcoholic beverages for no charge or at reduced prices, or provide, allow, contract to provide, or arrange to provide food or lodging for no charge or at nominal prices at a Gaming Facility or lodging facility as an incentive or enticement for patrons to game;

m. The Gaming Enterprise shall spend an amount no less than one-quarter of one percent (.25%) of its Net Win annually to fund or support programs for the treatment and assistance of compulsive gamblers in the State or who patronize gaming facilities within the State,

and for the prevention of compulsive gambling in the State, and shall require that a substantial portion of such funds be distributed to an organization that has expertise in and provides counseling, intervention, or other services for compulsive gamblers in the State and whose services are available to all person without regard to race or tribal membership; *provided* that any information existing as a result of this Section, not including information that may identify or contain information referring to any gaming patron, shall not be subject to the confidentiality provisions of Section 4(E)(4) of the Compact and shall be made available for inspection and publication without restriction or limitation;

n. The Pueblo, Gaming Enterprise, or Management Contractor shall report to the New Mexico Secretary of State in the same manner and at the same times as are required of political committees under the provisions of the State of New Mexico's Campaign Reporting Act, NMSA 1978 §§ 1-19-25 through 1-19-36, any and all contributions, whether directly or through an agent, representative or employee, of any moneys derived from revenue from the Gaming Enterprise, or of anything of value acquired with that revenue, to a candidate, political committee, or person holding an office elected or to be elected at an election covered by the State's Campaign Reporting Act;

o. The Gaming Enterprise shall not operate any Class III Gaming at the Gaming Facility for at least four (4) consecutive hours daily, Mondays through Thursdays (except federal holidays); and

p. The Commission shall provide true and correct copies of all tribal laws and regulations affecting Class III Gaming to the State Gaming Representative, National Indian Gaming Commission, and the Bureau of Indian Affairs Gaming Representative and will provide true copies of any amendments thereto or additional laws or regulations affecting Class III gaming within thirty (30) days after their enactment or approval, if any; *provided* that the Commission or the Pueblo shall provide copies of any amendments to this Gaming Ordinance to the National Indian Gaming Commission within fifteen (15) days after the adoption of the amendments.

2. **Vendor Licensing.** Any Person that has supplied or proposes to supply any Gaming Machines or equipment or supplies to the Gaming Enterprise for use in conjunction with any Class III Gaming activity must be licensed by the Commission and shall be subject to a full

background investigation in accordance with the provisions of this Gaming Ordinance, and the Commission shall prescribe appropriate forms, procedures, and standards for such licensing.

G. **Employees; Prohibition Against Employees Engaging in Gaming**. Any and all individuals who operate or conduct or assist in operating or conducting any Games of Chance hereunder shall be employees of the Gaming Enterprise and shall wear legible identification tags, issued by the Commission, showing their names and photographs, and the name of the Gaming Enterprise. No employee of the Gaming Enterprise, the Commission, or the Management Contractor may engage in any gaming activity conducted by the Gaming Enterprise or win any prize or thing of value from the Gaming Enterprise during his or her employment and for a period of ninety (90) days after the termination of such employment.

H. **Qualifications for Employment**. Employees of the Gaming Enterprise shall be of good moral character, shall not have been convicted of any felony or gaming offense, and, as a condition of their contract of employment, shall agree to any lawful means of testing for truthfulness, including but not limited to polygraph testing, at any time and without prior notice, concerning the handling, collection, and/or disbursement of Gross Receipts. No person shall be employed by the Gaming Enterprise or the Management Contractor whose prior activities, criminal record (if any), reputation, habits or associations pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance any danger of unsuitable, unfair, or illegal practices, methods, or activities in the operation or conduct of gaming by the Gaming Enterprise or the carrying on of any business or financial arrangements incidental thereto.

I. **Preference in Employment**. Members of the Pueblo and their Indian spouses and children shall receive preference in employment and advancement if they meet the qualifications for employment with the Gaming Enterprise or Management Contractor. If there are not qualified persons from among the Members of the Pueblo and their Indian spouses and children to fill any available positions, the Gaming Enterprise or Management Contractor shall hire such qualified persons as are available, but it shall give preference to qualified members of other Indian tribes.

J. **Personnel Policies and Benefits.**

1. The Gaming Enterprise shall adopt written personnel policies for employees of the Gaming Enterprise, which shall be provided to each employee. The policies shall include, but

not be limited to a grievance process for an employee in cases of disciplinary or punitive action taken against an employee, and must include a process for appeals to persons of greater authority than the immediate supervisor of the employee.

2. The Gaming Enterprise shall provide employment benefits, including but not limited to sick leave, life insurance, paid annual leave, medical and dental insurance, unemployment and workers' compensation insurance through participation in programs offering benefits at least as favorable as those provided by comparable State programs. Such programs shall afford the employees due process of law and shall include an effective means for an employee to appeal an adverse determination by the insurer to an impartial forum, such as (but not limited to) the Pueblo's Tribal Court, which appeal shall be decided in a timely manner and in an administrative or judicial proceeding and as to which no defense of tribal sovereign immunity will be available; and *provided* that, to fulfill this requirement, the Pueblo may elect to participate in the State's program upon execution of an appropriate agreement with the State.

K. **Hiring and Training of Employees**. The Gaming Enterprise shall provide sufficient training to all employees to enable them to perform their jobs properly, and shall provide employees who are Members of the Pueblo with training specifically designed to enable such employees to acquire the experience and skills necessary to advance within the Gaming Enterprise and to become managers and supervisors.

L. **Expenses of Training Employees.** The expense of providing training to Members of the Pueblo and to their spouses and children shall be an operating expense of the Gaming Enterprise.

Section 12. Suspension and Revocation of License.

A. **Grounds for Suspension and Revocation**. If a Licensee makes a false statement in any application for a License, in any statement annexed thereto, or in any response to a request by the Commission for information; fails to keep sufficient books and records to substantiate the reports required by this Gaming Ordinance or the regulations promulgated hereunder; falsifies any books or records relating to any transaction in connection with the operation or conduct of any Games of Chance; is convicted of any felony or gaming offense; interferes with or unduly influences

or attempts to interfere or unduly to influence any decision or process of the government of the Pueblo relating to gaming; or deliberately or substantially fails to provide information to or answer relevant questions of the Commission or otherwise fails to comply with this Gaming Ordinance or the terms of any License granted pursuant hereto; or if the Commission receives reliable information from the National Indian Gaming Commission or any other source that the Licensee does not meet the standards established in this Gaming Ordinance; his or her License may be suspended; *provided* that, when the Commission receives reliable information from the National Indian Gaming Commission that the Licensee does not meet the standard established in this Gaming Ordinance, his or her License shall be suspended. After notice and a hearing before the Commission pursuant to this Section, such License also may be revoked, and the Commission shall notify the National Indian Gaming Commission of its decision. This sanction is in addition to any other sanction that may be imposed under this Gaming Ordinance.

B. **Notice; Immediate Suspension.** Proceedings to suspend or revoke a License shall be initiated by the Commission by serving a complaint upon the Licensee. If, in the Commission's judgment, the public interest; the effective regulation and control of gaming; or the safe, fair and honest operation and conduct of Games of Chance so requires, the Commission may suspend a License immediately, pending the holding of a hearing. Such an immediate suspension shall take effect upon service of the complaint upon the Licensee.

C. **Contents of Complaint; Service.** The complaint shall set forth the violations of this Gaming Ordinance which the Commission has reasonable cause to believe the Licensee has committed. The Commission shall cause the complaint and notice of hearing to be served personally upon the Licensee or any agent of the Licensee, or to be sent by certified mail or overnight delivery to the Licensee at the address shown upon the License. The complaint shall notify the Licensee of the place and date of a hearing, such date to be not less than twenty (20) days after the Licensee receives a copy of the complaint.

D. **Answer; Written Orders.** Upon receipt of a complaint and notice of hearing, the Licensee shall answer the complaint in writing within ten (10) days and shall inform the Commission whether the Licensee desires to present evidence. At the request of the Licensee for good cause

shown, or on its own motion, the Commission shall issue written orders for the attendance of witnesses and for the production of papers, books, records and documents.

E. **Hearing; Written Decision.** The hearing shall be held and concluded without unreasonable delay. The Commission shall hear the matter and issue a written decision, including findings of fact in support of its decision, within thirty (30) days of the hearing. As soon as feasible, the Commission shall cause the decision to be served personally upon the Licensee or any agent of the Licensee, or to be sent by certified mail to the Licensee at the address shown upon the License, with a copy sent to the Tribal Council. In the event of a suspension, revocation, or reinstatement of a License, such decision shall state the effective date of the suspension, revocation, or reinstatement. The Commission also shall notify the National Indian Gaming Commission and the State Gaming Representative of its decision.

F. **Surrender of License.** When the Commission suspends or revokes a License, the Licensee shall surrender the License to the Commission on or before the effective date of the suspension or revocation. No License shall be valid as of the effective date of the suspension or revocation, whether surrendered or not, or whether the Commission's decision is appealed or not.

G. **Additional Sanctions.** Upon its determination to suspend or revoke a License, the Commission, in addition to any other penalties that may be imposed, may declare the Licensee ineligible to operate or conduct Games of Chance, to participate, directly or indirectly, in the operation or conduct of Games of Chance, or to apply for a License for a period not exceeding twelve (12) months. Such declaration of ineligibility may be extended to include any Primary Management Officials, Key Employees, owners, officers, or directors of the Licensee, and any of its subsidiary organizations, parent organizations, or affiliates.

H. **Appeal to Tribal Court.** The decision of the Commission suspending or revoking a License may be appealed to the Tribal Court, and the Tribal Court shall have sole jurisdiction to consider and resolve such appeal. Written notice of the appeal must be filed with the Tribal Court and served on the Commission within seven (7) days of the Commission's decision. The Tribal Court may affirm, reverse, vacate, or modify the order of the Commission; *provided* that the Tribal Court shall affirm the order of the Commission unless such order was entered in violation of due process, was arbitrary or capricious, or was otherwise in contravention of applicable law. In reaching

its decision, the Tribal Court shall consider only such evidence as appears in the records of the Commission and was available to the Commission at the time of its decision. The Tribal Court may but is not required to grant the appellant a hearing. The Tribal Court shall decide the appeal within fourteen (14) days after its filing, and the decision of the Tribal Court shall be final.

Section 13. **Prohibited Acts.** In addition to the acts prohibited elsewhere in this Gaming Ordinance, it shall be a violation of this Gaming Ordinance for any Person to:

A. Conduct or participate in any gambling on the Reservation other than at an authorized and licensed Gaming Facility;

B. Receive, distribute, apply, or divert any property funds, proceeds, or other assets of the Gaming Enterprise to the benefit of any Person except as authorized by this Gaming Ordinance, the Compact, or IGRA;

C. Tamper with any Gaming Machine or equipment used in the conduct of any gaming activity with the intent to cause any person to win or lose any wager other than in accordance with the publicly-announced rules of the Gaming Enterprise.

D. Do any other act in connection with the conduct of any Gaming Enterprise with the intent of affecting the outcome of any wager other than in accordance with the publicly-announced rules of such Gaming Enterprise;

E. Alter or misrepresent the outcome of any other event on which wagers have been made after the outcome is made sure but before its is revealed to the players;

F. Place, increase, or decrease a bet or to determine the course of play after acquiring knowledge, not available to all players, of the outcome of the game or any event that affects the outcome of the game or that is the subject of the bet or to aid anyone in acquiring such knowledge for the purpose of placing, increasing, or decreasing a bet or determining the course of play contingent upon that event or outcome;

G. Claim, collect or take, or attempt to claim, collect or take, money or anything of value in or from a Gaming Machine or equipment, with intent to defraud, without having made a wager thereon, or to claim, collect or take an amount greater than the amount won;

H. Place or increase a wager or bet after acquiring knowledge of the outcome of the game or other event that is the subject of the bet, including post-posting and pressing bets;

I. Reduce the amount wagered or cancel the bet after acquiring knowledge of the outcome of the game or other event that is the subject of the bet, including pinching bets;

J. Manipulate, with the intent to cheat, any component of an electronic Game of Chance or Gaming Machine in a manner contrary to the designed and normal operational purpose for the component, including but not limited to manipulating a Gaming Machine, with knowledge of any event that affects the outcome of the game;

K. Knowingly use coins or tokens other than those approved by the Commission or other than the lawful coin or legal tender of the United States of America, or to use a coin not of the same denomination as the coin intended to be used in the Gaming Machine;

L. Possess, with the intent to use, any device to assist in projecting the outcome of the game, in keeping tract of the cards played, in analyzing the probability of the occurrence of an event relating to the game, or in analyzing the strategy for playing or betting to be used in the game;

M. Use any device or means to cheat, or to possess any such device while at the Gaming Facility; or

N. Knowingly to entice or induce another to go to any place where Class II or Class III Gaming is being conducted or operated in violation of the provisions of this Gaming Ordinance, IGRA and its regulations, the Compact, or other applicable law and regulation with the intent that the other person play or participate in that gaming.

Section 14. <u>Violations; Jurisdiction; Enforcement of Subpoenas</u>.

A. **Criminal Penalties.**

1. Pursuant to Section 10 of the Compact, the State may exercise concurrent jurisdiction with the United States to prosecute violations by non-members of the Pueblo of any State gambling law on the Reservation, or any other crime against the Gaming Enterprise or any employee thereof, or that occurs on the Premises of a Gaming Facility. Immediately upon becoming aware of any suspected crime by a non-member of the Pueblo, the Gaming Enterprise or the Commission will notify the State Attorney General and the District Attorney for Taos County of the particulars

available. Upon any reasonable request by the District Attorney for Taos County, the Pueblo's Law Enforcement Agency and the Commission will perform additional investigation and cooperate fully with such District Attorney and State law enforcement agencies on the matter. In the event of an emergency involving a possible violation by a non-member of the Pueblo, the Pueblo and its constituent agencies may detain such person and otherwise act as they see fit in accordance with the laws of the Pueblo in order to protect against any immediate threat to lives or property.

2. The Pueblo may enter into a Memorandum of Understanding with the District Attorney for Taos County, to which Memorandum of Understanding the United States Attorney for the District of New Mexico also may be a party, to address such matters as the specific procedures by which cases under this Section will be referred, participation of the Commission and the Pueblo's Law Enforcement Agency in the investigation and prosecution of any such case, and payments by the Pueblo to the Office of the District Attorney for Taos County to defray the costs of handling such cases.

B. **Civil Sanctions.** The Commission is authorized to impose civil sanctions on any Person within the jurisdiction of the Pueblo that violates any provision of this Gaming Ordinance, including monetary penalties not exceeding five thousand dollars ($5,000) for each day such violation occurs along with any civil damages caused by the commission of such violation, denial or revocation of a License, exclusion from any Gaming Facility, and/or exclusion of non-Members of the Pueblo from the Reservation to the extent such exclusion is consistent with the laws of the Pueblo.

C. **Tribal Court Jurisdiction and Civil Remedies.**

1. Except as otherwise provided in this Gaming Ordinance, the Tribal Court shall have exclusive jurisdiction over all matters concerning the administration and enforcement of this Gaming Ordinance; *provided, however*, that nothing in this Gaming Ordinance is intended nor shall it be interpreted to preclude prosecution in federal court pursuant to the IGRA, as it may be amended from time to time, or any regulations promulgated thereunder, or any other applicable federal or tribal law; *provided further,* that nothing in this Gaming Ordinance shall be construed to authorize or require the exercise of criminal jurisdiction over non-Indians except to the extent allowed by any applicable present or future Act of Congress or any applicable federal court decision.

2. The Commission may bring a civil action in the Tribal Court against any Person who violates this Gaming Ordinance or engages in any activity or activities prohibited herein and recover monetary damages, attorney fees, injunctive relief, and/or any other relief that is just and equitable under the circumstances. The Tribal Court may order a Person who commits an intentional or willful violation to pay punitive damages, which shall be assessed in an amount not to exceed three (3) times the actual damages or one thousand dollars ($1,000) per violation, whichever is greater.

3. Any Person who violates this Gaming Ordinance, or whose employees or agents in the course of their employment or agency violate this Gaming Ordinance, may have their right to engage in business on the Reservation suspended or terminated.

4. For good and sufficient cause found, the Tribal Court may exclude from the Reservation any Person who engages in an activity in violation of this Gaming Ordinance to the extent such exclusion is not inconsistent with the other laws of the Pueblo.

5. The Tribal Court shall have jurisdiction over all violations of this Gaming Ordinance and over all Persons who are parties to a Management Contract entered pursuant thereto, including agents, employees, owners, directors, and officers of such parties, and may, in addition to the other penalties and civil sanctions prescribed in this Section, grant such other legal and equitable relief as is necessary and proper for the enforcement of this Gaming Ordinance and of the provisions of any Management Contract entered pursuant thereto, including but not limited to injunctive relief against acts in violation thereof.

D. **Enforcement of Tribal Court and Commission Orders**. If a Person is ordered by the Commission to attend or to produce books, accounts, records, or other documents in any investigation or hearing conducted by the Commission fails to obey the command of the subpoena without reasonable cause, or if a Person in attendance at any hearing or investigation refuses, without lawful cause, to be examined, to answer a legal and pertinent question, or to exhibit any book, account, record, or other document when ordered to do so by the the Commission or its designated representative, the Commission may apply to the Tribal Court for an order returnable in not less than five (5) nor more than ten (10) days directing the Person to show cause why he or she should not comply with such order. For purposes of this Gaming Ordinance, no person shall be excused from

testifying or producing any books, accounts, records, or other documents in any investigation or hearing on the ground that such testimony or documentary evidence may tend to incriminate such person, unless the Commission, Tribal Council, or the Tribal Court agrees in writing that such Person shall not be prosecuted, punished, or subjected to any penalty or forfeiture resulting from such testimony or production; *provided* that no person shall be exempt from prosecution or punishment for any act of perjury committed by him under a grant of immunity under this Subsection.

Section 15. <u>Protection of Visitors–Visitor Claims</u>.

A. **Resolving Visitor Claims of Liability for Bodily Injury or Property Damage.**

1. The Tribal Court shall have original jurisdiction over claims or demands by a visitor for bodily injury or property damage alleged to have been proximately caused by the conduct of the Gaming Enterprise; *provided, however*, that a visitor may elect to bring such claims arising on the Reservation in any court of competent jurisdiction, or in binding arbitration.

2. Claims brought under this Section must be commenced by filing an action in Tribal Court or serving a demand for arbitration within three (3) years of the date that the claim accrues.

3. Arbitration shall be conducted pursuant to an election by a visitor under this Section, as follows:

a. The visitor shall submit a written demand for arbitration to the Gaming Enterprise by certified mail, return receipt requested;

b. The visitor and the Gaming Enterprise shall each designate an arbitrator within thirty (30) days of the date of receipt of the demand by the Gaming Enterprise, and the two arbitrators shall select a third arbitrator, however, in the event that the two arbitrators cannot agree on the selection of the third arbitrator within thirty (30) days of their appointment, they shall apply to the American Arbitration Association to appoint a third arbitrator;

c. The arbitration panel shall permit the parties to engage in reasonable discovery and shall establish other procedures to ensure a full, fair, and expeditious hearing on the claim; and

d. The award of the arbitration panel shall be final and binding.

B. **Liability Insurance and Limited Waiver of Sovereign Immunity; Increases in Liability Insurance Coverage Limits.**

1. The Gaming Enterprise will provide annually to the State Gaming Representative a certificate of insurance showing that it is maintaining in effect policies of liability insurance insuring the Gaming Enterprise, the Pueblo, and their agents and employees against claims, demands, or liability for bodily injury and property damages brought by a visitor arising from an occurrence described in this Gaming Ordinance, and such policies shall provide bodily injury and property damage coverage in an amount of at least ten million dollars ($10,000,000) per occurrence and ten million dollars ($10,000,000) annual aggregate and include a provision under which the insurer agrees not to assert the defense of sovereign immunity on behalf of the insured up to the limits of such coverage.

2. Pursuant to Section 8(G) of the Compact, on the fifth anniversary of the Compact and every five (5) years thereafter, the liability insurance coverage requirements and the limit on the Pueblo's limited waiver of sovereign immunity set forth in Section 8(D) of the Compact shall increase by a percentage equal to the percentage increase in the CPI-U published by the Bureau of Labor Statistics of the United States Department of Labor, for the same period, rounded to the nearest one hundred thousand dollars ($100,000).

C. **Choice of Law.** In any claim brought under the provisions of this Section, State law shall govern the substantive rights of the claimant and shall be applied by the forum in which the claim is heard; *provided* that the Tribal Court shall apply the laws of the Pueblo to any such claim brought by a member of the Pueblo.

Section 16. **Public Health and Safety.** The Gaming Facility and all additions thereto shall comply with health, safety, and construction standards that are at least as stringent as the current editions of the National Electrical Code, the Uniform Building Code, the Uniform Mechanical code, the Uniform Fire Code, and the Uniform Plumbing code. The Commission shall cause inspections to be conducted with respect to these standards at least annually. Pursuant to the Compact, the State Gaming Representative may be present during an annual inspection, *provided* the request to be

present is made sufficiently in advance of such inspection. Upon a written request by the State Gaming Representative, the Commission shall provide copies of such inspection reports to the State Gaming Representative. The Gaming Enterprise or Management Contractor shall correct any deficiencies noted in such inspections within a reasonable period of time as agreed upon by the Gaming Enterprise or Management Contractor and the State Gaming Representative.

Section 17. Inspections by State Gaming Representative.

A. Pursuant to Section 4(E) of the Compact, the State Gaming Representative shall have the right to inspect a Gaming Facility, Class III Gaming activity, and all records relating to Class III Gaming, subject to the following conditions:

1. With respect to public areas of a Gaming Facility, at any time without prior notice during the normal business hours of the Gaming Enterprise; and

2. With respect to private areas of a Gaming Facility not accessible to the public, at any time during normal business hours of the Gaming Enterprise, immediately after notifying the Commission and Gaming Enterprise of his or her presence on the Premises, presenting proper identification, and requesting access to the non-public areas of the Gaming Facility.

B. Pursuant to the Section 4(E)(3) of the Compact, in the Pueblo's discretion, an employee of the Gaming Enterprise or a member of the Commission shall accompany the State Gaming Representative at all times during which the State Gaming Representative is on the Premises of a Gaming Facility; *provided* that at least one employee or member of the Commission shall be available for such purpose.

Section 18. Miscellaneous.

A. **Severability.** In the event any provision of this Gaming Ordinance or the application thereof to any Person or circumstances is held to be invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Gaming Ordinance.

B. **Gender.** Any noun or pronoun used herein shall refer to any gender and to any number as the context requires or permits.

Section 19. **Sovereign Immunity.** Except as expressly and unequivocally stated herein, this Gaming Ordinance shall not be construed as waiving the Pueblo's sovereign immunity from a suit for any purpose in any court other than as may be expressly provided in the Compact and, except as expressly and specifically waived by resolution of the Tribal Council, the Pueblo and its Gaming Enterprise shall be immune from suit, and their officers and employees also shall be immune from suit for liability arising from the performance of their official duties.

Section 20. **Amendments.** This Gaming Ordinance may be amended by majority vote of the Tribal Council. The Commission or the Pueblo shall provide true copies of any amendments to this Gaming Ordinance to the National Indian Gaming Commission within fifteen (15) days after the adoption of the amendments and to the State Gaming Representative within thirty (30) days after their enactment or approval, if any.

Section 21. **Effective Date.** Following adoption by the Tribal Council, the effective date of this Gaming Ordinance, as amended and restated, shall be the date of its approval by the National Indian Gaming Commission.

CERTIFICATION

The forgoing Taos Pueblo Second Amended and Restated Gaming Ordinance was adopted at a duly called meeting of the Taos Pueblo Tribal Council held on the 29TH day of OCTOBER, _____ at which time a quorum was present by a vote of 20 in favor and 0 opposed. 5 ABSTAINING.

Paul T. Martinez, Governor

Luis Romero, WarChief

Carl N. Concha, Cacique

for Ignacio Lujan
David Gomez Sr., Senior Councilman

Frank Marcus, Sr., Tribal Council Secretary

Senior Councilman

ATTEST:

Delbert Chisholm, Governor's Secretary

Michael A. Martinez, War Chief's Secretary