

**NATIONAL  
INDIAN  
GAMING  
COMMISSION**

JAN 20 1998

Bernard Mora, Chairman  
Tesuque Pueblo Gaming Commission  
Route 5, Box 360-T  
Santa Fe, New Mexico 87501

Dear Chairman Mora:

This letter responds to the Pueblo of Tesuque's request to review and approve the Pueblo of Tesuque Amended and Restated Gaming Ordinance adopted by Resolution No. 1997-09-04 by the Pueblo of Tesuque (Pueblo) on September 25, 1997. This letter constitutes such approval under the Indian Gaming Regulatory Act (IGRA).

Under the IGRA and the regulations of the National Indian Gaming Commission (NIGC), the Chairman is directed to review ordinances with respect to the requirements of the IGRA and the implementing regulations. Thus, the scope of the Chairman's review and approval is limited to the requirements of the IGRA and the NIGC regulations. Provisions other than those required under the IGRA or the NIGC regulations that may be included in a tribal ordinance are not subject to review and approval. Such approval does not constitute approval of specific games.

Thank you for submitting the Pueblo of Tesuque Amended and Restated Gaming Ordinance for review and approval. The NIGC staff and I look forward to working with you and the Pueblo in implementing the IGRA.

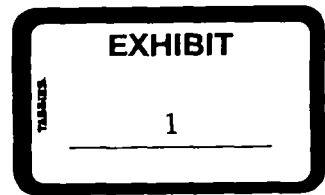
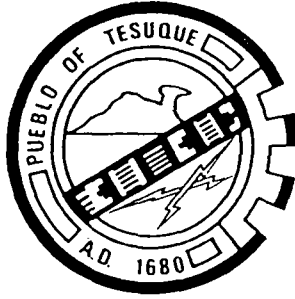
Sincerely yours,

  
Tadd Johnson  
Chairman

1/20/98

cc: J. Marvin Herrera, Governor, Pueblo of Tesuque  
Gwenellen P. Janov, Esq.

TESUQUE PUEBLO  
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**PUEBLO OF TESUQUE TRIBAL COUNCIL**

**RESOLUTION NO. 1997-09-04**

**AMENDMENT AND RESTATEMENT OF TRIBAL GAMING ORDINANCE**

**WHEREAS**, on or about December 16, 1989, by Resolution No. 1989-12-04, the Tribal Council of the Pueblo of Tesuque ("Pueblo") adopted a Gaming Ordinance for the Pueblo of Tesuque ("Gaming Ordinance"), which Gaming Ordinance was amended on or about August 24, 1994, by Resolution No. 1994-08-3, and further amended and restated on April 3, 1997 by Resolution No. 1997-04-02; and

**WHEREAS**, on July 9, 1997, a Class III Indian Gaming Compact ("Compact") was executed between the Pueblo and the State of New Mexico, which Compact was deemed approved on August 29, 1997 by inaction of the Secretary of the Interior, to the extent the Compact is consistent with the Indian Gaming Regulatory Act ("IGRA"); and

**WHEREAS**, because the Compact imposes new duties and responsibilities on the Pueblo with respect to the conduct of Class III gaming on the Pueblo of Tesuque Indian Reservation ("Reservation"), the Tribal Council finds it necessary and in the best interests of the Pueblo to amend, clarify, and update the Gaming Ordinance to assure that games are conducted in a fair, honest, and professional manner and, to the extent the Compact is consistent with the IGRA, to

ensure that Class III gaming activities of the Pueblo are conducted in compliance with the Compact; and

**WHEREAS**, in connection with the changes to the Gaming Ordinance, the Tribal Council desires to reserve the Pueblo's rights to challenge the lawfulness of any new duties, requirements, responsibilities, or limitations imposed on the Pueblo by the Compact or the revenue sharing agreement ("Revenue Sharing Agreement"), which was required to be executed by the Pueblo contemporaneously with the Compact, with respect to the conduct of Class III gaming on the Reservation or any new duties, responsibilities, rights, and powers granted to the State of New Mexico by the Compact or Revenue Sharing Agreement.

**BE IT THEREFORE RESOLVED** that the Tribal Council hereby adopts the amended and restated Gaming Ordinance ("Amended and Restated Gaming Ordinance"), in the form attached hereto, which amends the Gaming Ordinance by clarifying and updating the Gaming Ordinance to correct any technical errors, to make the Gaming Ordinance internally consistent and comprehensive, and to make the Gaming Ordinance consistent with the Compact, IGRA, and the federal regulations promulgated thereunder.

**BE IT FURTHER RESOLVED** that, on behalf of the Pueblo, the Pueblo's attorneys are directed to submit this Resolution and the attached Amended and Restated Gaming Ordinance adopted therein to the National Indian Gaming Commission, along with the Compact, for approval of these amendments to the Gaming Ordinance, as required by IGRA, 25 U.S.C. §§ 2710(b)(1)(B) and 2710(d)(1)(A)(iii); and

**BE IT FURTHER RESOLVED** that, pursuant to Section 4(B) of the Compact, the Pueblo's Gaming Commission is directed to submit the attached Amended and Restated Gaming Ordinance to the State Gaming Representative on or before September 28, 1997; and


**BE IT FINALLY RESOLVED** that, in connection with the foregoing amendments to the Gaming Ordinance, the Tribal Council hereby explicitly reserves any and all rights of the Pueblo to challenge the lawfulness of any new duties, requirements, responsibilities, or limitations imposed on the Pueblo by the Compact or the Revenue Sharing Agreement, regarding Class III gaming conducted by the Pueblo, and any new duties, responsibilities, rights, and powers granted to the State of New Mexico by the Compact or Revenue Sharing Agreement regarding Class III gaming conducted by the Pueblo.

**CERTIFICATION**

I, the undersigned, as Governor of the Pueblo of Tesuque, hereby certify that the foregoing Resolution was duly adopted by a vote of 9 for and 0 against, with \_\_\_ abstaining, at a duly called meeting of the Tribal Council of the Pueblo of Tesuque held on the 25<sup>th</sup> day of September, 1997, at which a quorum was present.

  
\_\_\_\_\_  
J. Marvin Herrera, Governor  
PUEBLO OF TESUQUE

Attest:

  
\_\_\_\_\_  
Council Member

## **PUEBLO OF TESUQUE GAMING ORDINANCE**

Originally adopted by Resolution No. 1989-12-04, dated December 16, 1989, as Amended by Resolution No. 1994-08-3, dated August 24, 1994, as Amended and Restated by Resolution No. 1997-04-02, dated April 3, 1997, and as Amended and Restated by Resolution No. 1997-09-04, dated September 25, 1997.

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## **PUEBLO OF TESUQUE GAMING ORDINANCE**

**BE IT ENACTED BY THE COUNCIL OF THE PUEBLO OF TESUQUE: An Ordinance to Govern, Regulate, and Control Gaming Activities on the Pueblo of Tesuque Indian Reservation.**

**SECTION 1. NAME.** The name of this Ordinance shall be the Pueblo of Tesuque Gaming Ordinance.

**SECTION 2. DEFINITIONS.** In this Ordinance, unless the context otherwise requires:

(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 and other designations in which the holder of the cards 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) "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.

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

(d) "Commission" means the Pueblo of Tesuque Gaming Commission, which is the agency of the Pueblo to be identified to the State Gaming Representative as the Tribal Gaming Agency responsible for the regulatory actions of the Pueblo of Tesuque under the Compact between the Pueblo of Tesuque and the State of New Mexico.

(e) "Compact" means the Class III Indian Gaming Compact, executed between the Pueblo of Tesuque and the State of New Mexico on July 9, 1997, and considered approved on August 29, 1997 by the Secretary of the Interior to the extent the Compact is consistent with the Indian Gaming Regulatory Act.

(f) "Council" means the Pueblo of Tesuque Tribal Council, the governing body of the Pueblo of Tesuque.

(g) "Equipment" includes, with respect to Bingo Games, the receptacle and numbered objects drawn from it; the master board upon which such objects are placed as drawn; the cards or sheets bearing numbers or other designations to be covered and the objects used to cover them; the board or signs, however operated, used to announce or display the numbers or designations as they are drawn; the public address system; and all other articles essential to the operation, conduct, and playing of Bingo Games.

(h) "Games of Chance" means all forms of Class II and Class III Gaming, but shall not include social games played solely for prizes of minimal value, or traditional forms of Indian gaming engaged in by individuals as part of, in connection with, tribal ceremonies or celebrations.

(i) "Gaming Device" means a Gaming Machine or associated equipment, and includes a system for processing information that can alter the normal criteria of random selection that affects the operation of a Class III Game or determines the outcome of a Class III Game; "Gaming Device" does not include a system or device that affects a Class III Game solely by stopping its operation so that the outcome remains undetermined.

(j) "Gaming Enterprise" means the business entity established and operated by the Pueblo of Tesuque, acting through the Council, to conduct and operate Games of Chance on the Reservation.

(k) "Gaming Facility" means the buildings or structures in which Class II and Class III Gaming activities are operated on the Reservation pursuant to this Gaming Ordinance.

(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, is available to play or operate a Class III Game, whether the payoff is made automatically from the Gaming Machine or in any other manner.

(m) "Gaming Ordinance" means this Pueblo of Tesuque Gaming Ordinance, as it now exists or as it may be amended hereinafter from time to time.

(n) "Gaming Services" means any goods or services, except legal and accounting services, provided to the Pueblo of Tesuque 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 ten thousand dollars (\$10,000) in any single month.

(o) "Governor" means the Governor of the Pueblo of Tesuque.

(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) "Indian" means any person who is a member of a federally-recognized Indian tribe or who is recognized as an Indian under federal law;

(r) "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. 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 most highly compensated persons in the gaming operation.

(s) "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.

(t) "Licensee" means any person who has been duly licensed by the Commission.

(u) "Management Contract" means a contract within the meaning of 25 U.S.C. §§ 2701(d)(9) and 2711 and as defined in 25 C.F.R. § 502.14.

(v) "Management Contractor" means any person or entity that has entered into a Management Contract with the Pueblo of Tesuque.

(w) "Manager" means the manager of the Gaming Enterprise hired directly as an employee or pursuant to a Management Contract under Section 8 of this Gaming Ordinance.

(x) "Member of the Pueblo of Tesuque" means an enrolled member of the Pueblo of Tesuque.

(y) "National Indian Gaming Commission" means the National Indian Gaming Commission established by the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701-21, 18 U.S.C. §§ 1166-68.

(z) "Net Revenues" means the gross revenues of a gaming operation at a Gaming Facility less amounts paid out as, or paid for prizes and total gaming-related operating expenses, excluding management fees.

(aa) "Net Win" means the total amount wagered at a Gaming Facility on Gaming Machines less the following amounts:

(1) the annual amount paid out in prizes from Class III Gaming on Gaming Machines;

(2) the actual amount of regulatory fees paid to the State of New Mexico; and

(3) the sum of two hundred fifty thousand dollars (\$250,000) per year as an amount representing tribal regulatory fees, with these amounts increasing by five percent (5%) each year beginning on the first day of January occurring after the Compact has been in effect for at least twelve (12) months.

(ab) "Person" means a natural person, firm, association, partnership, joint venture, corporation, or other legal entity.

(ac) "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.

(ad) "Reservation" means all lands within the exterior boundaries of the Pueblo of Tesuque Indian Reservation and its confirmed grants from prior sovereigns and any lands title to which is held in trust by the United States for the benefit of the Pueblo of Tesuque or a member thereof and held by the Pueblo of Tesuque subject to a restriction by the United States against alienation, and over which lands the Pueblo of Tesuque exercises governmental power.

(ae) "State Gaming Representative" means the person or agency designated by the State of New Mexico to be responsible for actions of the State set out in the Class III Indian Gaming Compact between the Pueblo of Tesuque and the State of New Mexico.

(af) "Treasurer" means the Treasurer of the Pueblo of Tesuque.

(ag) "Tribal Court" means the Pueblo of Tesuque Tribal Court.

**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, affording patrons a fair chance to win in accordance with the nature of the games, and so that revenue may be generated by such games to fund tribal governmental operations and programs that promote the health, education, and welfare of the Pueblo of Tesuque and its members and that promote tribal economic development.

**SECTION 4. INTERPRETATION.** This Gaming Ordinance is an exercise of the sovereign power of the Pueblo of Tesuque and shall be liberally construed for the accomplishment of its purposes and to comply with the Indian Gaming Regulatory Act.

**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 the provisions of this Gaming Ordinance.

(b) **Ownership of Gaming Enterprise.** The Pueblo of Tesuque, acting through the Council, shall have the sole proprietary interest in and responsibility for the operation and conduct of any Games of Chance operated or conducted on the Reservation.

(c) **Protection of the Environment, Public and Employee 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 safety and property of patrons at the Gaming Facility, the safety of employees of the Gaming Enterprise, and the property of the Gaming Enterprise.

(d) **Licensing Procedures for Employees.** Licensing procedures shall be adopted by the Commission and such procedures shall be enforced strictly 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.

(e) **Providers of Class III Gaming Equipment.** Any and all Class III Gaming Machines, Gaming Devices, equipment, or supplies to be purchased, leased, or otherwise acquired by the Pueblo of Tesuque or Gaming Enterprise for use in conducting Class III Gaming shall comply with the standards imposed by the State of Nevada on Class III Gaming Machines, Gaming Devices, equipment, or supplies. Compliance with such standards shall begin no later than thirty (30) days after the effective date of the Compact, provided that any and all Class III Gaming Machines, Gaming Devices, equipment, or supplies already in use at a Gaming Facility on the effective date of the Compact shall be replaced or upgraded, if necessary, to comply with such standards by no later than one (1) year after the effective date of the Compact. Prior to entering into any future lease or purchase agreement for Class III Gaming Machines, Gaming Devices, equipment, or supplies, the Commission shall obtain sufficient information and identification 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 in accordance with the licensing requirements in this Gaming Ordinance. The seller, lessor, manufacturer, or distributor shall provide, assemble, and install all Class III Gaming Machines, Gaming Devices, equipment, and supplies in a manner approved by the Commission.



**SECTION 6. PUEBLO OF TESUQUE GAMING COMMISSION.**

(a) **Establishment of Commission.** The Pueblo of Tesuque Gaming Commission is hereby established for 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 permit or refuse to permit the operation or conduct of any Games of Chance within the Reservation and to specify the conditions, therefor, provided that the operation or conduct of any Games of Chance must be approved by a Resolution of the Council.

(2) Subject to ultimate appeal to the Council, to grant, suspend, reinstate, or revoke any and all Licenses issued or required to be issued in accordance with this Gaming Ordinance.

(3) To monitor and oversee the operation and conduct of all Games of Chance within the exterior boundaries of the Reservation on a continuing basis, including but not limited to ongoing monitoring and oversight of Licensees engaged in the operation and conduct of such games.

(4) To inspect and examine all Gaming Facilities within the Reservation at which Games of Chance are played during all hours of Class II and Class III Gaming activity and to have immediate, unrestricted access to any and all areas of a Gaming Facility for ensuring compliance with this Gaming Ordinance and the Compact.

(5) To conduct or cause to be conducted background investigations of persons involved, directly or indirectly, in the operation or conduct of Games of Chance within the exterior boundaries of the Reservation.

(6) To inspect, examine, photocopy, and audit all papers, books, and records respecting gross receipts of gaming activities operated or conducted within the exterior boundaries of the Reservation and any other matters necessary to carry out the duties of the Commission under this Gaming Ordinance.

(7) Subject to the approval of the 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

(8) Subject to the approval of the Council, to establish fees for applications for Licenses and fees for Licensees based on a percentage of the gross receipts of Games of Chance operated or conducted by such Licensees.

(9) To require by written order 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, subject to the approval of the Council, to bring actions in the Tribal Court for the enforcement of such order.

(10) To administer oaths and affirmations to witnesses appearing before the Commission.

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

(12) To recommend amendments to this Gaming Ordinance to the Council.

(13) To submit quarterly reports to the Council on the activities of the Commission.

(14) 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 Council for all such activities, and to report to the Governor and Council on all such activities annually and upon request.

(15) Subject to the consent of the Council, to hire and fire employees as necessary to discharge the Commission's duties.

(16) To record and investigate unusual occurrences related to Class II and Class III Gaming at a Gaming Facility and to cause persons who may be involved in illegal acts to be detained for the purpose of notifying appropriate law enforcement authorities.

(c) **Composition; Selection; Term.** The Commission shall consist of three (3) Commissioners appointed by the Council. Each Commissioner shall serve for a term of five (5) years; provided that, in order to stagger the expiration of terms of office, the first Commissioner appointed shall serve a five-year term; the second Commissioner appointed shall serve a three-year term; and the third Commissioner appointed shall serve a two-year term. A Commissioner may serve after the expiration of his or her term of office until a successor has been appointed, unless such Commissioner has been removed for cause under Subsection (e) of this Section. A Commissioner may be reappointed to serve for one or more additional terms.

(d) **Qualification of Commissioners.** Two (2) Commissioners must be Members of the Pueblo of Tesuque, and one (1) Commissioner must be a non-member of the Pueblo of

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

- (1) Has been convicted of a felony or gaming offense;
- (2) Has any financial interest in, or management responsibility for, any gaming activity or supplier of gaming equipment; or
- (3) Has a financial interest in, or management responsibility for, any Management Contract submitted to the Council for review or approval.

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

- (1) Removal of a Commissioner may be initiated by a member or members of the Council, who shall provide the Governor with a written request specifying the cause for removal, signed by not fewer than six (6) members of the Council;
- (2) The cause for removal shall be limited to: (i) conviction in any court of a felony or crime involving moral turpitude; (ii) failure to meet or maintain the qualifications for Commissioners set forth in Subsection (d) of this Section; (iii) gross neglect of duty; (iv) malfeasance in office; or (v) conduct that 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 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; and

(4) To remove a Commissioner from office, the affirmative vote of no fewer than six (6) of the members of the Council is required.

(f) **Resignations and Vacancies.** A Commissioner may resign at any time by giving written notice of such to the Chairperson of the Commission and to the Governor. 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 with a written consent of the Council.

(g) **Selection of Officers.** The Commission shall select annually by majority vote one of its members to serve as Chairperson and one of its members to serve as Vice Chairperson/Secretary. The Vice Chairperson/Secretary shall serve as Chairperson during meetings of the Commission at which the Chairperson is absent.

(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. The Commission shall meet at the call of the Chairperson or a majority of the Commissioners. Two (2) members of the Commission shall comprise a quorum.

(i) **Cooperation with Law Enforcement Agencies.** The Commission may cooperate with law enforcement officials of the State of New Mexico, the Bureau of Indian Affairs, the Federal Bureau of Investigation, and other law enforcement agencies, when such cooperation is in the best interests of the Pueblo of Tesuque and will assist in assuring that fair, honest, and efficient Games of Chance are operated and conducted within the Reservation.

(j) **Compensation.** The Commissioners shall be compensated as determined by the Council.

**SECTION 7. LICENSES FOR OPERATING AND CONDUCTING GAMES OF CHANCE.**

(a) **License Required.** Every Key Employee and Primary Management Official of the Gaming Enterprise (but excluding the Pueblo of Tesuque), the Management Contractor and its principals, Primary Management Officials and Key Employees (if the Gaming Enterprise is managed under a Management Contract); any person that has supplied or proposes to supply any Gaming Machine or Gaming Device to the Pueblo of Tesuque, Gaming Enterprise, or the Management Contractor, if any; and each person providing Gaming Services within or without a Gaming Facility shall apply for a License from the Commission as required by the provisions of this Section. A separate License shall be required for each location of a Gaming Facility.

(b) **License Application.** Each Applicant for a License shall file with the Commission a written application in the form prescribed by the Commission, along with the Applicant's fingerprint card, current photograph, and the fee required by the Commission.

(1) The following notice shall be placed on the application form for all employees 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 Tesuque Gaming Commission and the National Indian Gaming Commission, which have need for the information in the 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 investigation or prosecution or when, pursuant to a requirement by a 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 investigation of activities while associated with a tribe or a Gaming Operation. Failure to consent to the disclosures indicated in this notice will result in a tribe's being unable to hire you in a primary management official or key employee position with a tribal gaming enterprise.

The disclosure of your Social Security Number (SSN) is voluntary. However, failure to supply an SSN may result in errors in processing your application.

(2) Existing Key Employees and Primary Management Officials shall be notified in writing that they shall either:

A. Complete a new application form that contains the 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 for all employees 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.C. §1001.

(4) The Commission shall notify all existing employees in writing 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.

(c) **Background Investigations.**

(1) Upon receipt of a completed application and the required fee, 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 the determination required under 25 C.F.R. § 558.2. In particular, the Commission shall cause a thorough criminal history check to be made of each applicant, by having the National Indian Gaming Commission process the applicant's fingerprint card through the Federal Bureau of Investigation.

(3) The Commission shall request from each applicant, and from each principal, Primary Management Official, and Key Employee of each applicant, 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, and all languages spoken or written;

B. 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 all applicants for positions as Primary Management Official, Key Employee, Management Contractor, manufacturer or supplier of Gaming Machines or Gaming Devices, and/or a person providing Gaming Services, must provide such information currently and from the age of eighteen (18);



C. The names and current addresses of at least three (3) personal references, including one (1) personal reference who was acquainted with the applicant during each period of residence listed in Subsection (c)(3)(B) of this Section;

D. Current business and residence telephone numbers;

E. A description of any existing and previous business relationships with Indian tribes, including ownership interests in those businesses, and a description of any potential or actual conflict of interest between such businesses and Indian tribes;

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

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

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

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

J. 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

Subsection (c)(3)(H) or (c)(3)(I) of this Section, the criminal charge, the date of the charge, the name and address of the court involved, and the disposition, if any;

K. 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 or not such license or permit was granted;

L. A current photograph;

M. Fingerprints taken by the Pueblo of Tesuque Law Enforcement Department or the Bureau of Indian Affairs Law Enforcement Agency;

N. The fee required by the Commission; and

O. Any other information the Commission deems relevant.

(4) In conducting a background investigation, the Commission and its agents shall promise to keep confidential the identity of each person interviewed in the course of the investigation.

(5) Background checks of applicants will be performed pursuant to the following procedures:

A. The Commission will provide applications to potential applicants upon request, and shall collect and maintain the applications;

B. The Commission shall investigate or cause to be investigated the information provided in the applications. Such investigation will include: (i) contacting persons or entities identified in the application and verifying by written or oral communication that the information contained in the application is accurate; (ii) interviewing a sufficient number of knowledgeable people, such as former employers, partners, business associates, and others

referred to in the application, to provide a basis for the Commission to make a determination on whether the applicant meets applicable eligibility requirements; (iii) reviewing relevant financial records of the applicant for the three (3) years preceding the application; and (iv) contacting any state, federal, or other government agency that is referred to in the application.

C. 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.

D. 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 to be insufficient, the Commission will perform additional investigations.

E. Once the investigation is complete, the Commission will decide whether the applicant meets the eligibility requirements under the Gaming Ordinance.

F. In conducting a background investigation and review, 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 investigation.

(d) **Temporary License.** Within twenty (20) days of the receipt of a completed application for licensing, and upon request of an applicant, the Commission may issue a temporary License to the applicant unless the background investigation undertaken discloses that the applicant has a criminal history, or unless other grounds sufficient to disqualify the applicant are apparent on the face of the application. The temporary License shall become void and be 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.

(e) **Eligibility Determination.** The Commission shall review the person's prior activities, criminal record, if any, and reputation, habit, and associations to make a finding concerning eligibility of an applicant, or a principal, Key Employee, or Primary Management Official of an applicant, for employment 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 Class II or Class III Gaming Activity, the Commission shall deny the application.

(f) **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.

(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) When a Key Employee or Primary Management Official begins work at the Gaming Enterprise, the Commission shall forward to the National Indian Gaming Commission and the State Gaming Representative a completed application for employment and conduct the background investigation and make the eligibility determination referred to in Subsection (e) of this Section.

(2) The Commission shall forward the report referred to in Subsection (h) of this Section to the National Indian Gaming Commission and the State Gaming Representative within sixty (60) days after an employee begins work or within sixty (60) days of the approval of the Compact by the Secretary of the Interior.

(3) The Gaming Enterprise shall not employ as a Key Employee or Primary Management Official a person who does not have a 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 Subsection (g) of this Section, the Commission shall prepare and forward to the National Indian Gaming Commission and to 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 subsection (e) of this Section.

(3) If a license is not issued to an applicant, the Commission:  
A. Shall notify the National Indian Gaming Commission and 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.

(4) 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 three (3) years from the date of termination of employment.

(i) **Granting of a Gaming License.**

(1) If, within a thirty (30) day period after the National Indian Gaming Commission receives an investigative report, the National Indian Gaming Commission 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.

(2) The Commission shall respond to a request for additional information from the Chairman of the National Indian Gaming Commission or the State Gaming Representative concerning a principal, Key Employee, or Primary Management Official who is the subject of an investigative report. Such a request shall suspend the thirty (30) day period under Subsection (i)(1) of this Section until the Chairman of the National Indian Gaming Commission and/or State Gaming Representative receives the additional information; provided that, in no event shall a request for additional information by the State Gaming Representative extend the thirty (30) day period under Subsection (i)(1) of this Section for a total period of more than sixty (60) days from the date the State Gaming Representative received the investigative report.

(3) If, within the thirty (30) day period described above, the National Indian Gaming Commission or 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 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 State Gaming Representative, and shall make a final decision whether to issue a License to such applicant.

(j) **Duration and Renewal of Licenses.** A License shall be effective for a time period to be specified by the Commission, not to exceed three (3) years from the date of its issuance; provided that, a Licensee that has applied timely for a renewal may continue to be employed or engaged or to conduct business under an expired License until action is taken on the renewal application by the Commission. Applicants seeking renewal of a License shall pay a renewal fee and update information, as requested, on the appropriate renewal forms, but, in the discretion of the Commission, may not be required to resubmit historical data already available to the Commission.

#### **SECTION 8. MANAGEMENT CONTRACT.**

(a) **Hiring of Manager.** The 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 of Tesuque, or pursuant to a written Management Contract. A Management Contract must conform to the requirements of this Gaming Ordinance, tribal law, and the Indian Gaming Regulatory Act and regulations promulgated thereunder, and any such contract must be approved by the Council in accordance with the provisions of this

Section, and must further be approved by the Chairman of 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 principals, Primary Management Officials, and Key Employees of the Management Contractor must obtain a License from the Commission within sixty (60) days.

(c) **Standards for Approval.** The Council may approve a Management Contract only if the contract provides:

(1) For the adoption and maintenance of adequate accounting procedures and for verifiable financial reports to be prepared and submitted to the Council on a monthly basis;

(2) For access of the Commission to the daily operations of the gaming and for permission for the Commission to verify the daily gross revenues and income made from Class II and Class III Gaming activity.

(3) For a minimum guaranteed payment to the Pueblo of Tesuque, which payment must be made prior to retirement of any development and construction costs;

(4) For an agreed ceiling for the repayment of development and construction costs;

(5) For a contract term not to exceed five (5) years, except that the Council may authorize a contract term that exceeds five (5) years but does not exceed seven (7) years if the Council is satisfied that the investment required and the income projections for the gaming activity require the additional time;

(6) For grounds and procedures for terminating such contract;



(7) That the Management Contractor has no authority to waive the Pueblo of Tesuque's sovereign immunity without a duly passed resolution of the Council on a contract by contract basis;

(8) Requires that all Class III Gaming covered by the Management Contract will be conducted in accordance with this Gaming Ordinance, the Compact, and the Indian Gaming Regulatory Act; and

(9) All other provisions required by 25 C.F.R. § 531.1.

(d) **Management Contract Fees.** The Council may approve a Management Contract providing for a fee based upon a percentage of the Net Revenues. Such fee shall not exceed thirty percent (30%) of the Net Revenues, except that the Council may approve a Management Contract providing for a fee that exceeds thirty percent (30%) but not forty percent (40%) of the Net Revenues of a gaming activity if the Council is satisfied that the capital investment required and income projections for such gaming activity require the additional fee.

(e) **Grounds for Disapproval.** The Council shall not approve any Management Contract if the Council determines that:

(1) The Management Contractor, or any principal, Primary Management Official, or Key Employee of the Management Contractor, 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 the contract.

(f) **Modification and Revocation of Management Contract.** The Council shall have the authority to require appropriate contract modifications and may void any Management

Contract if it determines that this Gaming Ordinance or the Management Contract has been violated.

(g) **Management Contract Binding Upon Approval.** No Management Contract, and no modification, revision, or amendment thereto, shall be binding upon the Pueblo of Tesuque unless and until approved by the Council and by the Secretary of the Interior or the Chairman of the National Indian Gaming Commission.

**SECTION 9. FINANCIAL PRACTICES AND REPORTING.**

(a) **Monthly Reports.** On or before the twentieth (20th) day of each month, the Manager shall file with the Commission and the Council a certified financial report for the preceding calendar month showing the amount of gross receipts derived from Games of Chance, the operating expenses incurred or paid, the specific classifications of such expenses, and the Net Revenues derived from Games of Chance. It is the duty of the Manager to maintain and keep such books and records as may be necessary to substantiate the particulars of each report. If the Manager 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 Manager 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 shall be kept on the premises of a Gaming Facility showing the condition of the business and all transactions relating to Games of Chance therein. The Commission and the Council shall have access to such books of account and shall be entitled to examine them without notice at any time, either in person or by an agent. All records of Games of Chance in whatever medium shall be maintained for not less than six (6) 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 activity at each Gaming Facility, including but not limited to transactions relating to each gaming table bank, game dropbox, and gaming room bank;

(3) All returned checks, hold checks, or other similar credit instruments;

(4) 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 that show the total amount of cash wagered and the total amount of prizes won;

(5) Contracts, correspondence, and other transaction documents relating to all vendors and contractors;

(6) Records of all tribal gaming enforcement activities;

(7) Audits prepared by or on behalf of the Pueblo of Tesuque or the Gaming Enterprise;

(8) Personnel information on all Class III Gaming employees or agents, 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 Games 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) For the purchase of goods, wares, and merchandise furnished;

(2) For services rendered by the Manager (including repayment of development fees and construction costs, if any) for maintenance or reports of gaming and related equipment, and for operating or conducting Games of Chance;

(3) For regulatory fees required to be paid to the Pueblo of Tesuque, the National Indian Gaming Commission, or the State of New Mexico under the Compact;

(4) For rent, janitorial, and security services;

(5) For legal and accounting fees;

(6) For taxes and license fees;

(7) For utilities and trash removal costs;

(8) For advertising;

(9) For vehicle expenses;

(10) For insurance;

(11) For the interest portion of any debt payments;

(12) For employee training;

(13) For necessary and appropriate business travel;

(14) For employee wages; and

(15) 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 separate Gaming General Operating Account of the Pueblo of Tesuque which shall contain only gross receipts. All operating expenses shall be withdrawn from such account by consecutively numbered checks duly signed by the Manager or an official or officials designated by the Manager payable to a specific person or organization.

(e) **Annual Audit.** The Manager shall cause to be produced an annual outside independent certified audit of all gaming activities and shall deliver the same within one hundred and twenty (120) days of the close of the Pueblo of Tesuque's fiscal year to the Council, the Commission, and the National Indian Gaming Commission in accordance with all applicable regulations. The Commission shall, within one hundred and twenty (120) days of its receipt, furnish to the State Gaming Representative and the State Treasurer copies of the audit and certified financial statement covering all Class III Gaming of the Gaming Enterprise.

(f) **Audit of Contracts.** All gaming related contracts for supplies, services, or merchandise, in an amount greater than \$25,000 annually, except contracts for professional legal or accounting services, shall be specifically included within the annual outside independent certified audit referred to in Subsection (e) of this Section.

(g) **Disposition of Net Revenues.** The Net Revenues derived from Games of Chance shall be deposited into the general fund of the Pueblo of Tesuque and shall not be used for purposes other than:

- (1) To fund Pueblo of Tesuque governmental operations and programs;
- (2) To provide for the general welfare of the Pueblo of Tesuque and its members;
- (3) To promote tribal economic development;
- (4) To contribute to charitable organizations; and
- (5) To help fund operations of local Pueblo of Tesuque governmental agencies.

(h) **Compliance with Internal Revenue Code.** The Manager and Gaming Enterprise shall maintain a permanent record containing the name and address of each player who receives a prize if and as required by, and in accordance with, the Internal Revenue Code.

(i) **Compliance with Bank Secrecy Act.** The Manager and Gaming Enterprise shall comply with all applicable provisions of the federal Bank Secrecy Act.

**SECTION 10. TESUQUE GAMING ENTERPRISE.**

(a) **Establishment of the Enterprise.** There is hereby established, as a wholly owned enterprise of the Pueblo of Tesuque, the Tesuque Gaming Enterprise, 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 Council may designate. The Tesuque 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 such Class III Gaming activities as are authorized by the Compact.

(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 Council, which shall act as the Board of Directors of the Gaming Enterprise. The day-to-day operations of the Gaming Enterprise shall be under the direction of the Manager, who shall be hired by the Council in accordance with the provisions of Section 8 of this Gaming Ordinance. The Manager shall hire and supervise the other employees of the Gaming Enterprise, and, subject to the guidance and direction of the Council (acting as Board of the Enterprise), 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 person has held a valid gaming License issued by the Commission under the provisions of this Gaming Ordinance for no fewer than ten (10) days prior to the date on which such person 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 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 the Council, and their agents specifically appointed for any such inspection.

(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) ***No Limit on Prizes.*** There shall be no limit on the size of the prize offered or given in any Bingo Game.

(4) ***Rules of Play.*** The equipment used in playing Bingo 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 including, where more than one room is used for any Bingo Game, 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 the Indian Gaming Regulatory Act or other federal law, such federal law shall control. As required by the Compact, the following provisions are hereby adopted as a matter of Pueblo of Tesuque law and shall be enforced with respect to the Pueblo of Tesuque'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 of Tesuque to federal jurisdiction under said laws or as creating under Pueblo of Tesuque law any causes of action available to any person under such federal laws;

D. On any construction project involving a Gaming Facility to be used for the conduct of Class III Gaming or related structure that is funded in whole or part by federal funds, workers shall be paid wages meeting or exceeding the standards established for the State of New Mexico under the federal Davis-Bacon Act;

E. The Gaming Enterprise and any Management Contractor shall not discriminate in the employment of persons at the Gaming Facility on the grounds of race, color, national origin, gender, sexual orientation, age, or handicap; provided that, the Pueblo of Tesuque, the Gaming Enterprise, and any Management Contractor shall provide for Indian preference in employment in Class II and Class III Gaming activities as set forth in this Gaming Ordinance, consistent with Title VII of the federal Civil Rights Act of 1964, 42 U.S.C. §§ 2000e et seq.;

F. The Gaming Enterprise shall allow the State of New Mexico Department of Environment inspectors to inspect the food service operations of a Gaming Facility where Class III Gaming is conducted 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:

i. cash for patrons any paycheck or any type of government assistance check, including Social Security, AFDC, pension, and other similar checks;

or

ii. 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 must be posted on each such 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 of New Mexico to AFDC recipients for access to AFDC benefits;

J. No later than ninety (90) days after the effective date of the Compact, all Gaming Machines on the premises of the Gaming Facility will be connected to a central computerized reporting and auditing system on the Gaming Facility premises, which shall collect on a continual basis the activity of each Gaming Machine in use, and which data shall be

accessible electronically to the State Gaming Representative upon entry of appropriate security codes;

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

i. 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;

ii. 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;

iii. 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

iv. No alcoholic beverages shall be sold, served, delivered, or consumed in that part of the Gaming Facility where Class III Gaming is allowed.

L. 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 of Tesuque, and their agents and employees against claims, demands, or liability for bodily injury and property damages brought by a patron or visitor arising from an occurrence described in Subsection (b)(1) of Section 13 of this Gaming Ordinance, and such policies shall provide bodily injury and property damage coverage in an amount of at least one million dollars (\$1,000,000) per person and ten million

dollars (\$10,000,000) per occurrence 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;

M. The Gaming Enterprise shall spend an amount no less than one-quarter of one percent (.25%) of its Net Win as that term is defined herein annually to fund or support programs for the treatment and assistance of compulsive gamblers or for the prevention of compulsive gambling;

N. 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);

O. Neither the Pueblo of Tesuque nor the Gaming Enterprise may provide, allow, contract to provide, or arrange to provide alcoholic beverages, food, or lodging for no charge or at reduced prices at a Gaming Facility or lodging facility as an incentive or enticement for patrons to participate in Class III Gaming;

P. Neither the Pueblo of Tesuque, the Gaming Enterprise, the Commission, nor any Management Contractor shall contribute directly, or through an agent, representative, or employee, revenues from the Gaming Enterprise, or 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 of New Mexico's Campaign Reporting Act; and

Q. 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 of Tesuque 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, corporation or other entity that has supplied or proposes to supply any Gaming Machines, Gaming Devices, or equipment 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 Section 7 of this Ordinance, and the Commission shall prescribe appropriate forms, procedures and standards for such licensing.

(3) ***Class III Gaming Rules.*** The Commission shall have the authority to prescribe such other rules and procedures to govern any Class III Gaming authorized to be conducted under the terms of the Compact and this Gaming Ordinance, which are not inconsistent with the provisions of the Compact, this Gaming Ordinance, or the Indian Gaming Regulatory Act and regulations issued thereunder.

(g) **Employees; Prohibition Against Employees Engaging in Gaming.** Any and all persons 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 Manager 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 Manager 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 of Tesuque and their spouses and children shall receive preference in employment and advancement if they meet the qualifications for employment with the Gaming Enterprise and the Manager. If there are not qualified persons from among the Members of the Pueblo of Tesuque and their spouses and children to fill any available positions, the Gaming Enterprise shall hire such qualified persons as are available, but it shall give preference to qualified members of other Indian tribes.

(j) **Advertisement of Positions.** Notice of the availability of any positions with the Gaming Enterprise shall be posted on the premises of the Gaming Facility where such vacancy exists, and at least two other locations selected by the Council, for at least fifteen (15) days prior to the filling of the position, unless special circumstances exist as determined by the Council that warrant dispensing with such notice or posting for a shorter period. The notice shall contain a description of the minimum job qualifications, duties, hours of work, compensation, and the application procedure, including the application deadline.

(k) **Personnel Policies and Benefits.**

(1) The Manager shall adopt written personnel policies for employees of the Gaming Enterprise, which shall be provided to each employee and which shall be subject to the approval of the Council. The policies shall include, but not be limited to:

A. A grievance process for an employee in cases of disciplinary or punitive action taken against an employee that includes a process for appeals to persons of greater authority than the immediate supervisor of the employee; and

B. An employee's right to receive a written statement of reasons for dismissal in the event such employee is dismissed.

(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.

(l) **Hiring and Training of Employees.** The Gaming Enterprise and the Manager 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 of Tesuque with training specifically designed to enable such employees to acquire the experience and skills necessary to advance within the Gaming Enterprise.

**SECTION 11. SUSPENSION OR 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 or the Council for information; fails to keep sufficient books and records to substantiate the reports required by this Gaming Ordinance; 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 of Tesuque relating to gaming; or deliberately or substantially fails to provide information to or answer relevant questions of the Commission or the Council or otherwise fails to comply with this Gaming Ordinance or the terms of any License granted pursuant hereto; or if the Council or Commission receives reliable information from the National Indian Gaming Commission or any other source that the Licensee does not meet the standard established in Section 7(e) of this Gaming Ordinance; his or her License may be suspended; provided that, when the Council or Commission receives reliable information from the National Indian Gaming Commission that the Licensee does not meet the standard established in Section 7(e) of 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. 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 to the Licensee at the address shown upon the License, with a copy sent to the Council. 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 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 make a decision in writing, including findings of fact in support of its decision. The Commission shall issue its decision within thirty (30) days of the hearing. The Licensee shall be informed immediately of the decision and, in the event of a suspension, revocation, or reinstatement of his or her License, of 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) **Appeal to Council.** The decision of the Commission suspending or revoking a License may be appealed to the Council. Written notice of the appeal must be filed with the Governor and served on the Commission within ten (10) days of the Commission's decision. The Council may but is not required to grant the appellant a hearing. The Council shall decide the appeal within twenty (20) days after its filing, and the decision of the Council shall be final.

(g) **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.

(h) **Additional Sanctions.** Upon its determination to suspend or revoke a License, the Commission, in addition to any other penalties which 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.

**SECTION 12. VIOLATIONS; JURISDICTION; ENFORCEMENT OF SUBPOENAS.**

(a) **Criminal Penalties.**

(1) Except as otherwise provided in Subsection (a) of this Section, any Indian who violates any provision of this Gaming Ordinance shall be guilty of a criminal offense punishable by a fine, or by imprisonment, or both, the amount of such fine and the length of such imprisonment to be up to the maximum amount and length that federal law allows Indian tribes to impose.

(2) Pursuant to the Compact, the State of New Mexico may exercise concurrent jurisdiction with the United States to prosecute violations by non-members of the Pueblo of Tesuque of any State of New Mexico gambling law on the Reservation, 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 of Tesuque, the Gaming Enterprise or the Commission will notify the State of New Mexico Attorney General and the District Attorney for Santa Fe County of the particulars available to the Gaming Enterprise or Commission. Upon any reasonable request by the District Attorney for Santa Fe County, the Pueblo of Tesuque Law Enforcement Department and the Commission will perform additional investigation and cooperate fully with such District Attorney and State of New Mexico law enforcement agencies on the matter. In the event of an emergency involving a possible violation by a non-member of the Pueblo of Tesuque, the Pueblo of Tesuque and its constituent agencies may act as they see fit in accordance with the laws of the Pueblo of Tesuque in order to protect against any immediate threat to lives or property.

(3) The Pueblo of Tesuque may enter into a Memorandum of Understanding with the District Attorney for Santa Fe County, to which Memorandum of Understanding the United States Attorney also may be a party, to address such matters as the specific procedures by which cases under Subsection (a)(2) of this Section will be referred, participation of the Commission and the Pueblo of Tesuque Law Enforcement Department in the investigation and prosecution of any such case, and payments by the Pueblo of Tesuque to the Office of the District Attorney for Santa Fe County to defray the costs of handling such cases.

(b) **Civil Sanction.** Any person who violates any provision of this Gaming Ordinance shall be liable for civil monetary sanctions not to exceed five thousand dollars (\$5,000) for each day such violation occurs, along with any civil damages caused by the commission of such violation. Such person also may be excluded from the Reservation to the extent such exclusion is consistent with the laws of the Pueblo of Tesuque.

(c) **Tribal Court Jurisdiction.** 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 penalties and civil sanctions prescribed in Subsections (a) and (b) of 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. Nothing in this Gaming Ordinance, however, 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.

(d) **Enforcement of Council and Commission Orders.** If a person is ordered by the Commission or the Council to attend or to produce books, accounts, records, or other documents in any investigation or hearing conducted by the Commission or the Council and 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 Commission or the Council, the Commission or the Council 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 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 or her under a grant of immunity under this Subsection.

**SECTION 13. PATRON DISPUTES AND VISITOR CLAIMS.**

(a) **Procedures for Resolving Patron Disputes.** Except as otherwise provided in Subsection (b) of this Section, whenever any patron of any Class II or Class III Gaming activity being conducted by the Gaming Enterprise under the provisions of this Gaming Ordinance believes that he or she should not have lost any money, or has not received any winnings to which the patron believes he or she was entitled, or in any other respect was treated wrongly or unfairly, any employee to whom the patron communicates the complaint shall refer the patron to the Manager. The Manager shall investigate the matter thoroughly, and shall attempt to resolve the complaint amicably and promptly and in keeping with the spirit of this Gaming Ordinance. The Manager's proposed action shall be communicated to the person in writing, no less than ten (10) days after the complaint is brought to the Manager. If the person is dissatisfied with the resolution proposed by the Manager, the patron may, within ten (10) days of receipt of the Manager's decision, appeal to the Commission. The Commission shall investigate the facts underlying the complaint and the actions of the Manager thereon, and shall make a final decision, in writing, either to affirm the Manager's proposed resolution, or to take some different action (but in no case shall the Commission's decision be less favorable to the patron than the Manager's proposal). If the patron is still dissatisfied, he or she may request that the dispute be referred to binding arbitration, either by a single arbitrator (if the parties agree on one) or by a panel of three (3) arbitrators, one appointed by the patron, one appointed by the Manager, and a third by the other two; provided, that if the arbitration results in a decision that is no more favorable

to the patron than the decision of the Commission, the patron shall bear one-half of the costs of the arbitration. The arbitration shall proceed in accordance with the rules of the American Arbitration Association, unless the patron and the Gaming Enterprise agree to follow different procedures.

(b) **Resolving Patron and Visitor Claims of Liability for Bodily Injury or Property Damage.**

(1) The Tribal Court shall have original jurisdiction over claims of liability by a patron or visitor to a Gaming Facility where Class III Gaming is conducted for bodily injury or property damage proximately caused by the conduct of the Gaming Enterprise and:

A. Occurring at a Gaming Facility on grounds or involving vehicles and mobile equipment used by the Gaming Enterprise;

B. Arising out of a condition at a Gaming Facility or on premises or roads and passageways immediately adjoining it;

C. Occurring outside of a Gaming Facility but arising from the activities of the Gaming Enterprise;

D. As a result of a written contract that directly relates to the ownership, maintenance, or use of a Gaming Facility or when the liability of others is assumed by the Gaming Enterprise; or

E. On a road or other passageway on the Reservation while the patron or visitor is traveling to or from the Gaming Facility.

(2) A patron or visitor having a claim described in Subsection (b)(1) of this Section may pursue that claim in the Tribal Court or, at the option of the patron or visitor,

in binding arbitration. The patron or visitor shall make a written election that is final and binding.

(3) Claims brought under Subsection (b)(1) of 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.

(4) Arbitration shall be conducted, pursuant to an election by a patron or visitor under Subsection (b)(3) of this Section, as follows:

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

B. The patron or 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;

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.

(c) **Posting of Notice.** The Gaming Enterprise shall prominently post a notice, bearing the title, "PATRON DISPUTE AND VISITOR CLAIMS PROCEDURES," informing patrons and visitors of the remedies set forth in this Section, and setting forth the language of Subsections (a) and (b) of this Section, in every room of every Gaming Facility where Class II and Class III Gaming is conducted under the provisions of this Gaming Ordinance.

(d) **Public Health and Safety.** Each Gaming Facility and 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 Pueblo of Tesuque 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.

**SECTION 14. MISCELLANEOUS.**

(a) **Severability.** In the event that any provision in this Gaming Ordinance or the application thereof to any person or circumstances is held 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.

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